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Insurance Policy Conditions

EDITION 8

EFFECTIVE 1 JULY 2009



Helping Queenslanders Build Better

Dear Homeowner,

These documents are your *Home Warranty Insurance Policy* and *Insurance Certificate*.

The *BSA Home Warranty Insurance* is provided by the *BSA* because you have chosen a *BSA* licensed builder to construct your home. This booklet explains the terms and conditions of the *Home Warranty Insurance* the *BSA* provides for your property and the *certificate* shows details of the policy, your builder, the value of the *contract* and your policy's expiry date.

**PLEASE DO NOT THROW THESE
DOCUMENTS AWAY.**

You should read this booklet carefully and then store it in a safe place. You may need to refer to it if you encounter difficulties with your construction and wish to make a claim.

If you have any questions regarding the contents of this booklet or the details on your *certificate* please phone 1300 272 272 or visit your nearest *BSA* office.

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INSURANCE POLICY CONDITIONS

Subject to the terms of this policy, the Queensland Building Services Authority ("BSA") will pay for loss for:

- Non-completion;
- *Vandalism and forcible removal*;
- *Fire, storm and tempest*;
- Defective construction; and
- Subsidence or settlement

of the insured work referred to in the *certificate of insurance*.

These policy conditions apply to *residential construction work* covered by the *Statutory Insurance Scheme* for which a premium has been paid, a *contract* entered, or work commenced (whichever is the earliest) on or after the date of commencement of this policy.

To remove doubt, earlier versions of these Insurance Policy Conditions do not apply to *residential construction work* covered by the *Statutory Insurance Scheme* for which a premium has been paid, a *contract* entered into or work commenced on or after the date of commencement of this policy.

Note: In this policy, certain words and phrases used throughout are defined in Part 11 and are shown in italics when used, e.g. *Insured*.

PART 1: NON-COMPLETION

1.1 Payment for Non-Completion

Subject to the terms of this policy, the *BSA* agrees to pay for loss suffered by the *Insured* in the event of the *contractor* failing to complete the *contract* for the *residential construction work*.

1.2 Termination of Contract

The *BSA* is only liable to pay for loss under this Part when the *contract* is for a *fixed price* and the *Insured* has *properly terminated* the *contract* with the *contractor*.

1.3 Works Commenced

For the purposes of this Part *contracted works* are commenced when:

- (a) construction of the permanent *footing system* of a building comprising *residential construction work* is commenced; or
- (b) in the case of a *contract* for *residential construction work* where no *footing system* is to be constructed - when change to the existing structure is physically commenced.

To remove doubt, work has not commenced if only *preparatory work* has been performed.

1.4 Amount of Payment Where Work has Not Commenced

Subject to Parts 6, 7 and 8 of this policy, where the *contractor* has not commenced the *contracted works* in accordance with clause 1.3, the amount of the payment is limited to the total of:

- (a) the lower of:
 - (i) the amount of any unrefunded deposit paid by or on behalf of the *Insured* to or on behalf of the *contractor*; or
 - (ii) if the *contract* price is equal to or more than \$20,000 – 5% of the *contract*

price (however this amount is limited to the *BSA's* maximum liability of \$200,000 specified in Part 6 of this policy); or

(iii) if the *contract* price is less than \$20,000 – 10% of the *contract* price; and

(b) interest on the amount payable under paragraph (a) at the rate stated in the *certificate* for the period from when the deposit was paid until the date when the *contract* was properly terminated by the *Insured*.

1.5 Amount of Payment Where Works have Commenced

Subject to the provisions of Parts 6, 7 and 8 of this policy, where the *contractor* has commenced the *contracted works* in accordance with clause 1.3, the amount of the payment under this Part is limited to the total of:

(a) the *BSA's* assessment of the reasonable cost of completing the *contract* less the *Insured's* remaining liability under the *contract* (exclusive of any amount by way of liquidated damages or damages for delay) at the date of termination of the *contract*;

and

(b) in the case of a *contract* for *residential construction work* other than a *contract* involving building work to a *related roofed building*, an amount the *BSA* determines is reasonable for alternative accommodation of the *Insured*, removal and storage costs, necessarily incurred by the *Insured* as a result of the non-completion and because the *residential construction work* is, in the opinion of the *BSA*, uninhabitable.

Any such payment will be limited to those reasonable alternative accommodation, removal and storage costs necessarily incurred as a result of the *contractor's* failure to complete the *contract* for the period from:

- the date nominated or stated in the *contract for practical completion*; or
- the date when the *Insured* has *properly terminated* the *contract* with the *contractor*; or
- the date the *Insured* gives notification of the claim to the *BSA*;

whichever date is the latest, until the date that the *residential construction work* referred to in paragraph (b) is substantially complete in the opinion of the *BSA*.

For the period between receipt of the formal claim approval from the *BSA*, and the making of a *contract* for recommencement of construction, the payment is limited to those expenses incurred over a maximum period of 7 days.

1.6 Limit on Right to Payment

- Where, in the opinion of the *BSA*, the value of the *contracted works* to be undertaken clearly exceeds the price to be paid, the *BSA* will reduce the amount payable under this policy by the amount of that excess as determined by the *BSA*.
- Where in the opinion of the *BSA*, the *Insured* pays to or on behalf of the *contractor* any moneys for the *contracted works* before they become due ("prepayment"), the *BSA* will reduce the amount payable under this policy by the value of that prepayment. (The value of the prepayment is the *BSA's* assessment of the value of the incomplete work in the stage of the *contract* for which the prepayment was made).

1.7 Expiry of Cover

The *BSA* is only liable to pay for loss under this Part where the *Insured* has *properly terminated* the *contract* with the *contractor* within 2 years from the date of payment of the insurance premium or the date of entering into the *contract* (whichever is the earlier).

1.8 Time Limit for Making a Claim

The *Insured* is NOT ENTITLED to payment for loss under this Part unless the claim is made under this Part within 3 months of the *Insured* properly terminating the *contract*, or within such further time as the *BSA* may allow.

1.9 No Liability in Certain Circumstances

The *BSA* is not liable under this Part:

- (a) in relation to a *contract* or *contracts* for:
 - (i) *residential construction work* involving more than two living units between the *Insured* and the one *contractor*; or
 - (ii) *residential construction work* to the *common property* of a *multiple storey dwelling* other than a *duplex* between the *Insured* and the one *contractor*, unless at least 50% of the units were occupied when the *contract* was entered into, and when the *contract* was terminated; or
 - (iii) *residential construction work* involving the construction of a *multiple storey dwelling* other than a *duplex*.
- (b) where the *Insured* has exercised the *Insured's* right to withdraw from the *contract* during the "cooling off period" in accordance with the terms of the *contract*, or pursuant to the provisions of the *Domestic Building Contracts Act 2000*.

For sub-section 1.9(a)(i):

- (a) a single detached dwelling is taken to be 1 living unit; and
- (b) a *residential unit* is taken to be 1 living unit; and
- (c) a *duplex* is taken to be 2 living units.

PART 2: NON-COMPLETION - ACTS OF VANDALISM AND FORCIBLE REMOVAL

2.1 Payment for *Vandalism and Forcible Removal*

Subject to the terms of this policy, the *BSA* agrees to pay for loss suffered by the *Insured* in the event of another person causing damage to or destruction of *standing work* through *vandalism* or *forcible removal*.

