

## **Victorian Plumbers Consumer Protection Endorsement**

Definitions applicable to this Endorsement

“Building Owner” means the person for whom plumbing work has been, is being, or is about to be, carried out and includes:

- (a) any occupier of the land, building or home where the plumbing work is carried out;
- (b) any person who is the owner for the time being for such land, building or Home;
- (c) if the plumbing work is carried out on land in a plan of subdivision containing common property;
- (d) the body corporate for that land or a building on that land; and
- (e) any assignee of the building owner’s rights under contract; and
- (f) any person who has contracted with another person to provide the plumbing work.

“Completed work liability” means any liability that arises as a result of any personal injury to a third party, or loss or damage to the property of a third party (other than property that is part of the plumbing work itself), directly or indirectly related to or arising from the plumbing work :

- (a) after the issue of the compliance certificate for the work; or
- (b) if no compliance certificate is issued for the work, after the plumber who carried out the work stopped carrying out the work. 2

“Contract” means a contract to carry out plumbing work and includes a domestic building contract or other building contract that includes plumbing work.

“Defect” in relation to plumbing work includes:

- (a) a failure to carry out the plumbing work in a proper and workmanlike manner and in accordance with any plans and specifications set out in the Contract;
- (b) a failure to use materials in the plumbing work that are good and suitable for the purpose for which they are used;
- (c) the use of materials in the plumbing work that are not new (unless the Contract permits use of materials that are not new);
- (d) a failure to carry out the plumbing work in accordance with, and in compliance with, all laws and legal requirements including but without limiting the generality of this clause, the Building Act 1993 (Vic) and any regulations made under that Act;
- (e) a failure to carry out the plumbing work with reasonable care and skill and, in the case of Domestic Plumbing Work, a failure to complete the work
  - i. by the date (or within the period) specified by the Contract; or
  - ii. within a reasonable time, if no date (or period) is specified;
- (f) if the Contract states the particular purpose for which the plumbing work is required, or the result which the building owner wishes the plumbing work to achieve, so as to show that the building owner relies on Your skill and judgment, a failure to ensure that the plumbing work and any material used in carrying out the plumbing work:
  - i. are reasonably fit for that purpose; or
  - ii. are of such a nature and quality that they might reasonably be expected to achieve that result; and

- (g) a failure to maintain a standard or quality of plumbing work specified in the Contract. A reference to any material in sub-clause (b) or (f) does not include any material that is supplied by the building owner (or the building owner's agent.)

"Defects Liability" means liability to pay for the cost of rectifying any defect in Your plumbing work carried out in Victoria.

"Disappearance" means cannot be found after due search and inquiry.

"Domestic Plumbing Work" means plumbing work performed or intended to be performed on or in relation to a home or any building or structure on land or which a home is or is intended to be situated.

"Home" means any residential premises and includes any part of a commercial or industrial premises that is used as a residential premises and also includes any houseboat that is less than 8 metres in length, but does not include:

- (a) any residence that is not intended for permanent habitation; or
- (b) a rooming house within the meaning of the Residential Tenancies Act 1997 (Vic);
- (c) a motel, residential club, residential hotel or residential part of licensed premises under the Liquor Control Reform Act 1998 (Vic);
- (d) a nursing home, hospital or accommodation associated with a hospital; or
- (e) any residence that the regulations made under the Domestic Building Contracts Act 1995 (Vic) state is not a home for the purposes of the definition of 'home' in that Act.

"Insolvent Under Administration" means a person who is bankrupt in respect of a bankruptcy from which the person has not been discharged and includes:

- (a) a person who has executed a deed of arrangement under Part X or the Bankruptcy Act 1966 (Cth) (or the corresponding provisions of the law of another jurisdiction) where the terms of the deed have not been fully complied with; or
- (b) a person whose creditors have accepted a composition under Part X of the Bankruptcy Act 1966 (Cth) (or the corresponding provisions of the law of another jurisdiction) where a final payment has not been made under that composition.

"Ministerial Order" means the Licensed Plumbers General Insurance Order 2002

"Non-Domestic Plumbing Work" means plumbing work that is not Domestic Plumbing Work.

"Product defect" means a defect in any appliance, material, substance or other thing that was supplied or used by You in connection with plumbing work.

