



Victoria Government Gazette

No. S 122 Friday 30 October 1998

By Authority, Victorian Government Printer

SPECIAL

VICTORIAN CASINO AND GAMING AUTHORITY

Casino Control Act 1991

Notice under section 60(1)

Approval of Games—Electronic Gaming Machines

By this notice, the Victorian Casino and Gaming Authority—

- (a) **revokes** the approval of “Aristocrat” games made by notice published in the Victoria Government Gazette on 26 August 1998 (S85); and
- (b) **approves** the games set out in Schedule 1.

This notice operates with effect from 4.00 am on 2 November 1998.

Dated: 28 October 1998

BILL LAHEY

Director of Gaming and Betting

Schedule 1

Aristocrat

6, 7, 8, Spot Progressive Keno

Bear Essentials

Bird of Paradise

Black Panther

Black Rhino

Bring Home The Bacon

Butterfly Delight

Cash Splash

Chicken

Coral Riches

Desert Bloom

Diamond Fever

Dinomight

Dolphin Treasure

Dragon's Eye

Enchanted Forest

Extra 2 Ball Keno

Fantasy Fortune

Gator Gold

Gold Bullion

Golden Canaries

Heart Throb

Jumping Beans

Jungle Juice

KG Bird

Loco Loot

Lone Star

Looney Sevens

Lucky Clover

Lucky Strike

Mine Mine Mine

Money Mouse

Mystic Garden

Oscar

Penguin Pays

Phantom Pays

Power Pays

Prize Fight

QT Bird

Queen of the Nile

Reel Power

Snow Cat

Super Bucks II

Super Hero

Super Triple Sevens

Sweethearts II

Thor

Three Bags Full

Thunder Heart

White Tiger

Wild Africa

Wild Angels

Wild Bill

Wild Cougar

Wild Peacock

Winning Post

Winning Streak

**VICTORIAN CASINO AND GAMING
AUTHORITY**

Casino Control Act 1991

Notice under section 60(1)

Rules of the Game—Sic-Bo

By this notice, the Victorian Casino and Gaming Authority **amends** the Rules approved in respect of the Game “Sic-Bo” by notice published in the Victoria Government Gazette on 24 April 1997 (S44)—

Rules 3.1.3, 3.1.4 and 3.1.7 are **substituted**—

“3.1.3 “Specific Triples” means a wager on any one of the specific triples, 6, 5, 4, 3, 2 or 1, which shall win if that triple appears.”

“3.1.4 “Specific Doubles” means a wager on any one of the specific doubles, 6, 5, 4, 3, 2 or 1 which shall win when 2 or all 3 dice show the same specific number.”

“3.1.7 “Two Dice Combinations” — when two of the three dice show the specific numbers on the betting position, the wager shall win.”

New Rule 4.2 **inserted** —

“4.2 Minimum and maximum wagers which differ from those displayed on the table notice may be agreed for individual players and in such cases, the position occupied by the player shall be denoted by a distinctive marker stating “higher limit”.”

Old Rules 4.2, 4.3 and 4.4 **renumbered** as 4.3, 4.4 and 4.5.

This notice operates with effect from 4.00 am on 2 November 1998.

Dated: 28 October 1998

BILL LAHEY
Director of Gaming and Betting

Planning and Environment Act 1987

MORELAND PLANNING SCHEME

Notice of Approval of Amendment

Amendment L70

The Minister for Planning and Local Government has approved Amendment L70 to the Moreland Planning Scheme.

The Amendment comes into operation on the date this notice is published in the Government Gazette.

The amendment makes an administrative change to the scheme by designating Shorts Road, Tinning Street and Barkly Street, Brunswick as “closed road” rather than “road closure” which was designated under Amendment L59 to the scheme.

A copy of the amendment can be inspected, free of charge, during office hours, at the Department of Infrastructure, Customer Service Centre, Upper Plaza, Nauru House, 80 Collins Street, Melbourne and at the offices of the Moreland City Council, Municipal Offices, 90 Bell Street, Coburg.

LEIGH PHILLIPS
Director, Planning Operations
Local Government, Planning and
Market Information Services Division
Department of Infrastructure

BUILDING ACT 1993 (VICTORIA)
MINISTERIAL ORDER
DOMESTIC BUILDING INSURANCE

I, Robert Maclellan, Minister for Planning and Local Government, pursuant to Section 135(4) of the **Building Act 1993** hereby revoke as from 1 December, 1998 my Ministerial Orders signed on the 25 September 1996 and made on 1 October, 1996 with effect from 1 November, 1996 ("the Revoked Orders") concerning Domestic Building Insurance Policy Issued in the Name of Building Owner ("Revoked Building Owner Policy Order") and Domestic Building Insurance Policy Issued in the Name of Builder ("Revoked Builder Policy Order") and pursuant to s 135(1) of the **Building Act 1993** hereby make the following Order requiring builders specified under Clause 4.1 of this Order and owner builders specified under Clause 4.2 of this Order to purchase on behalf of the building owner or purchaser, as the case may be, the required insurance of the kind and amount specified hereunder.