2.2 Commencement of Cover

Subject to clause 2.10, the *BSA's* liability under this Part commences when the *BSA* receives the *Insured's* claim under Part 1 of this policy and only where:

- (a) the claim is for loss suffered by the *Insured* because the *contractor* failed to complete *residential construction work* under a *contract*; and
- (b) *standing work* formed part of the *contracted works* under the *contract*.

To remove doubt the *BSA* is not liable and the *Insured* is not entitled to payment under this policy for loss resulting from a *defined event* occurring prior to the lodgement of a claim under Part 1 of this policy.

2.3 Lodgement of Claim

The *BSA* is only liable to pay for loss under this Part if the *Insured* lodges a claim under this Part within **14 days** of the *defined event* which caused the loss.

2.4 Reporting of *Defined Event* to Police

The *Insured* must make a formal complaint to the police about the *defined event* prior to lodging a claim under this Part, and must provide the information required in accordance with clause 2.11 to the *BSA* at the time the claim is lodged.

2.5 Excess

An excess of \$2,500 is payable by the *Insured* for each *defined event* for which loss is claimed under this Part.

2.6 Amount of Payment

Subject to Parts 6, 7 and 8 of this policy, if a claim is made under this Part payment is limited to the reasonable cost, as determined by the *BSA*, of undertaking those works necessary to reinstate the *standing work* to the same state that it was immediately prior to the *defined event* less the *Insured's* remaining liability under the *contract* after assessment of the *Insured's* claim under Part 1 of this policy.

2.7 Rectification Without Approval

The *Insured* is not entitled to payment for loss under this Part if the damaged or destroyed *standing work* is rectified or otherwise reinstated without the *prior written approval* of the *BSA*.

2.8 Expiry of Cover under this Part

The *BSA* ceases to be liable under this Part on the earliest of the following:

- (a) 6 months from the date the *contract* for *residential construction work* was properly terminated;
- (b) the date the *Insured* enters into a *contract* to complete the work that was contracted to be performed under the terminated *contract* under which the *standing work* was performed;
- (c) 7 days after the *BSA's* written approval of a claim under Part 1 for which the *standing work* formed part of the *contracted works*.

2.9 Expiry of Cover for Loss Caused by a Particular Defined Event

Without limiting clause 2.8, the *BSA* ceases to be liable under this Part for a particular *defined event* on the earliest of the following:

- (a) the date the *Insured* enters into a *contract* to rectify or reinstate damage or destruction to the *standing work* caused by the particular *defined event*;
- (b) 7 days after the *BSA's* written approval of a claim under this Part for loss caused by the particular *defined event*.

2.10 Exclusion from Cover Where the BSA is Not Liable under Part 1

The *BSA* is not liable under this Part if the *BSA* is not liable under Part 1 of this policy, or the *Insured* is not entitled to payment under Part 1 of this policy, for non-completion of a *contract* for which the *standing work* formed part of the *contracted works*.

This clause does not apply in circumstances where the *Insured* would be entitled to a payment under Part 1 but for the operation of either clause 1.5(a) or clause 6.6 of this policy.

2.11 Information to be Provided to the BSA

The *Insured* is not entitled to payment under this Part if the *Insured* fails to provide the *BSA* with the following information:

- (a) evidence of the *Insured's* complaint to the police about the *defined event*; and
- (b) all other information reasonably required by the *BSA* as being necessary to assess the claim.

2.12 Access to Assess a Claim

The *Insured* is not entitled to payment under this Part if the *Insured* refuses the *BSA* or a delegate of the *BSA* access to the *standing work* for the purposes of assessing the damage or destruction caused by the *defined event*.

2.13 No Liability in Certain Circumstances

The *BSA* is not liable under this Part for any of the following:

- (a) loss in relation to public or legal liability for the payment of compensation in respect of death, bodily injury or illness, occurring on the premises during the period of insurance, or loss suffered as a result of defective products;
- (b) loss to other property, including but not limited to adjoining properties and *associated building work* as a result of the *defined event*;
- (c) loss in relation to the cost of removing tree stumps or any part of a tree that has not fallen or caused damage to *standing work*.

PART 3: NON-COMPLETION - FIRE, STORM OR TEMPEST

3.1 Payment for *Fire, Storm or Tempest*

Subject to the terms of this policy, the *BSA* agrees to pay for loss to the *Insured* in the event of damage to, or destruction of *standing work* caused by a *fire, storm or tempest*.

3.2 Commencement of Cover

Subject to clause 3.8, the *BSA's* liability under this Part commences when the *BSA* receives the *Insured's* claim under Part 1 of this policy and only where:

- (a) the claim is for loss suffered by the *Insured* because the *contractor* failed to complete *residential construction work* under a *contract*; and
- (b) *standing work* formed part of the *contracted works* under the *contract*.

To remove doubt the *BSA* is not liable and the *Insured* is not entitled to payment under this policy for loss resulting from a *defined event* occurring prior to the lodgement of a claim under Part 1 of this policy.

3.3 Lodgement of Claim

The *BSA* is only liable to pay for loss under this Part

if the *Insured* lodges a claim under this Part within **14 days** of the *defined event* which caused the loss.

3.4 Amount of Payment

Subject to Parts 6, 7 and 8 of this policy, if a claim is made under this Part, payment is limited to the reasonable cost, as determined by the *BSA*, of undertaking those works necessary to reinstate the *standing work* to the same state that it was immediately prior to the *defined event* less the *Insured's* remaining liability under the *contract* after assessment of the *Insured's* claim under Part 1 of this policy.

3.5 Rectification Without Approval

The *Insured* is not entitled to payment for loss under this Part if the damaged or destroyed *standing work* is reinstated without the *prior written approval* of the *BSA*.

3.6 Expiry of Cover under this Part

The *BSA* ceases to be liable under this Part on the earliest of the following:

- (a) 6 months from the date the *contract* for *residential construction work* was properly terminated;
- (b) the date the *Insured* enters into a *contract* to complete the work that was contracted to be performed under the terminated *contract* under which the *standing work* was performed;
- (c) 7 days after the *BSA's* written approval of a claim under Part 1 for which the *standing work* formed part of the *contracted works*.

3.7 Expiry of Cover for Loss Caused by a Particular Defined Event

Without limiting clause 3.6, the *BSA* ceases to be liable under this Part for a particular *defined event* on the earliest of the following:

- (a) the date the *Insured* enters into a *contract* to rectify damage or destruction to the *standing*

- work* caused by the particular *defined event*;
- (b) 7 days after the *BSA's* written approval of a claim under this Part for loss caused by the particular *defined event*.

3.8 Exclusion from Cover Where the BSA is Not Liable under Part 1

The *BSA* is not liable under this Part if the *BSA* is not liable under Part 1 of this policy, or the *Insured* is not entitled to receive a payment for loss under Part 1 of this policy, for non-completion of a *contract* for which the *standing work* formed part of the *contracted works*.

This clause does not apply in circumstances where the *Insured* would be entitled to a payment under Part 1 but for the operation of clause 1.5(a) or clause 6.6 of this policy.

3.9 Fire caused by Vandalism or Forcible Removal

To remove doubt, the *BSA* is not liable under this Part for loss to *standing work* that has been damaged or destroyed by *fire* caused by or arising out of *vandalism, forcible removal* or other unlawful act.

3.10 Information to be Provided to the BSA

The *Insured* is not entitled to payment under this Part if the *Insured* fails to provide the *BSA* with all information reasonably required by the *BSA* as being necessary to assess the claim.

