

Domestic Construction

INSURANCE POLICY

Residential Builders Western 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.

Index

Page

About this booklet	1
About QBE Australia	1
General Information for Domestic Construction Residential Builders WA Insurance Policy	2
Our agreement with you	2
Your Policy	2
Paying your premium	2
The General Insurance Code of Practice	2
Words with special meanings – definitions which apply to all Sections of this Policy	2
Policy Terms and Conditions for Domestic Construction Residential Builders WA Insurance Policy	5
Residential builders warranty insurance	5
The insurer	5
Your policy terms and conditions	5
Who is covered by this policy?	5
What is covered by this policy?	5
How much will we pay?	5
What we don't pay	5
How long are you covered for?	6
How long do you have to claim?	6
Making a claim	6
Failures by the builder	7
Other important matters	7
Conflict with the Act	7
The builder's duty of disclosure	8
Privacy promise	8

GENERAL INFORMATION FOR DOMESTIC CONSTRUCTION RESIDENTIAL BUILDERS WA 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.

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, Section 1 for claims occurring and Section 2 for claims made, respectively during the period of insurance shown on your Policy Schedule or any renewal period.

The excesses set out in the section headed 'What you must pay if you make a claim – Deductible' apply to all claims except where otherwise stated. The amount of any deductible that applies to your Policy will be shown on your Policy Schedule.

The exclusions in the section(s) headed 'When you are not covered' and conditions in the section headed 'General Conditions' apply to all types of cover.

Your Policy

Your 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.

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; and
- 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.

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 Home Building Contracts Act 1991 and the Home Building Contracts Regulations 1992. The regulations when referred to separately are referred to as the regulations.
Associated work	includes site works, swimming pools, spas, pergolas, carports, garages, sheds, fencing, retaining walls, paving, driveways, landscaping and other like works.
Builder	The builder registered under the Builders Registration Act 1939 and named in the certificate of insurance as the builder. For the purposes of the cover we give in clause 1 – 'What is covered by this policy', builder includes any person contracted by the builder to perform the work.
Building	The dwelling(s) described in the certificate of insurance.
Building contract	The residential building contract between you or a developer and the builder or between you and a speculative builder pursuant to which residential building work is done or is to be done in connection with the building.
Certificate of insurance	The certificate that we produce 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.
Construct	In relation to a dwelling means perform any work commencing with the preparation of the site and ending with the completion of the dwelling (including any associated work) and includes: (a) painting where that is part of the work included in a contract; and

Word or Term	Meaning
Construct	(b) the provision of lighting, heating, water supply, drainage, sewerage, gas and other like services.
Cost of the work	<p>(a) in the case of work performed under a building contract, the amount payable under the building contract.</p> <p>(b) in the case of work not performed under a building contract, the estimated cost of construction specified in the application for a building licence under part XV of the Local Government (Miscellaneous Provisions) Act 1960.</p> <p>(c) in the case of work that is placing a dwelling on land, the cost of:</p> <ul style="list-style-type: none"> (i) placing the dwelling on the land including siting, stumping and any other work in connection with that placement; and (ii) any residential building work to the dwelling after placement. <p>(d) in the case of work that is placing a transportable dwelling on land for the first time after construction, the cost of:</p> <ul style="list-style-type: none"> (i) the dwelling; (ii) placing the dwelling on the land including siting, stumping and any other work in connection with that placement; and (iii) any residential building work to the dwelling after placement.
Cost plus contract	<p>a contract under which a builder is entitled to recover an amount excluding prime cost items and provisional sums that is not determined at the time when the contract is entered into, being an amount that includes the actual cost to be incurred in:</p> <ul style="list-style-type: none"> (a) acquiring materials; and (b) performing work, specified in the contract, together with an additional amount that comprises either: <ul style="list-style-type: none"> (a) a sum calculated as a percentage of that cost; or (b) a specified sum, or both.

