

# Domestic Construction

## INSURANCE POLICY

### Residential Builders South Australia

POLICY

This Policy is underwritten by QBE Insurance (Australia) Limited  
ABN 78 003 191 035 of 82 Pitt Street, Sydney.



## About this booklet

This booklet contains 2 separate parts:

### General Information and the Policy Terms and Conditions.

#### General Information

This part of the booklet contains information you need to know before you take out a Policy. Please read it carefully before taking out this insurance.

#### Policy Terms and Conditions

The Policy part of this booklet contains the Policy Terms and Conditions, which detail all the terms, conditions and exclusions relating to the Policy. It forms part of your legal contract with us.

If we issue you with an insurance Policy, you will be given a Policy Schedule. The Policy Schedule sets out the specific terms applicable to your cover and should be read together with the Policy Terms and Conditions.

The Policy Terms and Conditions and the Policy Schedule we send to you form your legal contract with us so please keep them in a safe place for future reference.

If you require further information about this product, please contact your Financial Services Provider.

#### About QBE Australia

QBE Insurance (Australia) Limited is a member of the QBE Insurance Group (ASX: QBE). QBE Insurance Group is Australia's largest international general insurance and reinsurance group, and one of the top 25 insurers and reinsurers worldwide. The company has been operating in Australia since 1886 and continues to provide industry-leading insurance solutions that are focused on the needs of intermediaries and their clients.

QBE is a household name in Australian insurance, backed by sizeable assets, and well known as a strong and financially secure organisation.

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# GENERAL INFORMATION FOR DOMESTIC CONSTRUCTION RESIDENTIAL BUILDERS SOUTH AUSTRALIA INSURANCE POLICY

The information contained in this part is general information only and does not form part of your contract with us. The Policy Terms and Conditions in the rest of this booklet contain details of your contract.

## Duty of Disclosure – What you must tell us

Under the Insurance Contracts Act 1984 (the Act), you have a Duty of Disclosure. You are required before you enter into, renew, vary, extend or reinstate your Policy, to tell us everything you know and that a reasonable person in the circumstances could be expected to know, is a matter that is relevant to our decision whether to insure you, and anyone else to be insured under the Policy, and if so, on what terms.

- **You do not have to tell us about any matter**
  - that diminishes the risk
  - that is of common knowledge
  - that we know or should know in the ordinary course of our business as an insurer, or
  - which we indicate we do not want to know.
- **If you do not tell us**

If you do not comply with your Duty of Disclosure we may reduce or refuse to pay a claim or cancel your Policy. If your non-disclosure is fraudulent we may treat this Policy as never having worked.

## Privacy

Privacy legislation regulates the way private sector organisations can collect, use, keep secure and disclose personal information. We are bound by the Privacy Act 1988 (Cth.), when collecting and handling your personal information. QBE has developed a privacy Policy which explains what sort of personal information we hold about you and what we do with it.

We will only collect personal information from or about you for the purpose of assessing your application for insurance and administering your insurance Policy, including any claims you make. We will only use and disclose your personal information for a purpose you would reasonably expect.

We may need to disclose personal information to our reinsurers, (who may be located overseas), insurance intermediaries, insurance reference bureaux, credit reference agencies, our advisers and those involved in the claims handling process (including assessors and investigators), for the purposes of assisting us and them in providing relevant services and products, or for the purposes of litigation. We may disclose personal information to people listed as co-insured on your Policy and to family members or agents authorised by you. We may also disclose information to organisations which conduct customer service surveys on our behalf. We will request your consent to any other purpose.

By providing your personal information to us, you consent to us making these disclosures. Without your personal information we may not be able to issue insurance cover to you or process your claim.