3.11 Access to Assess a Claim

The *Insured* is not entitled to payment under this Part if the *Insured* unreasonably refuses the *BSA* or a delegate of the *BSA* access to the *standing work* for the purposes of assessing the damage or destruction caused by the *defined event*.

3.12 No Liability in Certain Circumstances

The *BSA* is not liable under this Part for any of the following:

- (a) loss caused gradually out of repeated exposure to *fire* or smoke;
- (b) loss in relation to public or legal liability for the payment of compensation in respect of death, bodily injury or illness, occurring on the premises during the period of insurance, or loss suffered as a result of defective products;
- (c) loss to other property, including but not limited to adjoining properties and *associated building work* as a result of *fire*, *storm* or *tempest* commencing or occurring on, or otherwise affecting, the *residential construction work* subject to this policy;
- (d) loss in relation to the cost of removing tree stumps or any part of a tree that has not fallen or caused damage to *standing work*.

PART 4: DEFECTIVE CONSTRUCTION

4.1 Payment for Defective Construction

Subject to the terms of this policy, the *BSA* agrees to pay the cost of rectifying defects in the *residential construction work* that is *primary building work*, other than for defects from subsidence or settlement referred to in Part 5 of this policy.

4.2 Amount of Payment

- (a) Subject to clause 4.2(c) and Parts 6, 7 and 8 of this policy, the amount of the payment under this Part will be limited to the reasonable cost, as determined by the *BSA*, of undertaking those works necessary to rectify the defects, less, where the *Insured* contracted with the *contractor* for the undertaking of the *residential construction work* which is defective, the *owner's* remaining liability under the *contract*.

Under this clause 4.2(a), for the purpose of determining the *owner's* remaining liability

under the *contract*, the *BSA* may credit the *owner* with an amount for which the *contractor* has, for valuable consideration, waived payment and an amount for which the *contractor* is liable to the *owner* in respect of the *contract* for the *contracted works*.

- (b) Where the *BSA* has admitted a claim for payment for loss relating to defects, it may if it thinks fit, having given prior written approval, pay the *Insured* for the reasonable alternative accommodation of the *Insured* and any removal and storage costs of the *Insured* as determined by the *BSA* as having been necessarily incurred by the *Insured* as a result of the need to rectify the defects and because the *residential construction work* is, in the opinion of the *BSA*, uninhabitable.
- (c) Where, in the opinion of the *BSA*, the undertaking of remedial works is unnecessary or unreasonable, the payment under this clause 4.2 will be limited to the loss in value, if any, as determined by the *BSA* in the *residential construction work*, produced by the departure from the plans or specifications or by the defective workmanship or materials.

4.3 Limits on Right to Payment

The *BSA*'s liability to pay under this Part will not arise:

- (a) where, in the opinion of the *BSA*, the *Insured* unreasonably refuses access to the *contractor* or his/her agent to undertake rectification; or
- (b) in circumstances where the *BSA* issues a direction to rectify defective work, until the *BSA* is satisfied that the *contractor* will not comply with that direction or the requirements of the *Tribunal* or a Court in relation to that direction; or
- (c) in circumstances where the *contractor* has a continuing obligation to complete the *residential construction work*.

4.4 Expiry of Cover

(a) Subject to clause 4.4(c), the *BSA* is only liable to pay for loss under this Part for a *category 1 defect* where the defect first became evident within **6 years and 6 months** after:

- (i) the date of payment of the insurance premium, or the date of entering into the *contract* (and where more than one date, whichever is the earlier); or
- (ii) where no insurance premium was paid and there was no written *contract*, the date of commencement of construction.

(b) The *BSA* is only liable to pay for loss under this Part for a *category 2 defect* where the defect first became evident within **6 months** after the date of *practical completion* of the *residential construction work*.

(c) Where the *residential construction work*, (and *residential construction work* comprising more than one separate residence will be considered separately), has not reached *practical completion* within **6 months** after:

- (i) the date of payment of the insurance premium, or the date of entering into the *contract* (and where more than one date, whichever is the earlier); or
- (ii) where no insurance premium was paid and there was no written *contract*, the date of commencement of construction,

the period of insurance cover under this policy in respect of *category 1 defects* will be extended by the amount of time by which the time taken to reach *practical completion* of the *residential construction work* (and *residential construction work* comprising more than one separate residence will be considered separately) exceeds the period of **6 months** from that date.

4.5 Time Limit for Making a Claim

The *Insured* is NOT ENTITLED to payment for loss

under this Part unless:

- (a) in the case of a *category 1 defect*, the claim is made within **3 months** of that defect first becoming evident (in the opinion of the BSA); or
- (b) in the case of a *category 2 defect*, the claim is made within **7 months** of the date of *practical completion*,

or within such further time as the BSA may allow.

4.6 No Liability in Certain Circumstances

The BSA is not liable under this Part for that part of *residential construction work* that is *associated building work*.

PART 5: SUBSIDENCE OR SETTLEMENT

5.1 Payment for Subsidence or Settlement

- (a) Subject to the terms of this policy, the BSA agrees to pay for the cost of remedying subsidence or settlement damage to the *residential construction work* that is *primary building work*.
- (b) For the purposes of this policy, “subsidence or settlement” means movement in the foundations of the *residential construction work* which adversely affects the structural adequacy or serviceability, performance or functional use of that work.

5.2 Amount of Payment

Subject to Parts 6, 7 and 8 of this policy, the amount of the payment under this Part will be:

- (a) (i) where the *residential construction work* has been completed and the *Insured* contracted with the *contractor* for the undertaking of the *residential construction work* whose foundations have subsided or settled, the reasonable cost of remedying the *residential*

- construction work less the owner's remaining liability under the contract; or*
- (ii) where the *residential construction work* has been completed and the *Insured* purchased the *land* on which the *residential construction work* has been performed, the reasonable cost of remedying the *residential construction work*; or
 - (iii) where the *residential construction work* has not been completed, the reasonable cost of remedying the *residential construction work*; and
- (b) where the *BSA* has admitted a claim for payment for loss in relation to subsidence or settlement, it may if it thinks fit, having given prior written approval, pay the *Insured* for the reasonable alternative accommodation of the *Insured* and any removal and storage costs of the *Insured* necessarily incurred by the *Insured* as a result of the need to remedy the subsidence and settlement damage and because the *residential construction work* is, in the opinion of the *BSA*, uninhabitable.

5.3 Limits on Right to Payment

The *BSA's* liability for payment under this Part will not arise:

- (a) where, in the opinion of the *BSA*, the *Insured* unreasonably refuses access to the *contractor* or his/her agent to undertake rectification; or
- (b) in circumstances where the *BSA* issues a direction to rectify defective work, until the *BSA* is satisfied that the *contractor* will not comply with that direction or the requirements of the *Tribunal* or a Court in relation to that direction.

5.4 Expiry of Cover

- (a) Subject to clause 5.4(b), the *BSA* is only liable to pay for loss under this Part where the subsidence or settlement first became evident within **6 years and 6 months** after:

- (i) the date of payment of the insurance premium, or the date of entering into the *contract* (and where more than one date, whichever is the earlier); or
 - (ii) where no insurance premium was paid and there was no *contract*, the date of commencement of construction.
- (b) Where the *residential construction work*, (and *residential construction work* comprising more than one separate residence will be considered separately), has not reached *practical completion* within **6 months** after:
 - (i) the date of payment of the insurance premium, or the date of entering into the *contract* (and where more than one date, whichever is the earlier); or
 - (ii) where no insurance premium was paid and there was no written *contract*, the date of commencement of construction,

the period of insurance cover under this policy in respect of subsidence or settlement will be extended by the amount of time by which the time taken to reach *practical completion* of the *residential construction work* (and *residential construction work* comprising more than one separate residence will be considered separately) exceeds the period of **6 months** from that date.

