



# Victoria Government Gazette

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**SPECIAL**

## Building Act 1993

### MINISTERIAL ORDER

Required Insurance for Licensed Plumbers (Private Plumbing Work)

I, John Thwaites, Minister for Planning, make the following Order under section 221ZQ(1) of the **Building Act 1993**.

#### PART 1 – REQUIRED INSURANCE

##### 1. Purpose and Scope of this Order

- (1) This Order specifies the insurance by which a plumber is required to be covered in order to be eligible to be licensed under Part 12A of the **Building Act 1993** to carry out private plumbing work only.
- (2) To the extent that this Order is inconsistent with any Ministerial Order previously made under section 221ZQ(1), this Order prevails.

##### 2. Definitions

In this Order –

“**completed work liability**” has the meaning set out in clause 10;

“**compliance certificate**” means a certificate referred to in section 221ZH of the **Building Act 1993**;

“**defects**” in relation to private plumbing work includes the matters listed in clause 7;

“**family home**” means a home in which –

- (a) the plumber has a proprietary interest and in which the plumber resides as his or her permanent residence; or
- (b) a member of the plumber’s family has a proprietary interest and in which that member of the plumber’s family resides as his or her permanent residence;

“**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 house boat 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 1999**; or
- (c) a motel, residential club, residential hotel or residential part of licensed premises under the **Liquor Control Reform Act 1998**; or
- (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** state is not a home for the purposes of the definition of “home” in that Act;

“**a member of the plumber’s family**” means a parent, grandparent, child, grandchild, sibling, cousin, niece or nephew of the plumber and a parent or sibling of the plumber’s spouse;

“**plumber**” has the same meaning as in Part 12A of the **Building Act 1993**;

“**plumbing work**” has the same meaning as in section 221C of the **Building Act 1993**;

“**private plumbing work**” means plumbing work –

- (a) to which section 221ZH of the **Building Act 1993** applies; and
- (b) for which no monetary fee or other consideration is charged or received by the plumber or on the plumber’s behalf; and
- (c) which is performed on or in relation to a family home; and
- (d) which is one of not more than 6 plumbing works performed by the plumber in a twelve month period;

**“private plumbing work licence”** means a licence granted under Part 12A of the **Building Act 1993** that includes conditions which restrict the type of work the plumber may carry out to private plumbing work only;

**“property owner”** means the registered proprietor of the property on which the private plumbing work is carried out;

**“public liability”** has the meaning set out in clause 9;

**“trade practices liability”** has the meaning set out in clause 8.

(2) In calculating the value of plumbing work for the purpose of determining whether the work is work to which section 221ZH of the **Building Act 1993** applies, the value to be imputed for the plumber’s labour is \$45.00 per hour.

### 3. Overview of the required insurance.

(1) A plumber who holds a private plumbing work licence must, in relation to any private plumbing work (or proposed private plumbing work) –

- (a) be covered by insurance that indemnifies him or her for any liability in respect of that work that he or she is required to be indemnified for by Part 2; and
- (b) be indemnified by that insurance for the amounts and periods required by Part 3.

(2) The insurance must be provided under a policy that –

- (a) contains the provisions set out in Schedule 1 (or provisions that have the same effect); and
- (b) does not contain any of the provisions prohibited by Part 4; and
- (c) may contain some or all of the provisions set out in Schedule 2 (or provisions that have the same effect).

### 4. Insurance may be provided by multiple policies or insurers

(1) For the purposes of complying with this Order it is not necessary that the insurance be provided by one policy only, or that the insurance be provided by one insurer only.

(2) If the insurance is provided under more than one policy, clause 3(2) applies to each of those policies (unless a contrary intention appears in this Order).

## PART 2 – LIABILITY TO BE COVERED

### 5. Liability that must be covered in all cases

A plumber must have insurance that indemnifies him or her for –

- (a) any liability to pay for the cost of rectifying any private plumbing work required because of defects in the private plumbing work <sup>1</sup>;
- (b) any trade practices liability (as defined in clause 8);
- (c) any public liability (as defined in clause 9);
- (d) any completed work liability (as defined in clause 10);
- (e) any consequential financial loss reasonably incurred by the property owner as a result of any defects or non completion of the plumbing work, including but not limited to the cost of alternative accommodation, removal and storage costs that are reasonably and necessarily incurred;
- (f) any liability arising from non-completion of the private plumbing work due to –
  - (i) his or her death or legal incapacity;
  - (ii) his or her disappearance; or
  - (iii) the cancellation or suspension of his or her private plumbing work licence.