1. DEFINITIONS

Schedule 1 Glossary of Defined Terms sets out those definitions referred to below as adopted from the **Domestic Building Contracts Act 1995** (Vic), the **Building Act 1993** (Vic) and Building Code of Australia.

1.1 Wherever used in this Ministerial Order:

"**builder**", "**building owner**", "**building site**", "**defective**", "**domestic building work**", "**home**" and "**major domestic building contract**" shall have the same meaning as those terms are defined in Section 3 of the **Domestic Building Contracts Act 1995**.

"**completion date**" and "**construct**" shall have the same meaning as those terms are defined in Section 137B(7) of the **Building Act 1993**.

"**developer**" means any building owner or other person for whom three or more homes are being or are proposed to be built:

- a) on any one building site; or
- b) on more than one building site under one major domestic building contract.

"**disappearance**" means cannot be found after due search and inquiry.

"**DBC Act**" means the **Domestic Building Contracts Act 1995**.

"**externally administered corporation**" means a corporation:

- a) in respect of which a provisional liquidator has been appointed and not since removed; or
- b) that is being wound up; or
- c) that is under administration; or
- d) that has executed a deed of arrangement that has not yet terminated.

A body corporate becomes "**insolvent**" if:

- a) an administrator of the body corporate is appointed under section 436A, 436B or 436C of the Corporations Law;
- b) the body corporate commences to be wound up or ceases to carry on business;
- c) a receiver, or a receiver and manager, of property of the body corporate is appointed, whether by a Court or otherwise;
- d) the body corporate enters into a compromise or arrangement with its creditors or a class of them.

A natural person becomes "**insolvent**" if:

- a) a creditor's petition or a debtor's petition is presented under Division 2 or 3 of Part IV of the **Bankruptcy Act 1966** (Cth) (Bankruptcy Act) against:
 - (i) the person;

- (ii) a partnership in which the person is a partner; or
- (iii) 2 or more joint debtors who include the person;
- b) the person's property becomes subject to control under Division 2 of Part X of the Bankruptcy Act;
- c) the person executes a deed of assignment or deed of arrangement under Part X of the Bankruptcy Act; or
- d) the person's creditors accept a composition under Part X of the Bankruptcy Act.

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

"insured" means any person insured under a policy, and includes:

- a) for policies issued pursuant to clause 4.1, the building owner under a major domestic building contract and any person who is the owner for the time being of the land or building in respect of which the domestic building work was carried out under the contract and any other person who becomes entitled to the benefit of the warranties contained in section 8 of the **DBC Act**;
- b) for policies issued pursuant to clause 4.2, the purchaser referred to in section 137B(2) of the **Building Act 1993** and any subsequent person who is the owner for the time being of the land or building in respect of which the domestic building work was carried out;
- c) where the land or building in respect of which domestic building work is carried out is subject to the **Subdivision Act 1988** (Vic), the body corporate for that land or building;

BUT unless expressly provided for in the policy EXCLUDES:

- a) the builder or the owner builder, as the case may be; and
- b) a building owner under clause 5 or a purchaser under clause 6 that, in relation to their respective builder or owner builder, are related bodies corporate within section 50 of the **Corporations Law** or where neither party is a public company but have a common director or a common shareholder.

"major domestic building work" means domestic building work the value of which exceeded or, if performed under a domestic building contract would be anticipated to exceed \$5,000 at the time such work is carried out.

"owner builder" means a builder in relation to major domestic building work to whom

Section 137B(2) of the **Building Act 1993** applies and includes a mortgagee in possession from such owner builder or the executor or administrator of the estate of such owner builder.

"policy" means a contract of insurance, which complies with this Order.

"Tribunal" means the Victorian Civil and Administrative Tribunal established by the **Victorian Civil and Administrative Tribunal Act 1998**.

2. DATE OF EFFECT OF ORDER

This Order shall have effect from 1 December, 1998.

3. TRANSITIONAL PROVISIONS

- 3.1 If a builder was covered by the insurance required by the Revoked Builder Policy Order immediately before 1 December 1998, the builder need not comply with this Order before the policy under which that insurance is held is cancelled or expires.