5.5 Time Limit for Making a Claim

The *Insured* is NOT ENTITLED to payment for loss under this Part unless the claim is made within **3 months** of the subsidence or settlement first becoming evident (in the opinion of the *BSA*), or within such further time as the *BSA* may allow.

5.6 No Liability in Certain Circumstances

The *BSA* is not liable under this Part for the cost of remedying subsidence or settlement damage for *residential construction work* that is *associated building work*.

PART 6: LIMITS OF LIABILITY

6.1 Limits of Liability

In no case will the *BSA* be liable to an *Insured* for an amount in excess of the maximum amount of payment for loss calculated in accordance with this policy.

6.2 Maximum Liability - Single Detached Dwelling, Duplex or Related Roofed Building (that is not part of a contract for other Residential Construction Work) - Prior to Practical Completion

- (a) This clause applies to liability under this policy in relation to:
- (i) a single detached dwelling; or
 - (ii) a *duplex*; or
 - (iii) a *related roofed building* that is not erected or constructed, rectified or otherwise altered as part of a *contract* for the performance of other *residential construction work*.
- (b) The maximum amount of payment for which the *BSA* will be liable for all claims in the aggregate under this policy, in respect of a building mentioned in paragraph (a), that includes any or all of the following components:
- (i) loss resulting from non-completion of works;
 - (ii) loss to *standing work* resulting from *vandalism and forcible removal*;
 - (iii) defects that become apparent prior to *practical completion* of works;
 - (iv) subsidence or settlement that becomes apparent prior to *practical completion* of works;

will be the *replacement value* of the *residential construction work* or \$200,000, whichever is

less. That amount includes, where applicable, a maximum of \$5,000 for alternative accommodation, removal and storage costs.

6.3 Maximum Liability – Single Detached Dwelling, Residential Unit or Related Roofed Building (that is not part of a contract for other Residential Construction Work) - After Practical Completion

- (a) This clause applies to liability under this policy in relation to:
- (i) a single detached dwelling; or
 - (ii) a *residential unit*; or
 - (iii) a *related roofed building* that is not erected, constructed, rectified or otherwise altered as part of a *contract* for the performance of other *residential construction work*.
- (b) The maximum amount of payment for which the *BSA* will be liable for all claims in the aggregate under this policy, in respect to a building mentioned in paragraph (a), that includes any or all of the following components:
- (i) loss resulting from defective work that becomes apparent after *practical completion*;
 - (ii) subsidence or settlement that becomes apparent after *practical completion*;

will be the *replacement value* of the *residential construction work* or \$200,000, whichever is less. That amount includes, where applicable, a maximum of \$5,000 for alternative accommodation, removal and storage costs.

6.4 Maximum Liability – Contracted Works that comprise of a Related Roofed Building and other Residential Construction Work

- (a) This clause applies to liability under this policy in relation to *contracted works* that includes the erection or construction of, or construction on, at least one *related roofed building* and

other *residential construction work*.

(b) The maximum amount of payment for which the *BSA* will be liable for all claims in the aggregate under this policy, in respect of *contracted works* mentioned in paragraph (a), that includes any or all of the following components:

- (i) loss resulting from non-completion of works;
- (ii) loss to *standing work* resulting from *vandalism* and *forcible removal*;
- (iii) loss resulting from defective work that becomes apparent prior to *practical completion* of works;
- (iv) subsidence or settlement that becomes apparent prior to *practical completion* of works;

will be:

- (v) for a single detached dwelling and the *related roofed building* or buildings - the *replacement value* of the *contracted works* or \$200,000, whichever is the lower amount;
- (vi) for each *residential unit* and the *related roofed building* or buildings - the *replacement value* of the *contracted works* or \$200,000, whichever is the lower amount.

(c) The maximum amount of payment for which the *BSA* will be liable under this policy for a claim, in respect of *contracted works* mentioned in paragraph (a), that includes any or all of the following components:

- (i) loss resulting from defective work that becomes apparent after *practical completion*;
- (ii) subsidence or settlement that becomes apparent after *practical completion*;

will be:

- (iii) for a single detached dwelling and the *related roofed building* or buildings -

the *replacement value* of the *contracted works* or \$200,000, whichever is the lower amount;

- (iv) for each *residential unit* and the *related roofed building* and buildings - the *replacement value* of the *contracted works* or \$200,000, whichever is the lower amount.

6.5 Maximum Liability – Common Property

- (a) This clause applies to liability under the *Scheme* for the *common property* component of *contracted works*.

- (b) The maximum amount of payment for which the *BSA* will be liable under the *Scheme* for all claims in the aggregate, in respect of the *common property* in paragraph (a), that includes any or all of the following components:

- (i) loss resulting from non-completion of works;
- (ii) loss resulting from defective work;
- (iii) subsidence or settlement;

will be:

- (iv) \$1,000,000; or
- (v) \$200,000 times the number of *residential units* in the building; or
- (vi) an amount calculated by the *BSA* as the *replacement value* of the *contracted works*;

whichever is the lowest amount.

- (c) Unless otherwise required by the *Body Corporate and Community Management Act 1997*, any payment approved under the *Scheme* for *common property* is to be apportioned between the *residential units* in the building according to their interest schedule lot entitlements of their respective lots and their respective policies under the *Scheme*.

6.6 Maximum Liability – Failure to Complete Works

- (a) The maximum payment that can be made for all claims in the aggregate to the *Insured* under Part 1 where the *Insured* has entered into one *contract* with a *contractor* for *residential construction work* is the lower of:
- (i) the *BSA's* assessment of the amount of payment under Part 1 of this policy; or
 - (ii) \$200,000; or
 - (iii) the balance remaining from \$200,000 after the deduction of all amounts approved under Part 2 of this policy.
- (b) However, if the *Insured* has entered into more than one *contract* with the same *contractor* for *residential construction work*, the maximum payment that can be made for all claims in the aggregate to the *Insured* under Part 1 of this policy, is the lower of:
- (i) the *BSA's* assessment of the amount of payment under Part 1 of this policy; or
 - (ii) \$200,000; or
 - (iii) the balance remaining from \$200,000 after the deduction of the following:
 - A. all amounts approved under Part 2 of this policy; and
 - B. all amounts approved under the *Scheme* for the other *contract* or *contracts* in relation to loss associated with the *contractor* failing to complete the other respective *contract* or *contracts* for *residential construction work*; and
 - C. all amounts approved under the *Scheme* for the other *contract* or *contracts* in relation to one or more claims for loss associated with damage to or destruction of *standing work* through *vandalism* or *forcible removal*.

6.7 Maximum Liability – Vandalism and Forcible Removal

The maximum payment that can be made to the *Insured* for all claims in the aggregate under Part 2 of this policy where the *Insured* has entered into one *contract* with a *contractor* for *residential construction work* is the lower of:

- (a) the reasonable cost, as determined by the *BSA*, of undertaking those works necessary to reinstate the *standing work* to a condition substantially the same as, but not better or more extensive than immediately prior to the *defined event*; or
- (b) \$200,000; or
- (c) the balance remaining from \$200,000 after the deduction of the following:
 - (i) all amounts approved under Part 1 of this policy; and
 - (ii) all amounts approved under Part 2 of this policy for the same or another *defined event*.