"Trade practices liability" means any liability for the cost of rectifying any defect in plumbing work carried out in Victoria that arises as a result of conduct by You in connection with the plumbing work that contravenes Section 52, 53, 55A or 74 of the Trade Practices Act 1974 (Cth) or Section 9, 11 or 12 of the Fair Trading Act 1999 (Vic).

#### Cover

If this Endorsement is shown in the Policy Schedule as applying We will cover You for:

- 1. Defects Liability;
- 2. Trade Practices Liability; and
- 3. In respect of Domestic Plumbing Work carried out in Victoria any liability arising from:
  - (a) Non-completion of the plumbing work due to:
    - i. Your death or legal incapacity;

- ii. Your disappearance;
  - iii. You becoming an Insolvent Under Administration;
  - iv. The cancellation or suspension of Your license as licensed plumber under the Building Act 1993 (Vic); or
  - v. The early termination of the Contract by the building owner as a result of Your wrongful failure or refusal to complete the plumbing work; and
- (b) Any consequential financial loss reasonably incurred by the building owner as a result of any defects or non-completion of the plumbing work including but not limited to:
- i. the loss of any deposit or progress payment (or any part of any deposit or progress payment), and
  - ii. the cost of alternative accommodation, removal and storage costs that are reasonably and necessarily incurred.

The cover provided under (b) also applies to any Contract for both Domestic and Non-Domestic Plumbing Work in which the Non-Domestic Plumbing Work component does not exceed 20% of the total Contract value.

#### Limit of Liability

1. Our maximum liability in respect of any claim or series of claims in relation to Compliance Certificate (or, in the case of Domestic Plumbing Work, in relation to each Home if the Compliance Certificate relates to more than one Home) shall not exceed \$50,000 for Domestic Plumbing Work, or, \$100,000 for Non-Domestic plumbing work.
2. The maximum total amount that We will pay out under this Policy for all claims shall not exceed \$5,000,000 for this endorsement in the period of insurance.

In addition to the limit of liability We also pay the reasonable legal costs and expenses associated with the successful enforcement of a claim against You or Us. However, We will not pay the legal costs of any person making a claim against You that are not directly or indirectly related to:

- (a) The enforcement of this Policy; or
- (b) A liability in respect of which You are covered under this Policy.

Provided that:

- i. We will not be obliged to pay any claim or judgment or to defend any claim or legal action after the limit of liability has been exhausted by payment of judgments or settlements; and
- ii. If a payment exceeding the limit of liability has to be made to dispose of a claim, Our liability to pay any legal costs and expenses under this clause will be limited to that proportion of those legal costs and expenses as the limit of liability bears to the amount paid to dispose of the claim.

#### Exclusions applicable to this Endorsement

We will not cover You for:

1. any defects liability resulting from a product defect provided that:
  - (a) We bear that onus of establishing that the claim (or part of the claim) is based on a product defect; and
  - (b) We agree that nothing in this exclusion removes the cover given to You by this policy in relation to You supplying or using an appliance, material, substance or

other thing that You were unaware was defective or that You should not reasonably have been aware was defective;

2. any loss, injury or damage resulting from:
  - (a) fair wear, tear or depreciation of plumbing work; or
  - (b) a failure by the building owner to reasonably maintain plumbing work;
3. any consequential financial loss in relation to Non-Domestic Plumbing Work;
4. Claims for liquidated damages for delay or damages for delay, that may arise under a Contract provided that this exclusion does not apply to any increase in rectification costs caused by a delay;
5. for defects liability, trade practices liability and liabilities referred to in Paragraph 1 – Cover of this Endorsement, You are only covered in respect of plumbing work for which a Compliance Certificate is required from the time You agree to carry out that work until:
  - (a) 6 years after You last issued the Compliance Certificate in relation to that work, or
  - (b) if You did not issue a Compliance Certificate in relation to the work, 6 years after You stopped carrying out that work.

The indemnity provided by the insurance for defects liability, trade practices liability and liabilities referred to under the – Cover section of this Endorsement, continues to apply throughout the relevant period specified in this clause even if You cease to be a licensed plumber before the end of that period and even if You cease to maintain this Endorsement.

