

Calliden Owner Builder Warranty - NSW Insurance Policy



Table of contents

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Important Information	2
<hr/>	
Duty of Disclosure	2
Privacy Statement	2
Our Agreement with You	2
Goods and Services Tax	2
Definitions	3
<hr/>	
Our Cover	4
<hr/>	
Cover	4
Period of Cover	4
We will Pay	4
We will not Pay	5
Claims Procedure	5
<hr/>	
Exclusions	5
<hr/>	
Conditions	7
<hr/>	
Other Matters	7
<hr/>	
Jurisdiction	7
How we will Communicate	7

Important Information

Duty of Disclosure

This policy is subject to The Insurance Contracts Act 1984. Under that Act you have a duty of disclosure.

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, or
- 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

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

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 Statement

Privacy legislation regulates the way private sector organisations can collect, use, keep secure and disclose personal information. Any personal information you give us will be treated in accordance with the Privacy Act 1988.

For further information on our Privacy Policy or to obtain a complete copy of our Privacy Policy, please email our Privacy Officer at privacy@calliden.com.au

Our Agreement with You

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 relevant Contract(s) which supported the Application for this insurance, and carried out at the site described in the Certificate of Insurance.

Goods and Services Tax

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.

Definitions

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 Home Building Act 1989 as amended from time to time.

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

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

Common Property means the same as it does in the **Regulation**.

Contract means a contract for **Work** between the relevant **Contractor** and the **Owner-Builder**.

Contract of Sale means the contract of sale of the **Dwelling** to **you**.

Contractor means an individual, partnership or a corporation who has been issued a contractor licence authorising its holder to do **Work**.

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

Disappearance means the same as it does in the **Act** and the **Regulation**.

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

Insolvency means the same as it does in the **Act** and the **Regulation**.

Owner-Builder is the owner-builder described in the **Application** provided the owner-builder is an owner-builder in the **Act** and the **Regulation**.

Owner-Builder Work means the same as it does in the **Act** and the **Regulation**.

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

Purchaser of the Land means a purchaser of the land within the ambit of the **Act** and the **Regulation**.

Regulation means the Home Building Regulation 2004 as amended from time to time.

Residential Flat Building means any building containing two or more Dwelling(s).

Residential Flat Building Work means **Work** on the **Common Property** of an existing **Residential Flat Building** if the whole building is owned by the same person and where the **Contract** price exceeds \$12,000.

Statutory Warranty means a warranty established by the **Act**.

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

you/your/yours means the person who is the **Purchaser of the Land** on which the **Work** is done, and any successor in title to that person.

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

we/us/our means Calliden Limited ACN 110 186 224.

Work means **Owner-Builder Work** which is to be or has been done by or on behalf of the **Owner-Builder** to the **Dwelling**.

Our Cover

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**.

Cover

We will provide insurance cover to **you**, subject to the terms, conditions and exclusions set out in this **Policy**, and in accordance with the **Act** and **Regulation**:

- a) If **you** suffer loss or damage because **you** are unable, because of the **Insolvency**, death or **Disappearance** of the **Owner-Builder**:
 - i. to recover compensation from the **Owner-Builder** for a breach of a **Statutory Warranty** in respect of the **Work**; or
 - ii. to have the **Owner-Builder** rectify any such breach of a **Statutory Warranty**.
- b) Without limiting paragraph a) above, if **you** suffer loss or damage in respect of which **you** cannot recover compensation from the **Owner-Builder** or have the **Owner-Builder** rectify, because of the **Insolvency**, death or **Disappearance** of the **Owner-Builder**:
 - i. loss or damage resulting from faulty design, where the design was provided by the **Owner-Builder**, or
 - ii. the cost of alternative accommodation, removal and storage costs reasonably and necessarily incurred as a result of an event referred to in paragraph a) above, or
 - iii. any legal or other reasonable costs incurred by **you** in seeking to recover compensation from the **Owner-Builder** for the loss or damage or in taking action to rectify the loss or damage.

The risks indemnified include the acts and omissions of the **Contractor** or other persons contracted by the **Owner-Builder** to perform **Work** resulting in loss or damage of a kind referred to in this clause.

Period of Cover

- a) In the case of loss arising from a **Structural Defect**, this **Policy** provides the cover for a period:
 - i. commencing on the date of completion of the **Contract of Sale**; and
 - ii. ending 6 years after the completion of the **Work**.

Note: The period of cover does not include any time following the date which is 6 years after the completion of the **Work**.

- b) In the case of loss arising otherwise than from any such **Structural Defect**, this **Policy** provides the cover for a period:
 - i. commencing on the date of completion of the **Contract of Sale**; and
 - ii. ending 2 years after the completion of the **Work**.

Note: The period of cover does not include any time following the date which is 2 years after completion of the **Work**.

For the purposes of determining the period of the cover provided by this **Policy**, **Work** is taken to be complete:

- a. On the date that the **Work** is completed within the meaning of the relevant **Contract**, or
- b. If the relevant **Contract** does not provide for when the **Work** is completed, on the date of the final inspection of the **Work** by the 'principal certifying authority' (as defined in the **Regulation**), or
- c. In any other case, on the latest date that the relevant **Contractor** attends the site to complete the **Work** or hand over possession to the owner or if the relevant **Contractor** does not do so, on the latest date the relevant **Contractor** attends the site to carry out **Work**.