You also have the opportunity to find out what personal information we hold about you and, when necessary, correct any errors in this information. Generally we will do this without restriction or charge. For further information about our Privacy Policy or to access or correct your personal information, please contact The Compliance Manager, QBE Insurance (Australia) Limited, GPO Box 82 Sydney NSW 2001. Telephone: (02) 9375-4656, Fax: (02) 8275-9022 or Email: [compliance.manager@qbe.com](mailto:compliance.manager@qbe.com)

## The General Insurance Code of Practice

QBE Insurance (Australia) Limited is a signatory to the General Insurance Code of Practice. The Code aims to:

- promote more informed relations between insurers and their customers;
- improve consumer confidence in the general insurance industry;
- provide better mechanisms for the resolution of complaints and disputes between insurers and their customers; and
- commit insurers and the professionals they rely upon to higher standards of customer service.

## Dispute resolution

We will do everything possible to provide a quality service to you. However, we recognise 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.

We have a Complaints and Dispute Resolution Procedure which undertakes to provide an answer to your complaint within 15 working days.

If you would like to make a complaint or access our internal dispute resolution service please contact your nearest QBE office and ask to speak to a dispute resolution specialist.

# POLICY TERMS AND CONDITIONS FOR DOMESTIC CONSTRUCTION RESIDENTIAL BUILDERS SOUTH AUSTRALIA INSURANCE POLICY

## Insurer

The Policy is underwritten by QBE Insurance (Australia) Limited, ABN 78 003 191 035, AFS Licence No. 239545 of 82 Pitt Street, Sydney.

## Our agreement with you

This Policy is a legal contract between you and us. You pay us the premium, and we provide you with the cover you have chosen as set out in the Policy, during the period of insurance shown on your Policy Schedule or any renewal period.

The deductibles set out in the section headed 'How much will we pay – Excesses' apply to all claims except where otherwise stated. The amount of any excess that applies to your Policy will be shown on your Policy Schedule.

The exclusions in the section(s) headed 'What we don't pay' and conditions in the section headed 'General Conditions' apply to all types of cover.

## Your Policy

Your Domestic Construction Residential Builders Victoria Policy consists of the Policy Terms and Conditions in this booklet and the Policy Schedule we give you.

Please read your Policy carefully, and satisfy yourself that it provides the cover you require.

If you want more information about any part of your Policy, please ask us, or your Financial Services Provider.

The address and telephone number of your QBE branch are on your Policy Schedule.

You should keep your Policy Booklet and Policy Schedule together in a safe and convenient place for future reference.

## Paying your premium

You must pay your premium by the due date. If we do not receive your premium by this date or your payment is dishonoured this Policy will not operate and there will be no cover.

## How Goods and Services Tax affects any payments we make

The amount of premium payable by you for this Policy includes an amount on account of the GST on the premium.

When we pay a claim, your GST status will determine the amount we pay.

When you are:

- (a) not registered for GST, the amount we pay is the sum insured/limit of liability or the other limits of insurance cover including GST.

- (b) registered for GST, we will pay the sum insured/limit of liability or the other limits of insurance and where you are liable to pay an amount for GST in respect of an acquisition relevant to your claim (such as services to repair a Damaged item insured under the Policy) we will pay for the GST amount.

We will reduce the GST amount we pay for by the amount of any input tax credits to which you are or would be entitled if you made a relevant acquisition. In these circumstances, the Input Tax Credit may be claimable through your Business Activity Statement (BAS).

You must advise us of your correct Australian Business Number and Taxable Percentage.

Any GST liability arising from your incorrect advice is payable by you.

Where the settlement of your claim is less than the sum insured/limit of liability or the other limits of insurance cover, we will only pay an amount for GST (less your entitlement for Input Tax Credit) applicable to the settlement. This means that if these amounts are not sufficient to cover your loss, we will only pay the GST relating to our settlement of the claim.

We will (where relevant) pay you on your claim by reference to the GST exclusive amount of any supply made by any business of yours which is relevant to your claim.

GST, Input Tax Credit (ITC), Business Activity Statement (BAS) and Acquisition have the same meaning as given to those expressions in A New Tax System (Goods and Services Tax) Act 1999 and related legislation as amended from time to time.

Taxable Percentage is your entitlement to an Input Tax Credit on your premium as a percentage of the total GST on that premium.

### Words with special meanings – definitions which apply to all Sections of this Policy

Some key words and terms used in this Policy have a special meaning.

If words and terms are only used in just one Section of the Policy, we will describe their special meaning in that Section.