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<sup>1</sup> Clause 7 gives examples of what defects in plumbing work are.

**6. People acting on behalf of the plumber must also be covered**

A plumber must also have insurance that indemnifies him or her for any liability of a type described in this Part that arises from any act or omission of any person assisting the plumber to carry out private plumbing work.

**7. Meaning of “defects”**

- (1) For the purposes of this Order, “defects” in private plumbing work include –
- (a) a failure to carry out the work in a proper and workmanlike manner and in accordance with any plans and specifications;
  - (b) a failure to use materials in the work that are good and suitable for the purpose for which they are used;<sup>2</sup>
  - (c) the use of materials in the work that are not new (unless the use of materials that are not new is agreed by the property owner);
  - (d) a failure to carry out the work in accordance with, and in compliance with, all laws and legal requirements including, without limiting the generality of this paragraph, the **Building Act 1993** and any regulations made under that Act;
  - (e) a failure to carry out the work with reasonable care and skill;
  - (f) if the plumber is made aware of the particular purpose for which the work is required, or the result which the property owner wishes the work to achieve, so as to show that the property owner relies on the plumber’s skill and judgement, a failure to ensure that the work and any material used in carrying out the 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.
- (2) A reference to any material in sub-clause (1)(b) or (f) does not include any material that is supplied by the property owner (or his or her agent), in relation to plumbing work that is not performed on the plumber’s own home.

**8. Meaning of “trade practices liability”**

For the purposes of this Order, trade practices liability is any liability that arises as a result of conduct by the plumber in connection with the private plumbing work that contravenes section 52 or 53 of the **Trade Practices Act 1974** (Cth) or section 11 or 12 of the **Fair Trading Act 1985**.<sup>3</sup>

**9. Meaning of “public liability”**

For the purposes of this Order, public liability is any liability that arises as a result of any personal injury to a third party, or any loss or damage to the property of a third party (other than property that is part of the private plumbing work itself), that arises out of the activities of the plumber in relation to private plumbing work.

**10. Meaning of “completed work liability”**

For the purposes of this Order, completed work liability is 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 private plumbing work itself), directly or indirectly related to or arising from the private plumbing work –

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<sup>2</sup> This provision must be read subject to any exclusion in the policy concerning defects in the materials that is allowed under Schedule 2.

<sup>3</sup> Schedule 2 permits the insurer to limit its liability for trade practices liability.

- (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.<sup>4</sup>

### **PART 3 – AMOUNT AND PERIOD OF REQUIRED INSURANCE**

#### **11. Amount of insurance required**

A plumber must have insurance that indemnifies him or her in respect of private plumbing work –

- (a) for public liability and completed work liability for an amount of at least \$5,000,000 for any one occurrence; and
- (b) for all other liability under Part 2 for an amount of at least \$50,000 for any one claim or series of claims in relation to a compliance certificate (or if the compliance certificate relates to more than one home, at least \$50,000 for each home); and
- (c) for the reasonable legal costs and expenses associated with the successful enforcement of a claim against the plumber or the insurer.

#### **12. Period that insurance must cover**

- (1) A plumber must have insurance that indemnifies him or her in respect of private plumbing work for which a compliance certificate is required –
  - (a) for the liabilities referred to in clauses 5(a)(defects), 5(b)(trade practices liability), 5(e)(consequential financial loss) and 5(f) (non-completion) for 10 years after the plumber issued a compliance certificate in relation to that work or if he or she does not issue a compliance certificate in relation to the work, 10 years after the date the plumber stopped carrying out the work;
  - (b) for public liability and completed work liability that arises from personal injury to a third party or loss or damage to the property of a third party (other than damage to property that is part of the plumbing work itself) that occurs during the period of insurance caused by an occurrence that happens in connection with the carrying out of the work (regardless of when the work was carried out).
- (2) The indemnity provided by the insurance for the liabilities referred to in clauses 5(a) and 5(b) must continue to apply throughout the relevant period specified in sub-clause (1)(a), even if the plumber ceases to be a licensed or registered plumber before the end of that period and even if the plumber ceases to maintain the policy under which the insurance is provided.

