

# calliden

## Calliden Home Warranty Insurance - New South Wales

### Insurance Policy





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Insurance Policy - New South Wales

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## Important Information

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### Duty of Disclosure

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This Policy is subject to The Insurance Contracts Act 1984. Under that Act you have a Duty of Disclosure.

Before you take out insurance with us, you have a duty to tell us of everything that you know, or could reasonably be expected to know, that is relevant to our decision to insure you and to the terms of that insurance. If you are not sure whether something is relevant you should inform us anyway.

You have the same duty to inform us of those matters before you renew, extend, vary, or reinstate your contract of insurance.

Your duty however does not require disclosure of matters that:

- reduce the risk
- are common knowledge
- we know or, in the ordinary course of our business, ought to know
- we have indicated we do not want to know.

If you do not comply with your Duty of Disclosure, we may be entitled to:

- reduce our liability for any claim
- cancel the contract
- refuse to pay the claim
- avoid the contract from its beginning, if your non-disclosure was fraudulent.

### Limitation or Exclusion of Rights Against Third Parties

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This Policy provides that you must not limit or exclude your rights against a party from whom you might otherwise be able to recover in respect to the loss or damage - see Condition 5 of this Policy.

### Interested Parties

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This Policy provides that the cover provided by this Policy does not extend to an interest in the Dwelling that is not your interest - see Condition 6 of this Policy.

### Privacy

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Calliden respects your privacy and operates at all times in accordance with its privacy policy. This privacy notification provides a summary of how Calliden treats your privacy, and it is recommended that you read the policy in conjunction with this notice.

Calliden collects personal information to assess your request for insurance, to administer your policy, provide other insurance services as requested by you, and also to notify you about other Calliden services or promotions from time to time. At the time of collecting your information we will inform you of the purpose for the collection and the consequences if you choose not to provide the information.

In order to provide its insurance services Calliden may need to share your information with third parties including your agent or broker and Calliden's reinsurers and claims providers (for a full list see Calliden's privacy policy).

In accordance with Calliden's privacy policy you may obtain access at any time to information that Calliden or its service providers hold on you. If you would like to contact Calliden about privacy, or would like to obtain a copy of the privacy policy you may do so through one of the following means:

- obtain the privacy policy online at [www.calliden.com.au](http://www.calliden.com.au)
- by phone 02 9551 1111
- by email to [privacy@calliden.com.au](mailto:privacy@calliden.com.au)
- by letter to Privacy Officer, PO Box 348, Milsons Point NSW 1565.

### Our Agreement With You

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This Policy is a legal contract between you and us.

You, or any other person insured under this Policy, must comply with all provisions of this Policy, otherwise there may be no claim payable under this Policy.

This Policy will only respond to claims in connection with Work described in the Contract which supported the Application for this insurance, and carried out at the site described in the Certificate of Insurance.

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## Important Information (cont'd)

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### Dispute Resolution Process

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#### How You Can Resolve a Complaint You Have With Us

If you would like to make a complaint, we will do everything we can to try to resolve it as quickly and fairly as possible. The following paragraphs provide details on how you can lodge your complaint and how Calliden will try to resolve it.

You may contact us at any time if you are dissatisfied with any matter relating to your insurance with Calliden, including:

- our decision on your claim;
- our handling of your claim;
- the service of our representatives, assessors, loss adjusters or investigators; and
- your insurance Policy.

#### Contact Us

- If you have a complaint regarding your claim, please contact your claims consultant.
- If you have a complaint regarding your insurance Policy, please contact us on 02 9551 1111 and we will try to resolve your complaint straight away.
- You can write to us at:
  - Fax: 02 9551 1155
  - Address: PO Box 348, Milsons Point NSW 1565

#### How We Resolve Complaints

- We will address all complaints, except where specific circumstances apply, in accordance with Calliden's Complaints Handling Process. This process is compliant with the Insurance Council of Australia's Code of Practice. Both the Code of Practice and our Complaints Brochure, which contains a guide to our process, are available upon request.
- We will handle all complaints without cost to you.
- A complaints consultant will be assigned to the management of your complaint and will acknowledge your complaint within 2 business days of receipt. If further information is required to consider the complaint, it will be requested at this time.
- The complaints consultant will aim to resolve your complaint within a further 13 business days. In certain circumstances a longer period may be required, and we will request a later response date.
- The outcome of the complaint will be advised to you in writing, stating our reasons and any corrective action that will be undertaken.