Wherever the following words or terms are used in the Policy, they mean what is set out below:

Word or Term	Meaning
Act	the Building Work Contractors Act 1995 and regulations. The regulations when referred to separately are referred to as the regulations.
Builder	the builder licensed under the Act and named in the certificate of insurance as the builder.
Building	the house(s) described in the certificate of insurance.
Building contract	the domestic building contract between you and the builder pursuant to which domestic building work is done or is to be done in connection with the building.
Certificate of insurance	the certificate the we produce that includes important information and details about this Policy. The certificate of insurance will be evidence that we have accepted cover under this Policy.
Completion (of the work)	the time where the work is completed except for any omissions or defects which do not prevent the work from being reasonably capable of being used for its intended purpose.
Disappearance	includes cannot be found, after due search and enquiry.
Domestic building contract	A contract with the builder for the performance of domestic building work (including any variation to such contract), but does not include a subcontract for the performance of domestic building work for the builder.
Domestic building work	<ul style="list-style-type: none"> <li>(a) the whole or part of the work of constructing, erecting, underpinning, altering, repairing, improving, adding to or demolishing a house;</li> <li>(b) the whole or part of the work of excavating or filling a site for work referred to above;</li> <li>(c) the construction, alteration, repair or improvement of a swimming pool or spa within the external walls of a house or within the curtilage of a house; or</li> </ul>

Word or Term	Meaning
Domestic building work (continued)	(d) any other work carried out within the curtilage of a house or the boundary of the curtilage of a house.
House	<p>a building (or part of a building) intended for occupation as a place of residence but does not include:</p> <ul style="list-style-type: none"> <li>(a) hotels, motels, youth hostels, residential camps, boarding or lodging houses, university halls of residence, boarding school dormitories, barracks, nursing homes, or residential facilities for workers or for training purposes; or</li> <li>(b) any other building or portion of a building declared by the regulations to not be a house.</li> </ul>
Insolvency	<ul style="list-style-type: none"> <li>(a) In relation to an individual, that the individual is insolvent under administration (within the meaning of the Corporations Act 2001).</li> <li>(b) In relation to a corporation, that the corporation is an externally-administered body corporate administration (within the meaning of the Corporations Act 2001).</li> </ul>
Policy	this Policy wording, any endorsements and the certificate of insurance.
Statutory warranty	<p>each of the following warranties:</p> <ul style="list-style-type: none"> <li>(a) that the work will be performed in a proper and workmanlike manner to accepted trade standards and in accordance with the plans and specifications agreed between the parties to the contract.</li> <li>(b) hat all materials supplied for use in the work will be good and proper.</li> <li>(c) that the work will be done in accordance with, and will comply with, the Act and any other law.</li> <li>(d) that, if the contract does not stipulate a period within which the work will be done, that the work will be done with reasonable diligence.</li> <li>(e) that, if the work consists of construction of a house, that the house will be reasonably fit for human habitation.</li> </ul>

Word or Term	Meaning
Statutory warranty (continued)	(f) that if the building owner has expressly made known to the contractor, the particular purpose for which the home is required, or the result that the building owner desires the building to achieve, so as to show that the building owner relies on the contractor's skill and judgment, that the work, and any materials used in performing the work will be reasonable fit for that purpose or of such a nature and quality that might reasonably be expected to achieve that result.
Terrorism	Any act that, having regard to the nature of the act, and the context in which it was done, is reasonable to characterise as an act of terrorism. An act can only be characterised an act or terrorism if it: <ul style="list-style-type: none"> <li>(a) causes or threatens to cause death, personal injury or damage to property;</li> <li>(b) is designed to influence a government or to intimidate the public or a section of the public; or</li> <li>(c) is carried out for the purpose of advancing a political, religious, ideological, ethnic or similar cause.</li> </ul> Any lawful activity or industrial action cannot be characterised as an act of terrorism.
We/our/us	QBE Insurance (Australia) Limited ABN 78 003 191 035.
Work	domestic building work which is done or is to be done by the builder under the building contract or by the builder to the building.
You/your	the person on whose behalf the work is done or is to be done, and any successor in title to that person. You/your does not include: <ul style="list-style-type: none"> <li>(a) the builder;</li> <li>(b) a person who does domestic building work other than under a contract;</li> <li>(c) the holder of a builders licence who and that carried out the work; or</li> <li>(d) any related bodies corporate of those above, within the meaning of section 50 of the Corporations Act 2001.</li> </ul>