### **PART 4 – PROHIBITED PROVISIONS**

#### **13. Prohibited provisions**

- (1) The policy must not have any provision that limits the indemnity provided under the policy with respect to any defect as a result of –
  - (a) any loss or damage to that part of the property on which the plumber is working and which arises out of such work;
  - (b) any error in design, specification, formula or pattern or the provision of advice that is incidental to any private plumbing work undertaken by the plumber;
  - (c) the cost of inspecting, repairing or replacing component parts of private plumbing work.

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<sup>4</sup> Schedule 2 permits the insurer to limit its liability for completed work liability for things in the care, custody or control of the plumber.

- (2) The policy must not have any provision that excludes the cover provided under the policy with respect to public or completed work liability as a result of any personal injury, loss or damage arising directly or indirectly out of, or in connection with or caused by, the erection, demolition, alteration of or addition to buildings by or on behalf of the plumber.

#### **PART 5 – OTHER MATTERS**

#### **14. Adoption by reference**

If the policy adopts by reference any of the provisions of Schedule 1 or 3, the policy must set out a copy of the provisions adopted (and any relevant definitions).

#### **15. Relationship between Schedule 2 and the rest of this Order**

If there is an inconsistency between a provision of Schedule 2 and any other provision of this Order –

- (a) the provision of Schedule 2 prevails over any provision to the contrary in Parts 2 and 3;
- (b) a provision of Part 4 or Schedule 1 prevails over any provision to the contrary in Schedule 2.

#### **16. Other exclusions or limitations**

The policy may include an exclusion or limitation that is not referred to in Schedule 2 if the exclusion or limitation –

- (a) is standard to the insurer's policy wording; and
- (b) is not otherwise inconsistent with, or contrary to, anything in this Order.

#### **17. Amounts in Schedule 2 may be varied**

For the purposes of this Order a provision has the same effect as a particular clause in Part 3 of Schedule 2 if it provides a greater insurance cover to the insured than that specified in that clause.

#### **SCHEDULE 1 – MANDATORY PROVISIONS.**

#### **1. Purpose of this Schedule**

This Schedule sets out the provisions that the policy under which the insurance is provided must contain.

#### **2. Definitions**

In this Schedule –

“**the Ministerial Order**” is the Ministerial Order made on 19 July 2001;

“**this policy**” is the policy under which we provide insurance to you;

“**we**” means the insurer;

“**you**” means the plumber.

#### **3. Insurer to comply with court orders etc.**

We agree to comply with any order made against you by a court, the Victorian Civil and Administrative Appeals Tribunal or any other competent judicial body, in respect of any liability for which you are indemnified under this policy (including any excess that you may be obliged to pay to us).

#### **4. Deemed acceptance of claims**

- (1) This clause does not apply in relation to public and completed work liability.
- (2) 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.

**5. This Order to prevail in the case of conflict with policy.**

We agree that if any term of this policy conflicts, or is inconsistent, with the Ministerial Order, then this policy is to be read and to be enforceable as if it complied with that Order.

**6. Claims not to be refused on the grounds that the policy obtained by fraud etc.**

- (1) We agree that we will not refuse to pay a claim (other than a claim in respect of public or completed work liability) 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.
- (2) 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.

**7. Insurer must give effect to certificates**

- (1) If we give you a certificate stating that you are covered by insurance, we agree that we will not refuse to pay a claim on that insurance (other than a claim in respect of public or completed work liability) under this policy on the ground that you have not paid the premium for the insurance.
- (2) 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.

**8. Deemed notice of defects**

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.