#### If Your Complaint is Still Unresolved

If we cannot resolve your complaint within 15 business days or you are not happy with our response to your

complaint, you can seek an external review via our external dispute resolution scheme, administered by the Financial Ombudsman Service (FOS).

This national scheme is for consumers, free of charge and is aimed at resolving disputes between insureds and their insurance companies.

For more information call 1300 78 08 08 or visit [www.fos.org.au](http://www.fos.org.au)

If the FOS is unable to address your complaint then Calliden may be able to provide you with details of an alternative external dispute resolution service.

### General Insurance Code of Practice

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Calliden is a signatory to the General Insurance Code of Practice (Code). The Code aims to raise standards of service between insurers and their customers. Calliden's service standards are in accordance with the Code.

For any information about the Code, including a copy of the Code, contact us or the Financial Ombudsman Service on 1300 78 08 08 or visit [www.codeofpractice.com.au](http://www.codeofpractice.com.au)

### Taxation Information

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All references in this Policy to dollar amounts and the Contract price are inclusive of Goods and Services Tax (GST).

If you are not registered for GST in the event of a claim we will reimburse you the GST component in addition to the amount that we pay. The amount that we are liable to pay under this Policy will be reduced by the amount of any input tax credit that you are or may be entitled to claim for the supply of goods or services covered by that payment.

If you are entitled to an input tax credit for the premium, you must inform us of the extent of that entitlement at or before the time you make a claim under this Policy. We will not indemnify you for any GST liability, fines or penalties that arise from or are attributable to your failure to notify us of your entitlement (or correct entitlement) to an input credit on the premium.

If you are liable to pay an excess under this Policy, the amount payable will be calculated after deduction of any input tax credit that you are or may be entitled to claim on payment of the excess.

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## Definitions

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Some key words and terms used in this **Policy** have special meanings. Wherever the following words or terms are used in the **Policy** they mean what is set out below.

**Act** means the Home Building Act 1989 as amended from time to time.

**Application** means the application form completed by **you** or the **Contractor** applying for this insurance.

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

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

**Contract** means the contract for **Work** between the **Contractor** and the person on whose behalf the **Work** is done or is to be done.

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

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

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

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

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

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

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

**Residential Building Work** means the same as it does under the **Act**.

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

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

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

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

**Act of 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 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:

- i. involves violence against one or more persons;
- ii. involves damage to property;
- iii. endangers life other than that of the person committing the action;
- iv. creates a risk to health or safety of the public or a section of the public; or
- v. is designed to interfere with or to disrupt an electronic system.

**Work** means the **Residential Building Work** which is done or is to be done by the **Contractor** to the **Dwelling** under the **Contract**.

**We/us/our** means Calliden Insurance Limited (Calliden) (ABN 47 004 125 268 AFSL No. 234438)

**You/your/yours** means the person on whose behalf **Work** is done or is to be done, and a successor in title to that person.

This **Policy** is intended to comply with the requirements set out under the **Act** and any term of this **Policy** which conflicts with, or is inconsistent with, the **Act** shall be read and be enforceable as if it complies with the **Act**.

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## Our Cover

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

- a) Loss or damage resulting from non-completion of the **Work** because of the **Insolvency**, death or **Disappearance** of the **Contractor**; or
- b) Loss or damage arising from a breach of **Statutory Warranty**, being loss or damage in respect of which **you** cannot recover compensation from the **Contractor**, or have the **Contractor** rectify, because of the **Insolvency**, death or **Disappearance** of the **Contractor**;
- c) Without limiting paragraphs a) or b) above, loss or damage, being loss or damage in respect of which **you** cannot recover compensation from the **Contractor**, or have the **Contractor** rectify, because of the **Insolvency**, death or **Disappearance** of the **Contractor**:
  - i. loss or damage resulting from faulty design, where the design was provided by the **Contractor**, or
  - ii. loss or damage resulting from non-completion of the **Work** because of early termination of the Contract because of the **Contractor's** wrongful failure or refusal to complete the **Work**, or
  - iii. the cost of alternative accommodation, removal and storage costs reasonably and necessarily incurred as a result of an event referred to in paragraphs a) or b) above, or
  - iv. loss of deposit or progress payment due to an event referred to in paragraphs a) or b) above,
  - v. any legal or other reasonable costs incurred by **you** in seeking to recover compensation from the **Contractor** for the loss or damage or in taking action to rectify the loss or damage.