3.2 For the purposes of clause 3.1, if a policy has not been cancelled, or has not expired, by 1 December 1999, it is deemed to expire on that date.

3.3 If a builder was covered by the insurance required by the Revoked Building Owner Policy Order in respect of any particular domestic building work immediately before 1 December 1998, the builder need not comply with this Order with respect to that work.

4. INSURANCE TO BE PURCHASED BY BUILDERS AND OWNER BUILDERS

4.1 A builder shall ensure that a policy is issued which complies with all the requirements of this Order other than the requirements of Clause 6 of this Order, prior to entering into a major domestic building contract.

4.2 An owner builder shall ensure that a policy is issued which complies with all the requirements of this Order other than the requirements of Clause 5 of this Order, prior to entering into a contract to sell property within six (6) years and six (6) months after the completion date of major domestic building work performed on such property or, if neither an occupancy permit nor a certificate of final inspection is issued or required to be issued in respect of such major domestic building work, within seven (7) years after the date of commencement of such work.

4.3 The builder or owner builder, as the case may be, shall be responsible, as between it and the insurer, for the payment of the premium for the policy required to be issued under this Order.

4.4 Despite clauses 4.1 and 4.2, a builder or owner builder may enter into a contract referred to in clause 4.1 or 4.2 before ensuring that the policy required by that clause is issued if the contract contains a written condition -

(a) that requires the issue of a policy that complies with that clause before the builder or owner builder may enforce any provision of the contract; and

(b) that states that no money is payable under the contract before such a policy is issued.

4.5 If a builder was covered by the insurance required by the Revoked Builder Policy Order immediately before 1 December 1998, the builder must continue to maintain that insurance for the remainder of the period required by that Order as if that Order had not been revoked.

4.6 If, immediately before 1 December 1998, a builder was required to be covered by the insurance required by one of the Revoked Orders in respect of particular domestic building work but was not covered by that insurance in respect of that work, the builder must obtain and maintain insurance in respect of that work that complies with one of those Orders for the remainder of the period required by that Order as if that Order had not been revoked.

4.7 The requirements imposed by clauses 4.5 and 4.6 are additional to any other requirement imposed by this Order.

4.8 It is sufficient compliance with clause 4.5 in respect of particular domestic building work if the builder is covered in respect of that work by insurance that covers the period required by that clause and that complies with the Revoked Building Owner Policy Order as if that Order had not been revoked.

4.9 It is sufficient compliance with clauses 4.5 or 4.6 in respect of particular domestic building work if the builder is covered in respect of that work by insurance that covers the period required by that clause and that complies with this Order (other than clause 4.5 or 4.6, as the case may be).

Persons to whom insurance cover shall extend

4.10 In accordance with section 135(1)(c) of the **Building Act 1993** the insurance cover required in a policy shall be extended:

4.10.1 to each person who is or becomes entitled to the benefit of any of the warranties referred to in clause 5.1.1 or clause 6.1, as the case may be;

4.10.2 in the case of clause 5:

a) to any person on whose behalf the domestic building work is or was being carried out; and

- b) to the owner for the time being of the building or land in respect of which the domestic building work was being carried out;

4.10.3 in the case of clause 6, to any person who is the successor in title to the purchaser.

5. INSURANCE TO BE PURCHASED BY BUILDER PURSUANT TO CLAUSE 4.1

A policy to be issued pursuant to Clause 4.1 of this Order shall contain terms and conditions, which have the following effect:

5.1 The policy shall indemnify the building owner ("insured") in respect of loss or damage, which results from:

5.1.1 domestic building work which is defective, which expression shall include a breach of any of the warranties implied by Section 8 of the DBC Act namely that the builder warrants that:

- a) the work will be carried out in a proper and workmanlike manner and in accordance with the plans and specifications set out in the contract;
- b) all materials to be supplied by the builder for use in the work will be good and suitable for the purpose for which they are used and that, unless otherwise stated in the contract, those materials will be new;
- c) the work will be carried out in accordance with, and will comply with, all laws and legal requirements including, without limiting the generality of this warranty, the **Building Act 1993** and the regulations made thereunder;
- d) the work will be carried out with reasonable care and skill and will be completed by the date (or within the period) specified by the contract;
- e) if the work consists of the erection or construction of a home, or is work intended to renovate, alter, extend, improve or repair a home to a stage suitable for occupation, the home will be suitable for occupation at the time the work is completed; and
- f) if the contract states the particular purpose for which the work is required or the result which the building owner wishes the work to achieve, so as to show that the building owner relies on the builder's skill and judgement, then the work and any material used in carrying out the work will be reasonably fit for that purpose or will be of such a nature and quality that they might reasonably be expected to achieve that result.