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

## Residential builders warranty insurance

Residential builders warranty insurance protects the person on whose behalf work is to be done and the subsequent homeowners. The Policy covers loss or damage resulting from the non-completion of the work or breach of statutory warranty because of:

- Death; or
- Disappearance; or
- Insolvency

of the builder.

A builder takes out this insurance Policy, but the beneficiary is the homeowner or subsequent homeowner.

The builder must provide a Residential Builders Warranty Certificate to the homeowners for each job they undertake. In addition, a copy of the Residential Builders Warranty Certificate will be provided to the builder/contractor and the local authority/council.

A copy of this Policy wording is held by the builder and a copy is also provided to each homeowner with the Certificate.

### Who is covered by this Policy?

You are the person covered under this Policy. We do not cover anyone except you.

### What is covered by this Policy?

We will pay for the following sustained by you:

- (a) loss or damage resulting from non-completion of the work because of the insolvency, death or disappearance of the builder; or
- (b) loss or damage arising from a breach of a statutory warranty implied by the Act but only if you cannot recover compensation from the builder or have the builder rectify the loss or damage because of the insolvency, death or disappearance of the builder.

### How much will we pay?

We may do two things, at our option, when we pay a claim under this Policy. We will either make good the loss or damage or pay the amount of that loss or damage.

### Excess

'Excess' means the first amount you must contribute to any claim you make under this Policy.

We deduct the excess shown in the Policy document or on the current Policy Schedule from the amount of your claim.

Where a sub-limit is applicable, the excess will be applied to the claim prior to applying the sub-limit.

The following limitations apply to what we will pay:

- (a) We will not pay the first \$400 of each claim in relation to each house in each building insured under this Policy.
- (b) We will not pay more than \$80,000 in total in the aggregate for all claims under this Policy for each house.

- (c) If the work is carried out or to be carried out on land in a plan of subdivision containing common property, and the loss or damage relates to common property, we will not pay more to you for that claim than the amount calculated by dividing the amount payable for that claim by the number of houses in the building.

The limitations in this clause include all the amounts payable under 'What is covered by this Policy?'

## What we don't pay

We will not pay under this Policy:

- (a) under 'What is covered by this Policy?' for work done by the builder other than on behalf of another person.
- (b) for claims in the nature of liquidated damages for delay or damages for delay. However, this limitation does not extend to any increase in rectification costs caused by the passing of time.
- (c) 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.
- (d) in relation to a defect in, or repair of damage to the non-residential part of a building that supports or gives access to the residential part, unless it is a defect or damage that adversely affects the structure of the residential part or the access to it.
- (e) for loss or damage caused by the normal drying out of the building if the builder has taken all reasonable precautions in allowing for the normal drying out when carrying out the work.
- (f) for damage due to or made worse by the failure by you to take reasonable and timely action to minimise the damage.
- (g) in relation to an appliance or apparatus (such as a dishwasher or air conditioning unit) if the claim is made after the expiry of the manufacturer's warranty period for the appliance or apparatus concerned, or, if there is no warranty period, outside the reasonable lifetime of the appliance or apparatus.
- (h) in relation to damage to work or materials that is made outside the reasonable life time of that work or materials or the manufacturer's warranty period for the materials.
- (i) for legal liability resulting from any event unless expressly insured under this Policy.
- (j) in relation to an interest in the building that is not your interest.
- (k) in relation to a defect due to a faulty design provided by you or a previous owner.
- (l) for a deposit, progress or other payment to the extent that it exceeds the amount or differs from the type specified for such a payment in section 30 of the Act.
- (m) for loss, damage or defects due to:
  - (i) an act, error or omission of someone other than the builder or someone contracted by them.
  - (ii) faulty or unsuitable materials supplied by you.
- (n) arising from, connected with or relating to personal injury, death (other than the builder), disease or illness of a person or for injury to or impairment of a person's mental condition.
- (o) for consequential loss of any kind, including loss of rent or other income, loss of value, loss of opportunity, inconvenience or distress, unless expressly insured under this Policy.
- (p) for any claims connected with or relating to:
  - (i) war, invasion, acts of foreign enemies, hostilities or war like operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power, confiscation or nationalisation or requisition or destruction or damage to property by or under the order of any government or public or local authority.
  - (ii) fraud or dishonest conduct of any kind by you.
  - (iii) any terrorism.
  - (iv) radioactivity or the use, existence or escape of any nuclear fuel, nuclear material or nuclear waste or action of nuclear fission or fusion.
  - (v) the existence or use of asbestos products and/or products containing asbestos in the building or on or in the land on which the building is built.
  - (vi) mechanical or electrical breakdown, not attributable to the workmanship of, or the installation by the builder.
  - (vii) your failure to maintain appropriate protection against pest infestation or exposure to natural timbers.
  - (viii) the action of vermin, termites, moths or other insects, unless, and to the extent that, the work involved the treatment of the termites, moths or other insects or the prevention of the action of the vermin, termites, moths or other insects.
- (q) for loss claim, cost, expense or obligation of any kind directly or indirectly arising from or relating to mould, fungus, mildew or spores unless, and to the extent that, the work involved the treatment of mould, fungus, mildew or spores or the prevention of mould, fungus, mildew or spores.
- (r) for any claim insured under another Policy of insurance issued under or pursuant to the Act.
- (s) for any claims that were allowed to be excluded by the Act as at the date the certificate of insurance was issued.

## How long are you covered for?

This Policy covers claims in respect of work made within the period of 5 years from the completion of the work.

## How long do you have to claim?

You must notify us of a claim for loss or damage resulting from all causes within 90 days of when you first became aware, or when you ought reasonably have become aware, of the fact or circumstance giving rise to the claim.

If you notify us of a defect, you are taken to have given notice of every defect to which the defect is directly or indirectly related, whether or not the claim in respect of the defect that was actually notified has been settled.

## **Making a claim**

You must make a claim by completing our claim form. The claim form is available on our website [www.qbe.com](http://www.qbe.com).

In answering any questions you must be honest and tell us everything you know. We will use this information to decide whether to pay 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).

We will acknowledge receipt of your claim notification within 5 business days. At this time, we will confirm that we have all the required information or we will tell you of any other information needed to enable us to assess your claim.

We will notify you within 30 business days of receiving all the information necessary to assess your claim, if we accept that the builder is dead, has disappeared or is insolvent.

## **Failures by the builder**

We will not either refuse to pay you for a claim under this Policy or reduce any payment under this Policy on the ground that the builder:

- (a) failed to comply with the duty of disclosure; or
- (b) made misrepresentations to us.

We may, however, recover from the builder any amount we pay under this Policy in those circumstances.

## **General Conditions**

### **Our rights and obligations**

We may, at our discretion, fulfil our obligations under this Policy by either engaging or paying a builder to repair or rectify loss or damage or paying you the cost to you of doing so.

### **Loss prevention**

You must take all reasonable steps to prevent and/or minimise any act, error or omission or event which might cause or contribute to a claim under this Policy.

### **Recovery from others**

If we pay a claim, we are entitled to be subrogated to your rights to recover against any other party (including the builder or a contractor or supplier or a liquidator or administrator or the estate of the builder) 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 a 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 your actions.

You must provide us with reasonable assistance to recover damages or contribution from any other person.

### **Application of laws**

This Policy is subject to the law of South Australia. The law of South Australia includes Commonwealth legislation such as the Insurance Contracts Act. A reference to any legislation is a reference to the legislation as amended from time to time.

### **Conflict with the Act**

This Policy is intended to comply with the requirements set out under the Act. However, if this Policy conflicts with, or is inconsistent with the Act, the Policy must be read and enforceable as if it complies with the Act.