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

### Period of Cover

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The **Policy** provides cover for loss arising from non-completion of the **Work** for a period of 12 months after the failure to commence, or cessation of, the **Work**.

The **Policy** provides cover for other loss insured by the **Policy** for a period of:

- i. In the case of loss arising from a **Structural Defect**, 6 years after the completion of the **Work**, or the end of the **Contract**, whichever is the later, or
- ii. In the case of loss arising otherwise than from any such **Structural Defect**, 2 years after the completion of the **Work**, or the end of the **Contract**, whichever is the later.

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

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

### We Will Pay

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- i. If the **Work** is not **Residential Flat Building Work**, **we** will pay a maximum aggregate amount of \$300,000 or such other amount as may be provided for from time to time by the **Regulation** for all claims made under this **Policy**.
- ii. If the **Work** is **Residential Flat Building Work**, and the amount obtained by dividing the **Contract** price by the number of **Dwellings** in the building does not exceed \$12,000, **we** will pay a maximum amount of \$300,000 in the aggregate for all claims made under this **Policy**.
- iii. If the **Work** is **Residential Flat Building Work**, and the amount obtained by dividing the **Contract** price by the number of **Dwellings** in the building exceeds \$12,000, **we** will pay a maximum amount of \$300,000 in the aggregate for all claims made under this **Policy** in respect of each **Dwelling**.
- iv. If the claim is in respect of loss or damage resulting from non-completion of the **Work**, **we** will pay a maximum amount that is 20% of the **Contract** price (including any agreed variation to the **Contract** price).

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## Our Cover (cont'd)

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### We Will Not Pay

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We will not pay:

- i. The first \$500 of each claim
- ii. Any part of a progress payment that exceeds the amount specified for such a payment under the **Contract**
- iii. Any part of a deposit or payment that exceeds the amount specified for such a deposit or payment in section 8 under the **Act**
- iv. If **you** are the **Contractor**
- v. If **you** are a **Developer**
- vi. If **you** are a person who does **Residential Building Work** to the **Dwelling** other than under a **Contract**
- vii. If **you** are a company related (within the meaning of section 50 of the Corporations Act 2001) to any corporate person referred to in paragraphs iv) to vi) above.

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## Claims Procedure

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### How to Make a Claim

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1. A claim must be notified to us within the periods set out below:
    - a) Except as referred to in paragraph b) below, not later than 6 months after **you** first become aware, or ought reasonably to be aware, of the fact or circumstance under which the claim arises, or
    - b) In the case of a fact or circumstance that may give rise to a claim for loss or damage resulting from incomplete **Work**, not later than 12 months after:
      - i. The **Contract** date, or
      - ii. The date provided in the **Contract** for commencement of **Work**, or
      - iii. The date **Work** ceased, whichever is the later.
  2. **We** may not reduce our liability under this **Policy** or reduce any amount otherwise payable in respect of a claim merely because of a delay by **you** in notifying **us** of a claim if the claim is notified to **us** within the periods set out in paragraphs 1.a) or b) above.
  3. Where the claim is not notified to **us** within the periods set out in paragraphs 1.a) or b) above, **we** may reduce our liability under the **Policy** or reduce any amount otherwise payable because of the delay in the claim being notified to **us**.
  4. **You** must use **our** claim form to make a claim.
  5. **You** must give **us** any assistance, information or documents which **we** request. This includes giving **us**, the **Contractor** and **our** nominated **Contractor**, access to inspect, rectify or complete the **Work** (unless **you** have reasonable grounds to refuse access).
  6. **You** must not make any admissions, offer, promise or payment in connection with any claim.
- You** must comply with **your** obligations under the **Policy**, otherwise **we** may not have to pay **your** claim(s).