5.1.2 a failure to maintain a standard or quality of building work specified in the contract;

5.1.3 non-completion of the domestic building work due to the:

- a) death or legal incapacity of the builder;
- b) disappearance of the builder;
- c) builder becoming insolvent;
- d) builder becoming insolvent under administration;
- e) builder becoming an externally administered corporation;
- f) cancellation or suspension of the builder's registration as a building practitioner under the **Building Act 1993** without reinstatement of such registration within 30 days; or
- g) early termination of the major domestic building contract by the building owner as a result of the builder's wrongful failure or refusal to complete the domestic building work; and

5.1.4 conduct by the builder in connection with a major domestic building contract which contravenes Sections 52, 53, 55A or 74 of the **Trade Practices Act 1974** (Cth) or Sections 11, 12, or 17 of the **Fair Trading Act 1985** (Vic).

5.2 The policy shall also indemnify the insured, in respect of:

5.2.1 loss of deposit (or any part thereof) or loss of any progress payment as a result of any event mentioned in clause 5.1.3;

5.2.2 alternative accommodation, removal and/or storage costs reasonably and necessarily incurred subsequent to and as a result of any event mentioned in clause 5.1;

5.3 The policy shall state that the risks for which the insured is indemnified include the acts and omissions of all persons contracted by the builder to perform the domestic building work under the relevant major domestic building contract resulting in loss or damage of the kind referred to under clauses 5.1 and 5.2.

5.4 Period of Insurance

The policy shall provide the indemnities referred to in clauses 5.1 and 5.2 of this Order in respect of loss or damage happening during the period commencing on the date the relevant major domestic building contract is entered into or the date of issue of the building permit for the relevant work, whichever is the earlier, and ending not earlier than:

- a) the day six (6) years and six (6) months after:
 - (i) the completion date of the domestic building work; or
 - (ii) the termination of the major domestic building contract, whichever is the earlier; or
- b) if neither an occupancy permit nor a certificate of final inspection is issued or required to be issued in respect of the domestic building work and clause 5.4(a)(ii) does not apply, the day seven (7) years after the date of such major domestic building contract.

Permissible Policy Limitations

5.5 Subject to clause 5.2, the policy may exclude or limit claims under the policy:

5.5.1 for penalties, fines, liquidated damages or other sums in respect of delay on the part of the builder PROVIDED HOWEVER that the policy shall not exclude or limit any increase in rectification costs caused by the effluxion of time;

5.5.2 for moneys paid to a builder which exceed the amounts that ought to have been paid in accordance with section 11 and section 40(2) or section 40(3) or section 40(4) (as the case may be) of the DBC Act;

5.5.3 made pursuant to clause 5.1.3 where the relevant event under clause 5.1.3 occurs prior to the commencement on the building site of any domestic building work by the builder requiring the use of any tools or building materials (but excluding removal of vegetation) PROVIDED HOWEVER that such exclusion or limitation must be subject to a right of the building owner to recover:

- (a) any moneys paid in relation to the domestic building contract; and
- (b) all reasonable costs and expenses incurred by the building owner in relation to such contract.

5.5.4 where the building owner is a developer and a claim is made pursuant to clause 5.1.3, PROVIDED HOWEVER that any exclusion or limitation made in the policy with respect to the developer shall be without prejudice to any rights under the policy of any subsequent owner for the time being of the building or land in respect of which the domestic building work was being carried out.

5.5.5 made pursuant to clause 5.2.2 to the extent that the period of alternative accommodation or storage exceeds 60 days excluding any period or periods of delay attributable to the insurer.

5.6 Subject to clauses 5.5 and 7, the policy shall not otherwise contain any exclusion or other provision which excludes, limits, avoids or modifies the requirements of this Clause 5.

6. INSURANCE TO BE PURCHASED BY OWNER BUILDER PURSUANT TO CLAUSE 4.2

A policy to be issued pursuant to Clause 4.2 of this Order shall contain terms and conditions, which have the following effect:

6.1 The policy shall indemnify the purchaser ("insured") in respect of loss or damage which results from a breach of any of the warranties implied by Section 137C of the **Building Act 1993** being that the owner builder warrants that:

- 6.1.1 all domestic building work was carried out in a proper and workmanlike manner; and
 - 6.1.2 all materials used in the domestic building work were good and suitable for the purpose for which they were used and those materials were new, unless otherwise stated in the contract of sale or condition report required by section 137B(2)(a) of the **Building Act 1993** or it was apparent from the nature of the relevant building work that those materials were not new; and
 - 6.1.3 domestic building work was carried out in accordance with all laws and legal requirements including, without limiting the generality of this warranty, the **Building Act 1993** and regulations made thereunder; and
- such indemnity to include alternative accommodation, removal and/or storage costs reasonably and necessarily incurred as a result of any event under this Clause 6.1.