If the *Insured* has entered into more than one *contract* with the same *contractor* for *residential construction work*, the maximum payment that can be made to the *Insured* under Part 2 of this policy, is the lower of:

- (a) the *BSA*'s assessment of the amount of payment under Part 2 of this policy; or
- (b) \$200,000; or
- (c) the balance remaining from \$200,000 after the deduction of the following:
 - (i) all amounts approved under Part 1 of this policy; and
 - (ii) all amounts approved under Part 2 of this policy for the same or another *defined event*; and
 - (iii) all amounts approved under Part 1 of the *Scheme* for the other *contract* or *contracts* in relation to one or more claims for loss associated with the

- contractor* failing to complete the other respective *contract* or *contracts* for *residential construction work*; and
- (iv) all amounts approved under the *Scheme* for the other *contract* or *contracts* in relation to one or more claims for loss associated with damage to or destruction of *standing work* through *vandalism* or *forcible removal*.

6.8 Maximum Liability - Fire, Storm and Tempest - Single Defined Event

- (a) Subject to clause 6.9, the total maximum amount of payment for which the *BSA* will be liable for all claims in the aggregate under Part 3 of this policy for a single *defined event* is the lower of:
 - (i) the *BSA's* assessment of the total amount of payment under Part 3 of this policy; or
 - (ii) \$200,000.
- (b) However, if the *Insured* has entered into more than one *contract* with the same *contractor* for *residential construction work*, the total maximum payment that can be made to the *Insured* under Part 3 of this policy for all claims in the aggregate, notwithstanding that loss may arise as a result of more than one *defined event*, is the lower of:
 - (i) the *BSA's* assessment of the total amount of payment under Part 3 of this policy; or
 - (ii) \$200,000; or
 - (iii) the balance remaining from \$200,000 after deduction of all amounts approved under the *Scheme* for any other *contract* or *contracts* with the same *contractor* in relation to loss caused by *fire*, *storm* or *tempest*.

To remove doubt for clause 6.8(b)(iii), the reference to *fire*, *storm* or *tempest* in this clause is not limited to

the same single *defined event* referred to in clause 6.8(b).

6.9 Maximum Liability - Fire, Storm and Tempest - Multiple Defined Events

- (a) The total maximum amount of payment for which the *BSA* will be liable for all claims in the aggregate under Part 3 of this policy where there are multiple *defined events* during the period of cover under this policy is the lower of:
- (i) the replacement value of the *standing work* to reinstate it to the state it was, as far as practicable, immediately prior to the first relevant *defined event*; or
 - (ii) \$200,000.
- (b) However, if the *Insured* has entered into more than one *contract* with the same *contractor* for *residential construction work* or the claim is in relation to multiple *residential units* under construction, the maximum payment that can be made to the *Insured* under Part 3 of this policy for all claims made in relation to the *defined events*, is the lower of:
- (i) the replacement value of the *standing work* to reinstate it to the state it was, as far as practicable, immediately prior to the first relevant *defined event*; or
 - (ii) \$200,000; or
 - (iii) the balance remaining from \$200,000 after deduction of all amounts approved under the *Scheme* for any other *contract* or *contracts* with the same *contractor* in relation to loss caused by *fire, storm or tempest*.

To remove doubt for clause 6.9(b)(iii), the reference to *fire, storm or tempest* in this clause is not limited to the same single *defined event* referred to in clause 6.9(b).

6.10 Total Maximum Liability

- (a) To remove any doubt, the maximum amount

payable by the *BSA* for all claims in the aggregate under this policy in relation to a single detached dwelling, *residential unit* or *related roofed building*, is \$600,000.

- (b) To remove any doubt, the *BSA* is not liable for a claim in relation to defective work or subsidence or settlement which becomes apparent after *practical completion*, if the same defect was, or in the opinion of the *BSA* should have been, apparent to the *Insured*, its agent or delegate prior to *practical completion*.

6.11 Taxes

- (a) Any payment made by the *BSA* under this policy is inclusive of all relevant taxes on the amounts paid or payable.
- (b) All maximum liability amounts stated in this policy are inclusive of all relevant taxes in respect of those amounts.
- (c) Where the amount of any payment to be made by the *BSA* under this policy is to be assessed or calculated by reference to costs expected to be incurred by the *Insured*, those costs are to be determined:
- (i) after reduction for the amount of any *input tax credits* to which the *Insured* is, or in the opinion of the *BSA* could reasonably be expected to be, entitled to claim in respect of those costs; and
 - (ii) exclusive of any *GST* liability for supplies made, or which may be made, by the *Insured*.

In forming its opinion of whether the *Insured* is, or could reasonably be expected to be entitled to claim *input tax credits* in respect of any cost, the *BSA* may have regard to whether it is likely that the acquisition for which the cost was incurred, will relate to a *taxable supply*, given:

- the status of the *Insured* as registered for *GST* purposes;
- the nature of the enterprise ordinarily carried out by the *Insured*; and

- the balance of any other evidence available to the *BSA* that the *Insured* would be likely to deal with the property in such a way that the acquisition would relate to a *taxable supply*, rather than an *input taxed supply*.
- (d) Where the assessment or calculation of the amount of any payment to be made by the *BSA* under this policy involves an adjustment for the remaining liability under a *contract* entered into after 30 June 2000 and where *GST* has been included in that *contract* liability, then the adjustment for that remaining liability may be determined after reduction for the amount of any *input tax credits* to which the *Insured* could, in the opinion of the *BSA*, reasonably have been expected to be entitled to claim in respect of that remaining liability.
- (e) In this clause “registered” has the same meaning as in the *GST Act*.

6.12 Additional Limits for Residential Units

- (a) The maximum amount of the payment for loss to the *owner* of a *residential unit* under this policy will be reduced where the *BSA* has a liability to pay a claim, or has paid a claim, at the time of loss in relation to any of the *common property* of the *community titles scheme* of which the *residential unit* forms a part.
- (b) The amount of this reduction is calculated in accordance with the following formula:

$$\text{Amount} = F \times G$$

Where:

F is the amount paid or payable in relation to the *common property*;

G is the *Insured's* lot entitlement as a proportion of the sum of the lot entitlements in the *community titles scheme*, or, if there is no *community titles scheme*, then G is the floor area of the *residential unit* as a proportion of the total floor area of the building or buildings (excluding any car park) to which the claim for *common property* relates.

6.13 Additional Limits Where Commercial Works are Involved

(a) Subject to the terms of this policy, where the insured work is contained in a building or buildings (“building”) that incorporates both residential purposes and *commercial purposes*, the *BSA’s* liability to the *Insured* under Parts 4 or 5 of this policy in relation to *common property* is limited to:

(i) where there is a *community titles scheme*, an amount calculated in accordance with the following formula:

$$\text{Liability} = \text{Loss} \times \frac{\text{Lot entitlement of residential units in building}}{\text{Total lot entitlement of building}}$$

or

(ii) if there is no *community titles scheme*, an amount calculated in accordance with the following formula:

$$\text{Liability} = \text{Loss} \times \frac{\text{Floor area of residential units in building}}{\text{Total floor area of building (excluding any car park and common property)}}$$

(b) For the purpose of this clause, “loss” is the total cost to rectify defects or remedy subsidence and settlement damage to *common property*.