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## Exclusions

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

1. Any claim that may arise under the **Contract** in the nature of liquidated damages for delay or damages for delay except in respect of any increase in rectification costs caused by the effluxion of time,
2. Any claim for such loss or damage as could be reasonably expected to result from fair wear and tear of the **Work** or **your** failure to maintain the **Work**,
3. Any claim in relation to a defect in, or the repair of damage to **Structural Elements** in the non-residential part of a building that supports or gives access to the residential part, unless it is a defect or damage that adversely affects the structure of the residential part or the access to it,
4. Any claim in relation to damage caused by the normal drying out of the **Work**, if the damage has occurred despite the **Contractor** taking all reasonable precautions in allowing for the normal drying out when carrying out the **Work**,
5. Any claim in relation to damage due to, or made worse by, **your** failure of to take reasonable and timely action to minimise the damage,
6. Any claim in relation to an appliance or apparatus (such as a dishwasher or air-conditioning unit) if the claim is made after the expiry of the manufacturer's warranty period for the appliance or apparatus or, if there is no warranty period, outside the reasonable lifetime of the appliance or apparatus,
7. Any claim in relation to damage to **Work** or materials that is made outside the reasonable lifetime of the **Work** or materials or the manufacturer's warranty period for the materials,
8. Any claim in relation to a defect due to a faulty design provided by **you** or a previous owner,
9. Any claim for loss, damage, consequential loss, cost or expense, disablement or liability, directly or indirectly caused by, contributed to by, resulting from, or arising out of or in connection with:
  - i. War, invasion, acts of foreign enemies, hostilities, or war-like operations (whether war be declared or not) or civil war.
  - ii. An **Act of Terrorism** or any action taken in controlling, preventing or suppressing or in any way relating to any **Act of Terrorism**.
  - iii. Mutiny, civil commotion assuming the proportions of or amounting to a popular rising, military rising, insurrection, rebellion, military or usurped power, confiscation, nationalisation, requisition, or destruction of or damage to property by or under order of any government, public or local authority or looting, sacking or pillage following any of the above.
  - iv. Asbestos, or any materials containing asbestos in whatever form or quantity.
  - v. A nuclear reaction, nuclear radiation, radioactive contamination or nuclear weapon material.
  - vi. Risks normally insured under a policy for public liability or contract works.
  - vii. An act of God or nature.
  - viii. **Your** failure to maintain appropriate protection against pest infestation or exposure of natural timbers.
  - ix. Consequential loss, including, without limitation, loss of rent or other income, loss of enjoyment, loss of business opportunity, inconvenience or distress.
  - x. Malfunction in any mechanical or electrical equipment or appliance, if **we** prove that the malfunction is not attributable to the workmanship of, or installation by the **Contractor**.

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## Conditions

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

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

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

2. Even though **you** or another person who applies for this insurance may be required to pay the premium when lodging an **Application**, **we** may refuse to accept the **Application**. The **Work** is not covered until we have provided to **you** or that other person a **Certificate of Insurance** evidencing the **Work**.
3. If **we** have provided to **you** or another person a **Certificate of Insurance** evidencing insurance for the **Work**, **we** are not entitled to refuse to pay a claim or to cancel the insurance on the grounds that:

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

4. If **we** pay a claim, **we** are entitled to be subrogated to **your** rights against any party in relation to the claim to the extent of the amount paid by **us**.
5. **You** must not limit or exclude **your** rights against a party from whom **you** might otherwise be able to recover in respect to the loss or damage. If **you** do, **our** liability to **you** is reduced to the extent **we** can no longer recover from that other party as a result of the limitation or exclusion by **you**.
6. The cover provided by this **Policy** does not extend to an interest in the **Dwelling** that is not **your** interest. **We** will not be liable under this **Policy** to anyone except **you**.

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## Other Matters

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### Jurisdiction

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This **Policy** is governed by the law of New South Wales. The law of New South Wales includes Commonwealth legislation such as the Insurance Contracts Act 1984. Any rights to refuse to pay a claim are subject to section 54 of that Act.

### How We Will Communicate

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1. All communications **you** are required to give or make under this **Policy** must be sent in writing to **us**.
2. All communications **we** are required to give or make under this **Policy** will be sent in writing to **you** at the address specified in the **Certificate of Insurance** or as notified by **you** from time to time.
3. All communications sent by post to **you** or **your** appointed agent will be deemed to have been received by **you** on the third day following the day of posting.
4. All communications sent by facsimile to **you** or **your** appointed agent will be deemed to have been received by **you** on the date of transmission.



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