6.2 Period of Insurance

The policy shall provide the indemnities referred to in clause 6.1 of this Order in respect of loss or damage happening during the period commencing on the date of the contract of sale of the property and ending not earlier than:

- a) the day six (6) years and six (6) months after the completion date of the major domestic building work on the property to which the contract of sale relates; or
- b) if neither an occupancy permit nor a certificate of final inspection is issued or required to be issued in respect of the major domestic building work, the day seven (7) years after the date of commencement of such work.

Permissible Policy Limitations

6.3 The policy may exclude or limit claims under the policy:

- 6.3.1 in respect of any defect or incomplete domestic building work which is referred to in the report required to be provided to a purchaser pursuant to Section 137B of the **Building Act 1993**; or
 - 6.3.2 made pursuant to the indemnity for alternative accommodation, removal and/or storage costs in clause 6.1 to the extent that the period of alternative accommodation or storage exceeds 60 days excluding any period or periods of delay attributable to the insurer; or
 - 6.3.3 made pursuant to the indemnity for non-completion of domestic building work in clause 5.1.3 to the extent that the cost of completing the domestic building work (excluding the cost of rectifying any defective building work) exceeds the contract price under the relevant major domestic building contract by more than twenty (20) per centum.
- 6.4 Subject to clauses 6.3 and 7 the policy shall not otherwise contain any term or provision which excludes, limits, avoids or modifies the requirements of this Clause 6.

7 TERMS POLICY MAY CONTAIN

A policy may:

- 7.1 include a provision which requires the insured (not being the builder or owner builder) to bear at the insured's own risk:
 - a) an excess of not greater than one thousand dollars (\$1,000) in respect of a claim made after five (5) years from the completion date;
 - b) an excess of not greater than seven hundred and fifty dollars (\$750) in respect of a claim made between three (3) years and five (5) years from the completion date;
 - c) an excess of not greater than five hundred dollars (\$500) in respect of a claim made between twelve (12) months and three (3) years from the completion date;

- d) a claim under five hundred dollars (\$500) made between three (3) and twelve (12) months from the completion date provided however that a claim of \$500 or more may relate to more than one defect where the amount claimed for any one or more defects is less than \$500.

PROVIDED THAT

A. No excess shall apply:

- a) in the case of a policy to which clause 5 of this Order applies, either in respect of any loss or damage occurring between the date of the relevant major domestic building contract or date of issue of the building permit for the relevant work (whichever is earlier) and the expiration of three (3) months from the completion date; or where loss or damage relates to non-completion in accordance with clause 5.1.3; and
- b) in the case of a policy to which clause 6 applies, where the relevant contract of sale occurs prior to the expiration of three (3) months from the completion date, in respect of any loss or damage occurring between the date of the relevant contract of sale and the expiration of three (3) months from the completion date.

B. An excess may be applied only once in relation to any claim under a policy comprising more than one defect or two or more claims, which relate to the same defect.

C. The date when a claim is made for the purpose of this clause shall be the earlier of:

- a) the date when a claimant first notifies the insurer of a circumstance which may give rise to a claim; and
- b) the date a claim is made.

7.2 limit the liability of the insurer under the policy to not less than the aggregate amount of One Hundred Thousand Dollars (\$100,000) for all claims in respect of any one home plus reasonable legal costs and expenses incurred by the insured (not being the builder or owner builder) associated with the successful enforcement of a claim against the insurer.

7.3 exclude or limit cover for loss or damage to landscaping, paving, retaining structures, driveways or fencing unless any such works:

- a) are integral to the construction of a building;
- b) require the issue of a building permit under the Regulations to the **Building Act 1993**;
- c) could result in water penetration of or within a building;
- d) could adversely affect health or safety;
- e) adversely affect the structural adequacy of a building; or
- f) are not completed for any reason under clause 5.1.3.

7.4 exclude or limit cover for loss or damage due to fair wear and tear of the domestic building work or failure by the insured to reasonably maintain such work.

7.5 limit the indemnity provided by the insurer for loss or damage resulting from conduct of the builder referred to in clause 5.1.4 of this Order to the cost of rectifying the relevant domestic building work.