Word or Term	Meaning
Developer	<p>any means a person for whom residential building work is performed under:</p> <ul style="list-style-type: none"> (a) a residential building work contract; or (b) a cost plus contract between a builder and another person for the performance by the builder of residential building work but does not include a contract for the performance by a builder of residential building work for another builder who is in turn obliged to perform the work under another contract; <p>in relation to 4 or more dwellings.</p>
Disappearance	includes cannot be found, after due search and enquiry.
Dwelling	a building occupied or intended for occupation solely or mainly as a place of residence.
Insolvency	<ul style="list-style-type: none"> (a) In relation to an individual, that the individual is insolvent under administration (within the meaning of the Corporations Act 2001). (b) In relation to a corporation, that the corporation is an externally-administered body corporate administration (within the meaning of the Corporations Act 2001).
Policy	This policy wording, any endorsements and the certificate of insurance.
Remedy	An order for remedy under section 12A of the Builders' Registration Act 1939.
Residential building work	<p>The whole or part of the work of:</p> <ul style="list-style-type: none"> (a) constructing or re-constructing a dwelling including an existing dwelling and/or strata-titled dwelling; (b) placing a dwelling on land; (c) altering, improving or repairing a dwelling, including a strata-titled dwelling; or <ul style="list-style-type: none"> (i) constructing or carrying out any associated work in connection with: (ii) constructing or re-constructing a dwelling including an existing dwelling and/or strata-titled dwelling; (iii) placing a dwelling on land; or (iv) an existing dwelling, including a strata-titled dwelling,

Words with special meanings

Word or Term	Meaning
Residential building work (continued)	(d) when it is to be performed under a contract which also includes constructing or re-constructing of an existing dwelling or strata-titled dwelling, placing a dwelling on land or altering, improving or repairing a dwelling or a strata-titled dwelling or it is associated work of the kind prescribed in the Act.
Residential building work contract	a contract for the performance of residential building work, but does not include: <ul style="list-style-type: none"> (a) a cost plus contract; or (b) a contract for the performance of residential building work for a builder who is in turn obliged to perform the work under another contract.
Speculative builder	An individual or corporation who performs residential building work on their own land, is registered under the Builders Registration Act 1939 and named on the certificate of insurance as a speculative builder. For the purposes of the cover we give in clause 1 – ‘What is covered, speculative builder includes any person contracted by the speculative builder to perform the work.
Strata-titled dwelling	A building or part of a building, occupied or intended for occupation solely or mainly as a place of residence, that is erected on a lot in respect of which a plan is registered under the Strata Titles Act 1985.
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"> (a) causes or threatens to cause death, personal injury or damage to property; (b) is designed to influence a government or to intimidate the public or a section of the public; or (c) is carried out for the purpose of advancing a political, religious, ideological, ethnic or similar cause. 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.

Word or Term	Meaning
Work	Residential building work which is done or is to be done by the builder under the building contract, by the speculative 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"> (a) any developer, but only for claims that relate to non-completion of residential building work or loss of deposit; (b) the speculative builder; (c) the builder; (d) a person who does residential building work other than under a contract; (e) the holder of a builder’s registration who and that carried out the work; or (f) any related bodies corporate of those above, within the meaning of section 50 of the Corporations Act 2001.

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

POLICY TERMS AND CONDITIONS FOR DOMESTIC CONSTRUCTION RESIDENTIAL BUILDERS WA INSURANCE POLICY

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.

The insurer

QBE Insurance (Australia) Limited,
ABN: 78 003 191 035
82 Pitt Street, Sydney NSW 2000

Your policy terms and conditions

Some words in this policy have special meaning. Those words appear in the policy in bold. What they mean is set out in 'Words with special meanings'.

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:

1. loss or damage resulting from non-completion of the work because of the insolvency, death or disappearance of the builder or speculative builder;
2. loss or damage resulting from loss of a deposit because of the insolvency, death or disappearance of the builder or speculative builder; or
3. loss or damage (including consequential loss) arising from the inability to take advantage of an entitlement to, or to enforce or recover under, a remedy for the work but only if you cannot recover compensation from the builder or speculative builder or have the builder or speculative builder rectify the loss or damage because of the insolvency, death or disappearance of the builder or speculative builder.

How much will we pay?