**9. Claimant may enforce policy direction in certain cases**

We and you both agree –

- (a) that 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 policy directly against us for the person's own benefit if –
  - (i) any event under clause 5(e) of the Ministerial Order occurs; or
  - (ii) you refuse to make a claim against us; or
  - (iii) there is an irretrievable breakdown of communication between you and us; and
- (b) that 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) that 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 excess that you are required to pay.

**10. Section 54 of the Insurance Contracts Act 1984 to apply**

- (1) We acknowledge that section 54 of the **Insurance Contracts Act 1984** (Cth.) applies to this policy.
- (2) Despite sub-clause (1), we agree that we will not rely on section 54 to reduce our liability under this policy or to reduce any amount that is otherwise payable in respect of a claim by reason only of a delay in a claim being notified to us if –
  - (a) the person who makes the claim notifies you either orally, or in writing; or

(b) that person or you notifies us in writing –  
within 180 days of the date when the person first became aware, or might reasonably be expected to have become aware, of some fact or circumstance that might give rise to the claim.<sup>5</sup>

- (3) Sub-clause (2) is subject to any thing to the contrary in any provision made under clause 12 of Schedule 2.

#### 11. 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; and
- (b) has no effect on any of our obligations under the policy with respect to the liabilities referred to in clauses 5(a)(defects), 5(b)(trade practices liability) and 5(e) (consequential financial loss) and 5(f)(non-completion) of the Ministerial Order in relation to private 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 5(c) (public liability) and 5(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 private plumbing work itself) that occurred while the policy was in force.

#### 12. 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.

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<sup>5</sup> Section 54 of the **Insurance Contracts Act 1984** states –

**Section 54 Insurer may not refuse to pay claims in certain circumstances**

- (1) Subject to this section, where the effect of a contract of insurance would, but for this section, be that the insurer may refuse to pay a claim, either in whole or in part, by reason of some act of the insured or of some other person, being an act that occurred after the contract was entered into but not being an act in respect of which subsection (2) applies, the insurer may not refuse to pay the claim by reason only of the act but his liability in respect of the claim is reduced by the amount that fairly represents the extent to which the insurer's interests were prejudiced as a result of that act.
- (2) Subject to the succeeding provisions of this section, where the act could reasonably be regarded as being capable of causing or contributing to a loss in respect of which cover is provided by the contract, the insurer may refuse the claim.
- (3) Where the insured proves that no part of the loss that gave rise to the claim was caused by the act, the insurer may not refuse to pay the claim by reason only of the act.
- (4) Where the insured proves that some part of the loss that gave rise to the claim was not caused by the act, the insurer may not refuse to pay the claim, so far as it concerns that part of the loss, by reason only of the act.
- (5) Where:
- (a) the act was necessary to protect the safety of a person or to preserve property; or
- (b) it was not reasonably possible for the insured or other person not to do the act; the insurer may not refuse to pay the claim by reason only of the act.
- (6) A reference in this section to an act includes a reference to:
- (a) an omission; and
- (b) an act or omission that has the effect of altering the state or condition of the subject matter of the contract or of allowing the state or condition of that subject matter to alter.



**SCHEDULE 2 – ALLOWABLE EXCLUSIONS ETC.****Part 1 – Purpose****1. Purpose of this Schedule**

This Schedule sets out the provisions that the policy under which the insurance is provided may contain.

**2. Definitions**

In this Schedule –

“**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; and
- (b) any person who is the owner for the time being of such land, building or home; and
- (c) if the land, building or home is subject to the **Subdivision Act 1988**, the body corporate for that land, building or home; and
- (d) any assignee of the building owner’s rights under a contract; and
- (e) any person who has contracted with another person to provide that plumbing work.

“**the Ministerial Order**” is the Ministerial Order made on 19 July 2001;

“**this policy**” is the policy under which we provide insurance to you;

“**we**” means the insurer;

“**you**” means the plumber.