7.6 require the insured, upon an insured event under the policy becoming known to the insured:

- a) to comply with the reasonable directions of the insurer in relation to the completion or rectification of the domestic building work;
- b) not to undertake or cause to be undertaken any rectification works without notifying the insurer, unless such works are reasonably necessary to prevent or minimise any further loss or damage;
- c) to provide the insurer or any person nominated by the insurer, reasonable access to the relevant building site for the purpose of inspection and/or rectification or completion of domestic building work; and

- d) to permit access for the purposes of c) above to a builder nominated or approved by the insurer, subject to the insured's right upon reasonable grounds (which may include loss of confidence in the subject builder) to refuse access to that builder.

PROVIDED HOWEVER that the insurer may not reduce its liability to the insured by reason of a failure on the part of the insured to comply with any requirement imposed pursuant to this clause unless and only to the extent that the insurer can prove that such failure increased the liability of the insurer under the policy.

- 7.7 provide that where the domestic building work is subject to the **Subdivision Act 1988** (Vic) and a claim is paid by the insurer in relation to the common property of a building or complex of multiple homes then the amount of cover in respect of any one home shall be reduced by not more than an amount calculated by dividing the amount paid under the claim by the number of homes comprised in the building or complex.
- 7.8 entitle the insurer to be subrogated to the rights of the insured.
- 7.9 provide that the insured shall take reasonable precautions to avoid or minimise loss or damage covered by the policy.
- 7.10 state that the policy will not be renewed and is of a kind that it is not usual to renew.
- 7.11 include a provision whereby the insurer may refuse to accept any claim which is not made within 180 days of the date when the claimant first became aware or might reasonably be expected to have become aware of some fact or circumstance which might give rise to the claim.
- 7.12 include a provision whereby the insurer may refuse to accept any claims after the expiration of 180 days from the end of the period of insurance provided for under clause 5.4 or clause 6.2, as the case may be.

8 TERMS POLICY MUST CONTAIN

A policy must contain provisions to the effect that:

- 8.1 The policy is issued in compliance with this Order and if any term of the policy conflicts or is inconsistent with this Order then the policy shall be read and be enforceable as if it complies with this Order.
- 8.2 Where the insurer has notice of the relevant proceedings, the insurer will accept any finding made by the Tribunal as to whether any of the events referred to in Clauses 5.1, 5.2 or 6.1 have occurred and, if so, as to the amount of loss or damage suffered by the building owner or purchaser, as the case may be, as a result of such event or events, as determinative of those issues.
- 8.3 The insurer may not cancel the policy unless:
 - 8.3.1 the insured makes a fraudulent claim under the policy;
 - 8.3.2 the insured breaches its duty of the utmost good faith to the insurer; or
 - 8.3.3 the building owner or owner builder (as the case may be) agrees to its cancellation following the termination of the major domestic building contract or contract of sale which required such policy PROVIDED THAT no risks or contingent risks had arisen under the policy which would give rise to an insurable event.
- 8.4 The insurer may not avoid the policy or refuse to make or reduce any payment under the policy on the grounds that:
 - 8.4.1 the builder or owner builder, as the case may be:
 - a) breached any duty of the utmost good faith;
 - b) failed to comply with any duty of disclosure;
 - c) made misrepresentations to the insurer;
 - d) failed to comply with a provision or requirement of the policy; or
 - e) by act or omission of any description prejudiced the interests of the insurer; or
 - 8.4.2 the premium or any installment of the premium has not been paid;

PROVIDED HOWEVER that where an insurer makes a payment under a policy in circumstances to which this clause applies then there shall be deemed to be a right vested in the insurer to recover from the builder or owner builder, as the case may be, any amount so paid.

8.5 Where a written claim is not determined as to liability by the insurer within ninety (90) days of receipt then, unless the insurer obtains an extension of time from the insured or the Tribunal, the insurer shall be deemed to have accepted liability for the claim.

8.6 If a person gives notice of a defect, that person is to be taken for the purposes of the 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.

8.7 The insurer acknowledges that section 54 of the **Insurance Contracts Act 1984** (Insurer may not refuse to pay claims in certain circumstances) shall apply or be deemed to apply to all policies issued pursuant to this Order PROVIDED HOWEVER that where the person who is making a claim against the insurer has notified either the builder, either orally or in writing, or that person or the builder has notified the insurer in writing, within one hundred and eighty (180) days of the date when the claimant first became aware, or might reasonably be expected to have become aware, of some fact or circumstance which may give rise to the claim, then the insurer shall not rely upon section 54 of the **Insurance Contracts Act 1984** to reduce its liability under the policy or to reduce any amount otherwise payable in respect of a claim made by reason only of any delay in a claim being notified to the insurer.