Conditions applicable to this Endorsement

(i) Deemed notice

We agree that if a person gives notice of a defect in writing to You or Us, that person is to be taken for the purposes of this Policy to have given notice of every defect of which the defect notified is directly or indirectly related, whether or not the claim in respect of the defect that was actually notified has been settled.

(ii) Non-Disclosure and Misrepresentation

This clause only applies in relation to Domestic Plumbing Work.

We agree that We will not refuse to pay a claim under this Policy on the ground that this Policy was obtained by misrepresentation, fraud or non-disclosure by You or anyone acting on Your behalf. You agree that if We make a payment under this Policy to, or for the benefit of, a building owner under the circumstances contemplated by this clause, by doing so We are not restricting Our right to recover that payment from You.

(iii) Common property

This clause applies if plumbing work is carried out on land in a plan of subdivision containing common property and a claim is paid by Us in relation to the common property. We will reduce the amount We will pay under this Policy in respect of any one home on land in the plan of subdivision by an amount calculated by dividing the amount of the claim paid by Us in relation to the common property by the number of homes on land in the plan of the subdivision.

(iv) Non-completion of work

If You fail to complete plumbing work for any reason listed in clause 11 of the Ministerial Order, then this Policy does not cover You for claims for the whole or a

specified part of any payment made under a Contract that exceeds the value of the work completed at the time of payment.

(v) Deemed acceptance of claims

This clause only applies in relation to Domestic Plumbing Work. We agree to accept liability for a claim if We do not notify the person making the claim within 90 days from when We receive the claim in writing that We accept or dispute the claim, unless We obtain an extension of time from the person in writing or from the Victorian Civil and Administrative Appeals Tribunal.

(vi) Certificate of Insurance

This clause only applies in relation to Domestic Plumbing Work. If We give You a Certificate stating that You are covered by insurance under this Policy, We agree that We will not refuse to pay a claim on that insurance on the ground that You have not paid the premium for the insurance. You agree that if We make a payment under this Policy to, or for the benefit of, a building owner under circumstances contemplated by this clause, by doing so We are not restricting Our right to recover that payment from You.

(vii) Direct Enforcement

We and You both agree that:

- (a) A person who is entitled to claim against You in respect of any liability for which You are indemnified under this Policy may enforce this section directly against Us for the person's owner benefit if:
  - i. any event listed in clause 11 of the Ministerial Order of the Policy occurs;
  - ii. you refuse to make a claim against Us; or
  - iii. there is an irretrievable breakdown of communication between You and Us; and
- (b) for the purpose of such enforcement the person has the same rights and entitlements as You would have had under any legislation applicable to You; and
- (c) We will pay to the person the full amount of any liability for which You are indemnified under this Policy despite any failure by You to pay any deductible that You are required to pay.

(viii) You must co-operate with Us

- (a) You agree in relation to a claim or prospective claim:
  - i. to make reasonable efforts to assist and inform Us or Our agent; and
  - ii. to attend the relevant building site for the purpose of inspecting, rectifying or completing plumbing work (unless the building owner refuses You access to the site); and
- (b) We may reduce the amount of a claim by a building owner by an amount that reasonably represents the cost resulting from an unreasonable refusal by the building owner to give You access to a building site if We have asked You to attend the site.

Special provisions

(i) "Provision concerning cancellation"

We agree that the cancellation of this policy:

- (a) will only take effect 30 days after We give both the Plumbing Industry Commission and You notice in writing of the cancellation;
  - (b) has no effect on any of Our obligations under the policy with respect to the liabilities referred to in clauses 10 (a) (defects), 10(b) (trade practices liability) and 11 (consequential financial loss and non-completion) of the Ministerial Order in relation to plumbing work that was carried out while the policy was in force; and
  - (c) has no effect on any of Our obligations under the policy with respect to the liabilities referred to in clauses 10(c) (public liability) and 10 (d) (completed work liability) of the Ministerial Order in relation to any personal injury to a third party or loss or damage to the property of a third party (other than property that is part of the plumbing work itself) that occurred while the policy was in force.
- (ii) "Notification concerning claims settled"

We and You both agree that We will notify the Plumbing Industry Commission in writing in the manner required by the Minister of the settling or payment of any claim under the policy.