1. 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.
2. However, the following limitations apply to what we will pay:
 - (a) We will not pay:
 - (i) the first \$500 of each claim in relation to each dwelling in each building insured under this policy.
 - (ii) more than \$13,000 (or any other minimum amount prescribed by the Act) for loss of a deposit.
 - (b) We will not pay more than \$100,000 in total (or such other minimum amount as may be prescribed by the Act) or the cost of the work (whichever is the lesser), in the aggregate for all claims under this policy for each dwelling.
 - (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 dwellings in the building.
3. The limitations in clause 2 – 'How much will we pay' includes all the amounts payable under the heading 'What is covered by this policy'.

What we don't pay

We will not pay under this policy:

1. under the heading – 'What is covered by this policy' for work done by the speculative builder.
2. 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.
3. 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.
4. 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.
5. for loss or damage caused by the normal drying out of the building if the builder or speculative builder has taken all reasonable precautions in allowing for the normal drying out when carrying out the work.
6. for damage due to or made worse by the failure by you to take reasonable and timely action to minimise the damage.

7. 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.
8. in relation to damage to work or materials that occurs outside the reasonable life time of that work or materials or the manufacturer's warranty period for the materials.
9. for legal liability resulting from any event unless expressly insured under this policy.
10. in relation to an interest in the building that is not your interest.
11. in relation to a defect due to a faulty design provided by you or a previous owner (other than the speculative builder).
12. for a deposit, progress or other payment to the extent that it exceeds the amount specified for such a payment in section 10 of the Act.
13. for loss, damage or defects due to:
 - (a) an act, error or omission of someone other than the builder or speculative builder or someone contracted by them.
 - (b) faulty or unsuitable materials supplied by you or supplied by a developer.
14. arising from, connected with or relating to personal injury, death, disease or illness of a person or for injury to or impairment of a person's mental condition.
15. other than in relation to the cover provided under the heading 'What is covered by this policy', 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.
16. for any claims connected with or relating to:
 - (a) 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.
 - (b) fraud or dishonest conduct of any kind by you or a developer.
 - (c) any terrorism.
 - (d) radioactivity or the use, existence or escape of any nuclear fuel, nuclear material or nuclear waste or action of nuclear fission or fusion.
 - (e) 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.
 - (f) mechanical or electrical breakdown, not attributable to the workmanship of, or the installation by the builder or speculative builder.
 - (g) your failure to maintain appropriate protection against pest infestation or exposure to natural timbers.
 - (h) 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.
17. 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.
18. for claims insured under another policy of insurance issued under or pursuant to the Act.
19. 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 6 years from the completion of the work.

How long do you have to claim?

1. You must notify us of a claim for loss or damage resulting from all causes (other than incomplete work) within a reasonable time of when you first became aware, or when you ought reasonably have become aware, of the fact or circumstance giving rise to the claim.
2. In any event, you must notify us of a claim within the period of 6 years from the completion of the work.
3. 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

1. You must make a claim by completing our claim form. The claim form is available on our website www.qbe.com.
2. 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.
3. 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).
4. You must not make any admissions, offer, promise or payment in connection with any claim.
5. You must comply with your obligations under the policy, otherwise we may not have to pay your claim(s).
6. 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 or speculative builder:
 - failed to comply with the duty of disclosure; or
 - made misrepresentations to us.
- We may, however, recover from the builder or speculative builder any amount we pay under this policy in those circumstances.

Other important matters

Enquiries and complaints

- We believe that it is important that the good relationship we have with our clients is not damaged through any misunderstanding or dispute that may arise from our products or services.
- Therefore, if you are:
 - uncertain about any aspect of your insurance cover or any claim you have made on this policy; or
 - concerned with delays in processing; or
 - dissatisfied with any response from us or our agents including loss adjusters or investigators;

please make your concerns known to the staff in our Branch Office, in the first instance. Our Branch Staff have the knowledge and skills to resolve most misunderstandings that arise.
- However, if any issue or complaint remains unresolved to your satisfaction, the matter can be referred to our Internal Dispute Resolution Panel. This Panel comprises senior managers who have the authority to review your dispute and attempt to reach an amicable outcome with you. It is our aim to respond to your complaint within 10 working days. If our internal dispute resolution process fails to satisfy your concerns, you are still able to use the options available to you through the normal legal process.
- Our contact details are on page one of this policy.