6.14 Other Insurance

(a) If any loss insured by this policy is covered by any other policy or policies of insurance (“relevant policies”), the *BSA* will pay only the amount in excess of the amount payable under any relevant policies.

(b) If the *Insured* elects not to claim or pursue payment or indemnity under any relevant

policies, the *BSA* will only be liable to pay the *Insured* the amount in excess of the amount that would have been payable under any relevant policies.

- (c) The *Insured* shall notify the *BSA* in writing of any insurance or insurances already effected covering, whether in whole or in part, the property or liability hereby insured.

6.15 Effect of Release of Contractor or Provision of Indemnity

- (a) Where the *contractor* or other person has been released from any liability in relation to the insured works the *BSA* is thereby released from liability under this policy to the same extent.
- (b) Where the *contractor* or other person has been indemnified by the *Insured* in relation to the insured works the *Insured* thereby releases the *BSA* from liability under this policy to the extent of that indemnity.

6.16 Process for Assessment of Claims under Part 1

Where a claim is made under Part 1 of this policy and a subsequent claim is made under either Parts 2 or 3 of this policy, the claim under Part 1 is to be assessed first. To remove doubt, where claims are assessed concurrently the claim under Part 1 is deemed to be assessed first.

PART 7: GENERAL EXCLUSIONS

7.1 Completion or Rectification Without Approval

The *BSA* may refuse to make a payment for loss under this policy where *residential construction work* has been completed or rectified (as applicable) **without the prior written approval of the *BSA*.**

7.2 Subsequent Purchasers

Where the *Insured* purchased the *land* on which *residential construction work* has been performed, the *Insured* is NOT ENTITLED to payment for loss under Parts 2, 3, 4 or 5 of this policy where the damage, destruction, defect, subsidence or settlement was, in the opinion of the *BSA*, evident prior to completing the *contract* to purchase the *land*.

7.3 Alterations and Additions

Where the *residential construction work* involves *primary building work* to an existing residence or *related roofed building* the *Insured* is NOT ENTITLED to payment for loss under this policy for any defects or subsidence or settlement which occurs in relation to that existing residence or *related roofed building* other than those which are directly caused or contributed to by the performance of the *residential construction work*.

7.4 Other Exclusions

The *Insured* is NOT ENTITLED to payment for loss where the loss is caused by or contributed to by:

- (a) defective design:
 - (i) in the case of a *multiple storey dwelling* (and subject to clause 7.6) - where the *Insured* is the person who contracted with the *engineer, architect* or *building designer* for the design of the *residential construction work*; or
 - (ii) in any other case - unless the design was prepared by or on behalf of the *contractor* or by:
 - an *engineer*;
 - an *architect*; or
 - a *building designer*; or
- (b) the gradual deterioration of the *residential construction work* caused by fair wear and tear or by the lack of maintenance or neglect of the *Insured*; or
- (c) the failure of any person other than the

- contractor* or the *contractor's* agent, employee, subcontractor, supplier or invitee to undertake reasonable maintenance, inspections and treatments or to carry out reasonable recommendations given by the *BSA*; or
- (d) pressure waves caused by aircraft or other aerial devices; or
 - (e) earthquake, erosion, flood, landslip, tidal wave, change of water course, failure of artificial devices for the storage or conveyance of water or gas (unless constructed as part of the *residential construction work* by the *contractor*), or accidental damage; or
 - (f) in relation to public or legal liability for the payment of compensation in respect of death, bodily injury or illness, occurring on the premises during the period of insurance, or loss suffered as a result of defective products.

Other than as provided in Parts 2 and 3 of this policy the *Insured* is NOT ENTITLED to payment for loss where the loss is caused by or contributed to by:

- (a) the act, omission or inaction of any person other than the *contractor* or the *contractor's* agent, employee, subcontractor, supplier or invitee;
- (b) malicious damage, *vandalism*, theft including *forcible removal*, *storm*, *fire* and *tempest*.

7.5 No Liability in Certain Circumstances

The *BSA* is not liable under this policy:

- (a) in relation to *vandalism* or *forcible removal*, where the damage is caused by any person who is acting with the express or implied consent of either the *Insured* or someone with the *Insured's* authority;
- (b) in relation to *vandalism* caused by the *Insured*, or the *Insured's* agent or invitee;
- (c) where the loss is caused by someone who has entered the *residential construction work* or the site of *residential construction work*

- with the consent of the *Insured* or the consent of someone with the *Insured's* authority;
- (d) in relation to public or legal liability for the payment of compensation in respect of death, bodily injury or illness, occurring on or arising from the premises during the period of insurance, or loss suffered as a result of defective products;
 - (e) for loss to other property, including adjoining properties as a result of *vandalism, forcible removal, fire, storm or tempest* occurring on, emanating from or otherwise affecting the *residential construction work* subject to this policy;
 - (f) cost of removing tree stumps or any part of a tree that has not fallen or caused damage to the *residential construction work*.

7.6 Insured as the Contractor or an Associate of the Contractor

- (a) Where the *Insured* is:
 - (i) a building *contractor* (other than a subcontractor); or
 - (ii) an associate of a building *contractor*;and that building *contractor* has performed or caused performance of the *residential construction work* then the *Insured* is not entitled to payment for loss under Part 1 (Non-Completion) or Part 4 (Defective Construction) of this policy in relation to the insured works.
- (b) For the purposes of clause 7.6(a) an *Insured* is taken to be an associate of a building *contractor* if:
 - (i) in the case of the building *contractor* being a company – the *Insured* is:
 - an officer of the company;
 - an individual, other than an officer of the company, who is in a position to control or substantially influence the conduct of the company's affairs, including for example, a shareholder

- with a significant shareholding, a financier or a senior employee;
 - the spouse (including a de facto spouse) or child of an officer of the company or an individual, other than an officer of the company, who is in a position to control or substantially influence the conduct of the company's affairs, including for example, a shareholder with a significant shareholding, a financier or a senior employee;
 - a trustee of a trust where the company, or another entity that is an associate of the company because of another sub-paragraph of this clause, benefits or is capable of benefiting under the trust;
 - another company whose majority voting interest is held by the company; or
 - another company who holds a majority voting interest in the company.
- (ii) in the case of the building *contractor* being an individual – the *Insured* is:
- the spouse (including a de facto spouse) or child of the individual;
 - a trustee of a trust where the individual, or another entity that is an associate of the individual because of another sub-paragraph of this clause, benefits or is capable of benefiting under the trust;
 - a company whose majority voting interest is held by the individual; or
 - a company in which the individual, the individual's spouse (including a de facto spouse) or child is in a position to control or substantially influence the conduct of the company's affairs, including for example, a shareholder with a significant shareholding, a financier or a senior employee.

- (c) Where the *Insured* is a building contractor (other than a subcontractor), and has performed or caused performance of the *residential construction work*, then the *Insured* is not entitled to payment for loss under Part 5 (Subsidence or Settlement) of this policy unless:
- (i) the *residential construction work* in question is the contractor's permanent residence; and
 - (ii) the footing was designed by an *engineer* and that design has been faithfully followed.

7.7 Carpet & Vinyl

The *Insured* is not entitled to payment for loss which relates to repair, replacement or cleaning of carpet or vinyl floor coverings irrespective of whether they are defective, damaged or improperly installed.