**Part 2 – Allowable Exclusions****3. Exclusion concerning product liability**

- (1) In this clause “product defect” means a defect in any appliance, material, substance or other thing that was supplied or used by you in connection with private plumbing work.
- (2) This policy does not cover you for any loss or damage giving rise to a claim under clause 5(a) of the Ministerial Order resulting from a product defect.
- (3) However, we agree that if we intend to rely on the fact this policy does not cover you for product defects in relation to any claim (or part of a claim), we bear the onus of establishing that the claim (or part of the claim) is based on a product defect.
- (4) We agree that nothing in this clause removes the cover given to you by this policy in relation to you supplying or using any appliance, material, substance or other thing that you were aware was defective, or that you should reasonably have been aware was defective.

**4. Exclusion concerning wear and tear**

This policy does not cover you for any injury, loss or damage resulting from –

- (a) fair wear, tear or depreciation of private plumbing work; or
- (b) a failure by the property owner to reasonably maintain private plumbing work.

**5. Exclusion concerning exposure to asbestos**

This policy does not cover you for any injury, loss or damage directly or indirectly caused by, contributed to or arising from, exposure to asbestos.

**6. Exclusion concerning legal costs**

This policy does not cover you in respect of the legal costs of any person making a claim against you that are not directly or indirectly related –

- (a) to the enforcement of the policy; or



(b) to a liability in respect of which you are covered under this policy.

**7. Exclusion concerning liquidated damages for delay**

(1) This policy does not cover you for claims for liquidated damages for delay, or damages for delay, that may arise under a contract.

(2) However, we agree that nothing in this clause removes the cover given to you by this policy in relation to any increase in rectification costs caused by a delay.

**8. Exclusion concerning property damage to premises owned or leased by you**

This policy does not cover you for claims for property damage to premises that are owned by you or leased or rented to you during the period that the premises are owned by you or leased rented to you.

**Part 3 – Allowable Limitations**

**9. Policy may impose limitation on total amount payable**

The maximum total amount that we will pay out under this policy is –

(a) \$5,000,000 for public and completed work liability for any one occurrence; and

(b) \$5,000,000 for all claims for all other liability under Part 2 of the Ministerial Order; and

(c) \$5,000,000 for all claims for completed work liability.

**9. Policy may impose limitation concerning trade practices liability.**

The maximum total amount that we will pay out under this policy for trade practices liability is the cost of rectifying the relevant private plumbing work.

**10. Policy may impose limitation concerning property damage**

The maximum total amount that we will pay out under this policy for any loss or damage caused by you directly or indirectly to any thing in your care, custody or control is \$20,000.

**11. Policy may impose 10 year limitation on claims**

We will not accept any claims including claims for private plumbing work first notified to us after the expiration of 10 years from –

(1) the date of a compliance certificate; or

(2) if you did not issue a compliance certificate in relation to the work that is insured, 10 years after you stopped carrying out that work.

**12. Limitation for common property**

(1) This clause applies if a claim is paid by us in relation to the common property of a building or complex of multiple homes and the property on which the building or complex stands, and on which private plumbing work is carried out, is subject to the **Subdivision Act 1988**.

(2) We will reduce the amount we will pay under this policy in respect of any one home in the building or complex by an amount calculated by dividing the amount of the claim paid by us by the number of homes in the building or complex.

**Part 4 – Excess**

**13. Excess**

You agree to pay to us for each claim settled by us under this policy the amount of excess agreed by us in this policy.

**14. Qualification concerning excess permitted**

Despite clause 13, you are not liable for any excess in respect of any claim made against you for personal injury.

**15. Further qualification concerning excess permitted**

Despite clause 13, you are not liable to pay an excess more than once in relation to any claim comprising more than one defect or 2 or more claims that relate to the same defect.

**16. Recovery of excess**

You agree that once a claim is settled in favour of a person making a claim and the person is paid the amount required by the settlement, then we are entitled to recover from you any excess specified in this policy.

**Part 5 – Miscellaneous**

**17. You must co-operate with us**

- (1) You agree, in relation to a claim or prospective claim –
  - (a) to make reasonable efforts to assist and inform us or our agent; and
  - (b) to attend the relevant building site for the purpose of inspecting, rectifying or completing private plumbing work (unless the building owner refuses you access to the site).
- (2) 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 owner to give you access to a building site if we have asked you to attend the site under sub-clause (1)(b).

Dated 19 July 2001

THE HON. JOHN THWAITES MP  
Minister for Planning

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