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 speculative builder, or a contractor or supplier or a liquidator or administrator or the estate of the builder or speculative 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.

Goods and services tax

- Despite the other provisions of this policy, our liability to you will be calculated taking into account any input tax credit to which you would have been entitled to for any acquisition which is relevant to your claim.
- You must tell us whether you were entitled to claim an input tax credit on the premium at the time of making a claim under the policy. If you do not provide us with this information we may deduct up to 1/11th of the amount otherwise payable in settlement of your claim.
- If you are registered for GST, this represents the reduction in the cash settlement for claims that would apply based on your entitlement to claim an input tax credit on the replacement goods or services.
- If you were not entitled to an input tax credit on the premium, this will equal the GST credit to which we would have been entitled if you had disclosed your entitlement.
- If you are only entitled to a partial input tax credit on the premium, this represents the reduction in the cash settlement for claims that would apply based on your entitlement to claim an input tax credit on the replacement goods or services plus the GST credit to which we may have been entitled if you had disclosed your entitlement.
- Unless stated otherwise, all amounts payable by us under this policy and all policy limits are inclusive of GST.
- 'GST', 'input tax credit' and 'acquisition' have the meaning given under the A New Tax System (Goods and Services Tax) Act.

Application of laws

This policy is subject to the law of Western Australia. The law of Western 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.

The builder's duty of disclosure

1. Before a person enters into a contract of general insurance with an insurer, that person has a duty, under the Insurance Contracts Act, to disclose to the insurer every matter they 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.
2. You, the builder or speculative builder, have the same duty to disclose those matters to the insurer before you renew, extend, vary or reinstate a contract of general insurance.
3. Your duty however does not require disclosure of any matter:
 - (a) that diminishes the risk to be undertaken by the insurer.
 - (b) that is of common knowledge.
 - (c) that your insurer knows or, in the ordinary course of its business, ought to know.
 - (d) as to which compliance with your duty is waived by the insurer.
- (c) a lawyer or recovery agent (for the purpose of defending an action or recovering our costs).
- (d) another insurer (for the purpose of seeking recovery or to assist them to assess insurance risk) or a reinsurer who may be located overseas.
- (e) any insurance reference bureau (for the purpose of recording any claims made upon us under this policy).
6. Personal information may also be obtained from the above people or organisations.
7. In addition, we will:
 - (a) give you the opportunity to correct your personal information, or obtain access to it (some restrictions and a fee may apply).
 - (b) provide our dispute resolution procedures to you in respect of any complaint you may have regarding your personal information.
8. Further information can be obtained by contacting our Compliance Manager by telephone (02) 9375 4656 or by fax (02) 9221 1330 or email to compliance.manager@qbe.com.

Privacy promise

1. As this policy is entered into by a builder and the beneficiary will be the homeowner(s), this privacy promise will apply to both those parties as appropriate. The builder will need to provide information to enable the policy to be issued and information about the homeowner will be obtained to enable the certificate of insurance to be issued. In the event of a claim, further information may be required about either or both parties.
2. We are bound by the National Privacy Principles, an industry code approved under the Privacy Act 1988 (Cth). We are committed to safeguarding your privacy and the confidentiality of your personal information. We will only collect personal information from you or about you, or the builder, which is relevant to this insurance policy, assessing and processing claims and use it in a way you would reasonably expect.
3. The personal information collected may include personal details, construction details financial information and arrangements.
4. Without this personal information we may not be able to issue insurance cover or process claims.
5. We, or our authorised agent may disclose personal information to:
 - (a) a financial institution, credit provider, credit/trade reference company, your major creditors including building material suppliers, accountant or other insurer (for the purpose of assessing the builder prior to a policy being issued);
 - (b) an investigator, assessor or State or Federal authority (for the purpose of investigating or assessing an application or a claim).