7.8 Terrorism

- (a) This policy excludes loss, damage, cost, or expense directly or indirectly caused by, contributed to by, resulting from, or arising out of or in connection with any act of *Terrorism*, as defined herein, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.
- (b) This policy also excludes loss, damage, cost, or expense directly or indirectly caused by, contributed to by, resulting from, or arising out of or in connection with any action in controlling, preventing, suppressing, retaliating against, or responding to any act of *Terrorism*.

7.9 Electronic Data

This policy does not insure:

- (a) total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of *electronic data*;
- (b) error in creating, amending, entering,

- deleting or using *electronic data*; or
- (c) total or partial inability or failure to receive, send, access or use *electronic data*, for any time or at all, from any cause whatsoever, regardless of any other contributing cause or event whenever it may occur.

7.10 Entitlements Subject to the Act

Notwithstanding anything stated in this policy, the *Insured* is not entitled to a claim, payment or other entitlement under this policy if it is prohibited by or contrary to the *Act* or *Regulation*.

Example – section 70A of the Act

“70A Persons not entitled to indemnity under insurance scheme

- (1) A building contractor who carries out speculative residential construction work is not entitled to indemnity under the statutory insurance scheme for the work.
- (2) Where a person has entered into 1 or more building contracts, in force at the same time, to construct 3 or more living units, the person is not entitled to indemnity under the statutory insurance scheme for the work.
- (3) For subsection (2)—
 - (a) a single detached dwelling is taken to be 1 living unit; and
 - (b) a residential unit is taken to be 1 living unit; and
 - (c) a duplex is taken to be 2 living units.
- (4) A policy of insurance for residential construction work, in the terms stated in the board’s policies, may include other circumstances in which a person is not entitled to indemnity under the statutory insurance scheme.
- (5) Nothing in this section affects the right of a subsequent owner of residential construction work mentioned in this section to claim indemnity under the statutory insurance scheme.”

PART 8: CLAIMS

8.1 Procedure for Claims

- (a) Prior to making a claim under this policy for defective construction or subsidence or settlement, the *Insured* will (except in the case of insolvency or death of the *contractor*) notify the *contractor* of the facts and circumstances giving rise to the claim and will allow the *contractor* a reasonable opportunity in which to rectify the defects or subsidence or settlement.
- (b) All claims will be in writing and will be in such form and contain such information as the *BSA* may direct.

8.2 Admission of Claims

Before admitting a claim, the *BSA* will determine whether a direction should be made requiring the *contractor* to rectify the *residential construction work*.

8.3 Duty of Good Faith

- (a) The *Insured* has a duty to the *BSA* to act in utmost good faith in respect of any matter arising under or in relation to this policy.
- (b) This duty includes, but is not limited to, a responsibility to disclose to the *BSA* every matter the *Insured* knows, or could reasonably be expected to know, which may be relevant to a determination of the liability or the extent of the liability of the *BSA* to pay a claim under this policy.
- (c) If the *Insured* fails in the duty of utmost good faith, the *Insured* is liable to pay the *BSA* any amount paid in excess of the *BSA*'s actual liability to pay for loss under this policy, and the *BSA* may recover such sum accordingly.

8.4 Subrogation

The *BSA* is subrogated to the rights of the *Insured*

to the extent of any payment it has made or undertaken to make.

PART 9: PAYMENTS

9.1 Payment

Where the *BSA* admits a claim under this policy, the *BSA* may, at its own discretion, and in full discharge of its liability, do any of the following:

- (a) pay the amount of the claim to a licensed *contractor* engaged by the *Insured* with the approval of the *BSA* to rectify or complete the insured works; or
- (b) arrange and pay for the rectification or completion of the insured works by a licensed *contractor* appointed by the *BSA* to the extent of the *Insured's* entitlement; or
- (c) pay the amount of the claim to the *Insured*; or
- (d) pay such part of the amount of the claim which is to be used for rectification or completion of the insured works to a licensed *contractor* and any balance to the *Insured*; or
- (e) pay the amount of the claim or any part of it to a body corporate in payment of any contribution or levy owing by the *Insured* under the *Body Corporate and Community Management Act 1997*; or
- (f) pay the amount or part of the amount of a claim made by a body corporate to one or more lot owners in the community management scheme to which the claim relates.

PART 10: REVIEWABLE DECISIONS

10.1 Decisions of the *BSA* which are Reviewable

Section 101 of the *Commercial and Consumer Tribunal Act 2003* provides that the *Tribunal* may

review a reviewable decision for which the *Tribunal* is given jurisdiction under an empowering Act. Section 86 of the *Queensland Building Services Authority Act 1991* provides that the *Tribunal* may review the following decisions of the *BSA*:

- a decision about the scope of works to be undertaken under the *Statutory Insurance Scheme* to rectify or complete tribunal work; or
- a decision to disallow a claim under the *Statutory Insurance Scheme* wholly or in part; or
- a decision that a domestic building contract has been validly terminated having the consequence of allowing a claim for non-completion under the *Statutory Insurance Scheme*.

10.2 Application for Review

- (a) If the *Insured* is affected by a reviewable decision of the *BSA*, the *Insured* may apply to the *Tribunal* for a review of the decision in accordance with Section 102 of the *Commercial and Consumer Tribunal Act 2003*.
- (b) An application to review a decision of the *BSA* must be made within 28 days after the *Insured* receives written notice of the decision.

PART 11: DEFINITIONS AND INTERPRETATION

11.1 Definitions

In this policy –

“**Act**” means the *Queensland Building Services Authority Act 1991*;

“**architect**” means a person registered as an architect under the *Architects Act 2002*;

“**associated building work**” means associated building work as defined in Section 12 of the *Regulation*;

“**BSA**” means the Queensland Building Services Authority;

“**building designer**” means a person who holds a licence

under Parts 11, 12 or 13 of the *Regulation* operating within the scope of work permitted within the scope of the licence;

"building work" means building work as defined in Schedule 2 of the *Act*;

"category 1 defect" means *building work* that is faulty or unsatisfactory because it either:

- (a) adversely affects the structural performance of a building;
- (b) adversely affects the health or safety of persons residing in or occupying a building;
- (c) adversely affects the functional use of the building; or
- (d) allows water penetration into a building.

"category 2 defect" means *building work* that is faulty or unsatisfactory, other than a *category 1 defect*, because:

- (a) it does not meet reasonable standards of construction or finish; or
- (b) it has caused a "settling in period" defect in a new building.

"certificate" means certificate of insurance issued under the *Act*;

"commercial purposes" means purposes other than those related to residential occupancy or other than for the purpose of using a residence for residential purposes;

"common property" means common property as defined by the *Body Corporate and Community Management Act 1997*;

"community titles scheme" means community titles scheme as defined by the *Body Corporate and Community Management Act 1997*;

"contract" means a contract for the performance of the *residential construction work* referred to in the *certificate*, or, where there is no *certificate* issued, a *contract* for the performance of *residential construction work* which is afforded the benefits of this policy by virtue of the *Act*;

"contracted works" means the *residential construction work* to be performed under a *contract*;

"contractor" means:

- (a) the licensed contractor referred to in the *certificate*; or
- (b) where there is no *certificate*, a contractor who holds a licence which appears to signify that the contractor may enter into *contracts* with consumers to carry out *residential construction work* covered by the *Statutory Insurance Scheme*, who enters into a *contract* with a consumer to carry out

residential construction work or otherwise carries out *residential construction work* other than as a subcontractor; or

- (c) a person fraudulently claiming to hold a licence permitting that person to enter into *contracts* with consumers to carry out *residential construction work* covered by the *Statutory Insurance Scheme*, who enters into a *contract* with a consumer to carry out *residential construction work*.