8.8 The insurer will notify the Building Practitioners Board ("BPB") at such times and in such manner as agreed with the Board, in the event that:

- (a) a builder is refused insurance, ceases to be eligible to renew or procure insurance or, in respect of domestic building work performed prior to the commencement of this Order, fails to purchase or maintain required insurance; and
- (b) any claim under a policy is settled or paid by agreement or otherwise.

8.9 The insurer shall provide a Certificate of Insurance, in the form or to the effect of the form contained in either Schedule 2 or Schedule 3 to this Order, (as the case may require) evidencing a policy issued in compliance with this Order in respect of each home for which insurance is required:

8.9.1 to the insured immediately upon issue of the policy; and

8.9.2 upon request by the builder, owner builder, or insured at any time.

9. **POLICY MAY NOT CONTAIN TERMS INCONSISTENT WITH THIS ORDER**

9.1 A policy must not contain any provision, which limits, modifies, varies, avoids or excludes any of the requirements for a policy set out in this Order or which, subject to this clause provides for limitations or exclusions to the policy not expressly permitted by this Order.

9.2 A policy may include an exclusion or limitation which is not referred to in this Order if it is:

- (a) Standard to the insurer's policy wording and relates to loss or damage incurred as a result of :
 - (i) war
 - (ii) a nuclear event
 - (iii) civil unrest
 - (iv) risks normally insured under a policy for public liability and/or contracts works;
 - (v) asbestos contamination or removal;
 - (vi) computer or other electronic malfunction relating to the year 2000 or other date generated problem;
 - (vii) act of God or nature;
 - (viii) failure by the insured to maintain appropriate protection against pest infestation or exposure to natural timbers;

- (ix) consequential loss, not otherwise covered by this Order; or
- (x) malfunction in any mechanical or electrical equipment or appliance where the insurer can prove that such malfunction is not attributable to the workmanship of or installation by the builder or owner builder; and

(b) Not otherwise inconsistent with, or contrary to, anything in this Order.

10. MISCELLANEOUS

- 10.1 This Order shall not apply to a person who is registered under Part 11 of the **Building Act 1993** under the Category of builder, class of demolisher and who is solely engaged in the carrying out, managing or arranging to carry out the demolition of a home or building on land zoned for residential purposes.
- 10.2 Notwithstanding clause 4 of this Order, a guarantee issued pursuant to the **House Contracts Guarantee Act 1987** is deemed to comply with this Order.
- 10.3 In the case of a registered builder who carries out domestic building work in his or her name, in anticipation of entering into a contract of sale as referred to in section 137B of the **Building Act 1993**, or a major domestic building contract as referred to in section 137E of the **Building Act 1993**, the builder is deemed, for the purposes of obtaining a building permit, to comply with this Order if the builder procures the policy required pursuant to clause 4 of this Order at the time that the builder enters into the contract of sale or the major domestic building contract, as the case may be.
- 10.4 For the purpose of this Order a provision in a policy will not contravene or be inconsistent with this Order by reason only that it:
- 10.4.1 provides a greater insurance cover and/or additional kinds of insurance cover to that specified under this Order; or
 - 10.4.2 provides for a lower excess than that specified under clause 7; or
 - 10.4.3 extends cover to persons other than the insured as defined in this Order.
- 10.5 Where the insurer, builder and BPB all agree, nothing in this Order shall prevent a builder from performing domestic building work under a major domestic building contract notwithstanding that an event under clause 5.1.3(c) to (f) (inclusive) occurring, subject to such conditions as the BPB may require.

DATED 29 October 1998

ROBERT MACLELLAN

Minister for Planning and Local Government

SCHEDULE 1

GLOSSARY OF DEFINED TERMS

DOMESTIC BUILDING CONTRACTS ACT 1995

“**builder**” means a person who, or a partnership which -

- carries out domestic building work; or
- manages or arranges the carrying out of domestic building work; or
- intends to carry out, or to manage or arrange the carrying out of, domestic building work.

“**building owner**” means the person for whom domestic building work is being, or is about to be, carried out.

“**building site**” means a place where domestic building work has been, is being, or is about to be carried out

“**defective**” in relation to domestic building work, includes -

- a breach of warranty listed in section 8;
- a failure to maintain a standard or quality of building work specified in the contract.

“domestic building work” means any work referred to in section 5 that is not excluded from the operation of this Act by section 6.