We will pay

- a) If the **Work** is not **Residential Flat Building Work**, **we** will pay a maximum aggregate amount of \$300,000 or such other amount as may be provided for from time to time by the **Regulation** for all claims made under this **Policy**.
- b) If the **Work** is **Residential Flat Building Work**, and the amount obtained by dividing the **Contract** price by the number of **Dwellings** in the building does not exceed \$12,000, **we** will pay a maximum amount of \$300,000 in the aggregate for all claims made under this **Policy**.

Our Cover (cont'd)

- c) If the **Work** is **Residential Flat Building Work**, and the amount obtained by dividing the **Contract** price by the number of **Dwellings** in the building exceeds \$12,000, **we** will pay a maximum amount of \$300,000 in the aggregate for all claims made under this **Policy** in respect of each **Dwelling**.

We will not pay

We will not pay:

- a) The first \$500 of each claim;
- b) If **you** are the **Owner-Builder**;
- c) If **you** are a **Developer**;
- d) If **you** are a person who does **Work** other than under a contract;
- 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 paragraphs b) to d) above.

Claims Procedure

1. A claim must be notified to **us** not later than 6 months after **you** first become aware, or ought reasonably to be aware, of the fact or circumstance under which the claim arises.
2. **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 period set out in paragraph 1 above.
3. Where the claim is not notified to **us** within the periods set out in paragraph 1 above, **we** may reduce our liability under the **Policy** or reduce any amount otherwise payable because of the delay in the 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**, **we** will be deemed to have accepted liability for the claim.
5. **You** must use **our** claim form to make a claim.
6. **You** must give **us** any assistance, information or documents which **we** request. This includes giving **us**, the **Contractor** and **our** nominated contractor, access to inspect, rectify or complete the **Work** (unless **you** have reasonable grounds to refuse access).
7. **You** must not make any admissions, offer, promise or payment in connection with any claim.

Exclusions

We will not be liable to indemnify **you** for:

- a) any claim relating to the sale of land more than 6 years after the completion of the **Work**,
- b) any claim if the reasonable market cost of the labour and materials involved did not exceed \$12,000 or any other amount prescribed by the **Regulation**,
- c) any claim if the **Work** is of a class prescribed by the **Regulation**,
- d) any claim if it relates to a person who is exempted under the **Act** and the **Regulation**,
- e) any claim in relation to any defect that is referred to in any report on the **Owner-Builder Work** which **we** required to be obtained before this **Policy** was entered into,
- f) any claim for such loss or damage as could be reasonably expected to result from fair wear and tear of the **Work** or **your** failure to maintain the **Work**,
- g) any claim 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,

Exclusions (cont'd)

- h) any claim in relation to damage caused by the normal drying out of the **Work**, if the damage has occurred despite the **Owner Builder** or **Contractor** taking all reasonable precautions in allowing for the normal drying out when carrying out the **Work**,
- i) any claim in relation to damage due to, or made worse by, **your** failure to take reasonable and timely action to minimise the damage,
- j) any claim 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 or, if there is no warranty period, outside the reasonable lifetime of the appliance or apparatus,
- k) any claim in relation to damage to **Work** or materials that is made outside the reasonable lifetime of the **Work** or materials or the manufacturer's warranty period for the materials,
- l) any claim in relation to a defect due to a faulty design provided by **you** or a previous owner,
- m) any claim for loss or damage resulting from:
 - i. War,
 - ii. An act of terrorism,
 - iii. Civil unrest,
 - iv. Asbestos contamination or removal,
 - v. A nuclear event,
 - vi. Risks normally insured under a policy for public liability or contract works,
 - vii. An act of God or nature,
 - viii. **Your** failure to maintain appropriate protection against pest infestation or exposure of natural timbers,
 - ix. Consequential loss, including, without limitation, loss of rent or other income, loss of enjoyment, loss of business opportunity, inconvenience or distress,
 - x. 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 **Owner Builder** or **Contractor**.

For the purpose of exclusion m):

- a) An act of terrorism is an act that, having regard to the nature of the act, and the context in which the act was done, it is reasonable to characterise as an act of terrorism,
- b) Any lawful activity or any industrial action cannot be characterised as an act of terrorism unless it:
 - i. Causes or threatens to cause death, personal injury or damage to property, and
 - ii. Is designed to influence a government or to intimidate the public or a section of the public, and
 - iii. Is carried out for the purpose of advancing a political, religious, ideological, ethnic or similar cause.

Conditions

- a) **We** are not entitled to either refuse to pay a claim under this **Policy** or to cancel this **Policy** for failure to comply with the duty of disclosure or misrepresentation by the **Owner-Builder**.

We may, however, recover from the **Owner-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).

- b) 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 the **Work**.
- c) 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 or to cancel the insurance on the grounds that:

- i. The premium was not paid;
- ii. In respect of **Work** done after the relevant **Contract** has commenced, the relevant **Contract** was entered into before the period of insurance under this **Policy** commenced.

- d) 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**.
- 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**.

Other Matters

How we will communicate

- 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.

Jurisdiction

This **Policy** is governed by 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.