"cost escalation clause" means a provision of a domestic building *contract* under which the amount to be paid by the consumer may be increased to reflect increased costs of labour and/or materials and/or in consequence of delays in carrying out the work;

"defined event"

- (a) For Part 2 of this policy, means each single event of *vandalism* or *forcible removal* of *residential construction work* that gives rise to a claim under that Part;
- (b) For Part 3 of this policy, means each single event of *fire*, *storm* or *tempest* which gives rise to a claim under that Part.

"duplex" means a building which is a detached dwelling comprising two *residential units*;

"excess" is the first amount that must be contributed by the *Insured* for each *defined event* for which loss is claimed;

"electronic data" means facts, concepts and information converted to a form usable for communications, display, distribution, interpretation or processing by electronic and electromechanical processing or electronically controlled equipment and includes programs, software and other coded instructions for such equipment;

"engineer" means a person who is a registered professional engineer under the *Professional Engineers Act 2002*;

"fire" fire or explosion excluding:

- events where there is no flame (e.g. scorching); or
- fire that has not escaped the normal confines of a cooking, heating or electrical appliance; or
- fire occasioned by or happens through:
 - spontaneous fermentation or heating or its undergoing any process involving the application of heat; or
 - earthquake or subterranean fire; or
 - riot, civil commotion, war, invasion, act of foreign enemy, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection or military or usurped power; or

- arson, vandalism, forcible removal or other unlawful act; or
- explosions resulting in a claim for liquid damage to residential construction work.

“fixed price” means a price which is certain, except for the effect of provisional costs or sums, prime costs or sums, variations and any *cost escalation clause*;

“footing system” includes under slab plumbing and drainage;

“forcible removal” the application of force to remove fixed *standing work* without the express or implied consent of the owner;

“GST” has the same meaning as in the *GST Act*;

“GST Act” means *A New Tax System (Goods and Services Tax) Act 1999* as amended;

“input tax credit” has the same meaning as in the *GST Act*;

“input taxed” has the same meaning as in the *GST Act*;

“Insured” means:

- (a) the owner of the *land*; or
- (b) a consumer who has entered into a *contract* with the contractor to have *residential construction work* carried out in Queensland;

“land” means the land upon which the *residential construction work* is or is to be constructed and includes a lot or *common property* in a *community titles scheme*;

“multiple storey dwelling” means a building of not more than three storeys in height (excluding the lowest level if it consists only of a car park) comprising at least one *residential unit*, whether or not the building also includes one or more *commercial purposes* or uses;

“owner” of *land* means:

- (a) for freehold *land* - the registered owner of the *land* under the *Land Title Act 1994*; or
- (b) for *land* held under a statutory lease or licence giving a right to possession of the *land* - the lessee or licensee; or
- (c) for *land* in respect of which there is a determination of the type referred to in the *Native Title (Qld) Act 1993* - a body corporate which by virtue of that determination has the exclusive right to regulate possession, occupation, use and enjoyment of *residential construction work* constructed on that *land*;
- (d) for *common property* under the *Body Corporate and Community Management Act 1997* - the body

corporate.

“practical completion” means when the works are complete in accordance with the *contract* and all relevant statutory requirements and inspections have been satisfactorily completed or the works are occupied, whichever is first;

“preparatory work” means all work undertaken in relation to preparation, design, obtaining building and/or development approvals and site works, including (but not limited to) earthmoving, to make the site ready for the *residential construction work*;

“primary building work” means primary building work as defined in Section 11 of the *Regulation*;

“prior written approval”, for Parts 2, 3 and 7, means written approval provided by the BSA to the *Insured* specifying work approved to be performed, but does not include:

- (a) the issuing of a *certificate* of insurance;
- (b) the issuing of a policy for *residential construction work*; or
- (c) the issuing of a scope of work or variation of a scope of work.

“properly terminated” means lawfully under the *contract* or otherwise at law, upon the *contractor’s* default which extends to, but is not limited to:

- (a) the cancellation or suspension of the *contractor’s* licence; or
- (b) the death or legal incapacity of the *contractor*; or
- (c) the insolvency of the *contractor*; or
- (d) any breach of the *contract* by the *contractor*.

“Regulation” means the *Queensland Building Services Authority Regulation 2003* as amended;

“related roofed building” means a related roofed building as defined by Section 9 of the *Regulation*;

“residence” means residence as defined by the *Regulation*;

“residential construction work” means residential construction work as defined in Section 10 of the *Regulation*;

“replacement value” means any costs which would be reasonably incurred in respect of:

- (a) replacing (not necessarily on the same *land*) or reinstating the building to a condition substantially the same as, but not better or more extensive, when new; and
- (b) demolition and removal of debris to the extent

that it is essential to enable the building to be reinstated or the site cleared;

“residential unit” means a part of a building designed for separate occupation as a residence;

“standing work” means *residential construction work* carried out under a *fixed price contract*, if:

- (a) the *contract* is between the *contractor* and the *Insured*; and
- (b) the work is carried out by the *contractor*; and
- (c) the work has been commenced but not completed in accordance with the *contract*; and
- (d) the *Insured* has *properly terminated* the *contract* prior to the completion of the work;

However, *standing work* does not include any of the following:

- (e) work that is *preparatory work* only;
- (f) materials or goods not supplied by the *contractor* or the *contractor’s agent*;
- (g) any *building work* that existed prior to the commencement of the *residential construction work*.

“Statutory Insurance Scheme” or **“Scheme”** means the insurance scheme established under Part 5 of the *Act*;

“storm” a violent atmospheric disturbance producing strong wind, including cyclones, which may be accompanied by rain, lightning, thunder, hail or snow. A storm does not include:

- persistent bad weather, or heavy or persistent rain by itself;
- water rising up from the ground, whether through natural causes or not;
- an increase in sea level, including tsunami or other storm surge.

“supply” has the same meaning as in the *GST Act*;

“taxable supply” has the same meaning as in the *GST Act*;

“tempest” a violent *storm*, agitation or tumult;

“Terrorism” means any act or preparation in respect of action, or threat of action designed to influence the government *de jure* or *de facto* of any nation or any political division thereof, or in the pursuit of political, religious, ideological, or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) *de jure* or *de facto*, and which:

- involves violence against one or more persons;
- or

- involves damage to property; or
- endangers life other than that of the person committing the action; or
- creates a risk to health or safety of the public or a section of the public; or
- is designed to interfere with or disrupt an electronic system.

“**Tribunal**” means the Commercial and Consumer Tribunal;

“**vandalism**” means wilful or unlawful damage or destruction of *residential construction work*, including arson, without the consent of the *Insured*;

“**Work has been commenced**”, for *standing work* under this policy, means the *contractor* has physically commenced work (other than *preparatory work*) under the *contract* to do either of the following:

- (a) construct the permanent *footing system* of a building comprising *residential construction work*; or
- (b) if no *footing system* is to be constructed under the *contract*, change the existing structure of a building comprising *residential construction work*.

11.2 Interpretation

- (a) Unless the contrary intention appears, wherever terms defined by the *Act* or the *Regulation* appear in this policy, those terms have the same meaning in this policy as in the *Act* or the *Regulation* when the policy comes into force.
- (b) Headings are for convenience only and are not to be used in interpreting this policy.

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