“home” means any residential premises and includes any part of a commercial or industrial premises that is used as a residential premises but does not include -

- a caravan within the meaning of the **Residential Tenancies Act 1997** or any vehicle used as a residence; or
- any residence that is not intended for permanent habitation; or
- a rooming house within the meaning of the **Residential Tenancies Act 1997**; or
- a motel, residential club, residential hotel or residential part of licensed premises under the **Liquor Control Act 1987**; or
- a nursing home, hospital or accommodation associated with a hospital; or
- any residence that the regulations state is not a home for the purposes of this definition.

“major domestic building contract” means a domestic building contract in which the contract price for the carrying out of domestic building work is more than \$5,000 (or any higher amount fixed by the regulations).

BUILDING ACT 1993

“completion date” means -

- the date of issue of the occupancy permit in respect of the building (whether or not the occupancy permit is subsequently cancelled or varied); or
- if an occupancy permit is not issued, the date of issue under Part 4 of the certificate of final inspection of the domestic building work for the construction of the building.

“construct” in relation to a building, means -

- build, rebuild, erect or re-erect the building; or
- make alterations to the building; or
- enlarge or extend the building; or
- cause any other person to do anything referred to in paragraph (a), (b) or (c) in relation to the building; or
- manage or arrange the doing of anything referred to in paragraph (a), (b) or (c) in relation to the building.

BUILDING CODE OF AUSTRALIA

Class 10: a non-habitable building or structure -

- Class 10a - non-habitable building being a private garage, carport, shed or the like; or
- Class 10b - a structure being a fence, mast, antenna, retaining or free standing wall, swimming pool, or the like.

SCHEDULE 2

BUILDING ACT 1993

Section 135

and

Ministerial Order Domestic Building Insurance

Certificate in respect of insurance

MAJOR DOMESTIC BUILDING WORK

A contract of insurance complying with the Ministerial Order for Domestic Building Insurance issued under section 135 of the **Building Act 1993**, namely:

Type of Insurance

Insurance issued in name of building owner as insured

has been issued by: *[insert name of insurer]*
in respect of: *[insert brief description of domestic building work]*
at: *[insert the address or description of land]*
carried out by: *[insert name of builder]*
for: *[insert name of building owner]*

Subject to the Act, the Ministerial Order and the conditions of the insurance contract, cover will be provided to building owner named in the major domestic building contract and to the successors in title to such building owner .

Date:*[insert date]*

Signed for and on behalf of the insurers: *[insert signature]*

SCHEDULE 3
BUILDING ACT 1993
Section 135
and

Ministerial Order Domestic Building Insurance
Certificate in respect of insurance
MAJOR DOMESTIC BUILDING WORK

A contract of insurance complying with the Ministerial Order for Domestic Building Insurance issued under section 135 of the **Building Act 1993**, namely:

Type of Insurance

Insurance issued in name of purchaser as insured

has been issued by: *[insert name of insurer]*
in respect of: *[insert brief description of domestic building work]*
at: *[insert the address or description of land]*
carried out by/on behalf of: *[insert name of owner builder]*
for: *[insert name of purchaser]*

Subject to the Act, the Ministerial Order and the conditions of the insurance contract, cover will be provided to the purchaser named in the contract of sale and to the successors in title to such purchaser.

Date:*[insert date]*

Signed for and on behalf of the insurers: *[insert signature]*

Gazette Services

The *Victoria Government Gazette* (VGG) is published by The Craftsman Press Pty. Ltd. for the State of Victoria and is produced in three editions.

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Periodical - \$113.00 each year

Subscriptions are payable in advance and accepted for a period of one year. All subscriptions are on a firm basis and refunds will not be given.

All payments should be made payable to

The Craftsman Press Pty. Ltd.

Subscription enquiries:

The Craftsman Press Pty. Ltd.

125 Highbury Road, Burwood Vic 3125

Telephone: (03) 9926 1233

Fax: (03) 9926 1292

The *Victoria Government Gazette* is published by
The Craftsman Press Pty. Ltd. with the authority of the
Government Printer for the State of Victoria
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ISSN 0819-5471

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Address all inquiries to the Government Printer for the State of Victoria

1 Macarthur Street

Melbourne 3002 Victoria Australia

Subscriptions

The Craftsman Press Pty. Ltd.

125 Highbury Road, Burwood

Victoria, Australia 3125

Telephone enquiries (03) 9926 1233

Facsimile (03) 9926 1292

Retail Sales

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Telephone enquiries 1300 366 356

City Graphics

2nd Floor, 4 Bank Place

Melbourne 3000

Telephone enquiries (03) 9600 0977

Price Code A