



Victoria Government Gazette

No. S 198 Wednesday 30 October 2002
By Authority. Victorian Government Printer

SPECIAL

Building Act 1993

BUILDING PRACTITIONERS' INSURANCE MINISTERIAL ORDER

I, Mary Delahunty, Minister for Planning, pursuant to section 135 of the **Building Act 1993** hereby revoke as from 4 December 2002 the Building Practitioners' Insurance Ministerial Order published in the Government Gazette No. S52 dated 16 May 1996.

I hereby make the following Order requiring Building Practitioners in the categories and classes specified below to be covered by liability insurance of the kinds and to the extent specified.

Column 1 Category of Building Practitioner	Column 2 Class of Building Practitioner	Column 3 Kind of Insurance
1. Building surveyor		A professional indemnity insurance policy of the kind specified in section A below.
2. Building inspector		A professional indemnity insurance policy of the kind specified in section A below.
3. Quantity surveyor		A professional indemnity insurance policy of the kind specified in Section A below.
4. Engineer	4.1 Civil engineer 4.2 Mechanical engineer 4.3 Electrical engineer 4.4 Fire Safety	A professional indemnity insurance policy of the kind specified in section A below.
5. Draftsperson	5.1 Building design (architectural) 5.2 Building design (interior) 5.3 Building design (services)	A professional indemnity insurance policy of the kind specified in section A below.
6. Architect		A professional indemnity insurance policy of the kind specified in section A below.
7. Builder	7.1 Commercial Builder (structural)	An indemnity insurance policy of the kind specified in section B below.
	7.2 Demolisher (low rise buildings)	A public liability insurance policy of the kind specified in section C below.

Column 1 Category of Building Practitioner	Column 2 Class of Building Practitioner	Column 3 Kind of Insurance
	7.3 Demolisher (medium rise building)	A public liability insurance policy of the kind specified in section C below.
	7.4 Demolisher (unlimited)	A public liability insurance policy of the kind specified in section C below.
8. Erector or Supervisor (temporary structures)	8.1 Stages or seating stands or equipment, platforms or a tower and fabricated on site from tubes and fittings or other scaffolding components of metals and other materials 8.2 Special structures – tents, marquees	A public liability insurance policy of the kind specified in Section C below.

A. Professional Indemnity Insurance Policy for Building Practitioners in Categories 1 to 6

1. The policy shall:

- 1.1 indemnify the Building Practitioner against legal liability resulting from any claim or claims first made against the Building Practitioner during the period of insurance and first notified to the insurer during such period and arising out of any act, error or omission on the part of the Building Practitioner in the conduct of the Building Practitioner's business as a building surveyor, building inspector, quantity surveyor, engineer, draftsperson or architect as the case may be, or in relation to the conduct of the business as a building surveyor, building inspector, quantity surveyor, engineer, draftsperson or architect of a company or firm of which the Building Practitioner is a director, principal, partner or employee;
- 1.2 contain at least one automatic reinstatement extension;
- 1.3 provide indemnity against legal liability in respect of claims for damages or compensation made against the Building Practitioner from misleading or deceptive conduct or conduct which is likely to mislead or deceive under Section 52, Section 53, Section 55A and Section 74 of the **Trade Practices Act 1974** (Commonwealth) or Sections 9, 11 or 12 of the **Fair Trading Act 1999** (Vic) or the equivalent provision of similar legislation in other States and/or Territories but excluding any claims arising from dishonest, fraudulent, malicious or criminal conduct;
- 1.4 may name as the insured either the Building Practitioner or the company or firm of which the Building Practitioner is a director, principal, partner or employee provided that where the insured is a firm or company the policy shall provide indemnity to:
 - 1.4.1 persons who are at the commencement of or who become during the period of insurance principals, partners, directors or employees of the firm or company and are registered Building Practitioners in categories 1 to 6; and

- 1.4.2 persons who are former principals, partners, directors or employees of the firm or company and who are or have been, but no longer are, registered Building Practitioners in categories 1 to 6, or, in the case of Architects, no longer are registered as architects under the **Architects Act 1991**, in respect of acts, errors or omissions committed or allegedly committed by them whilst they were principals, partners, directors or employees of the firm or company;
- 1.5 not exclude liability for loss or damage arising out of or concerning building work as defined in the **Building Act 1993** (Vic) in the State of Victoria unless such liability would otherwise have been excluded by the insurer's standard wording for professional indemnity insurance of Building Practitioners as at 1 July 1996 or if the insurer has no such standard wording at that time, by the wording of a type of professional indemnity insurance normally available within the insurance industry at that time;
- 1.6 have a retroactive date:
 - 1.6.1 where the insured is a sole practitioner, not later than the date at which the Building Practitioner was first registered as a Building Practitioner or, in the case of an Architect, the later of the date on which the Architect was first registered as an Architect under the **Architects Act 1991** or 1 July 1994; and
 - 1.6.2 where the insured is a firm or company, for each principal, partner, director or employee of the firm or company not later than the date on which the principal, partner, director or employee, as the case may be, was first registered as a Building Practitioner or, in the case of an Architect, the later of the date on which the Architect was first registered as an Architect under the **Architects Act 1991** or 1 July 1994;
- 1.7 require the insurer to give notice of any proposed cancellation to the Registrar, Building Practitioners Board of the State of Victoria on the same day that the notice is given to the insured;
- 1.8 require the insurer to give immediate notice to the Registrar, Building Practitioners Board of the State of Victoria of any notice of cancellation of the policy received from the insured;
- 1.9 specify a limit of indemnity for any one claim and in the aggregate during any one period of insurance of not less than:
 - 1.9.1 \$1 million for Building Practitioners in the category of Building Surveyor provided always that:
 - a) a Building Practitioner in the category of Building Surveyor appointed, employed or nominated by a council as its municipal building surveyor or to carry out the functions of a municipal building surveyor of the council for the purposes of the **Building Act 1993** and the Building Regulations 1994 or otherwise shall, to the extent that his or her work in the building industry is carried out pursuant to such appointment, employment, nomination or otherwise be deemed to comply with this Order if he or she is covered by a professional liability policy which the council has taken out and maintained pursuant to the provisions of section 76A of the **Local Government Act 1989** (Vic) and which specifies or refers to municipal building surveyors as persons to whom the insurance cover provided by the policy extends; and

- b) before a Building Practitioner in the category of Building Surveyor enters into an agreement with a council pursuant to section 215 of the **Building Act 1993**, the limit of the indemnity must not be less than a minimum of \$5 million for any one claim and in the aggregate during any one period of insurance;
- 1.9.2 \$1 million for Building Practitioners in the category of Building Inspector provided always that a Building Practitioner in the category of Building Inspector appointed or employed by a council as a building inspector shall, to the extent that his or her work in the building industry is carried out pursuant to such appointment or employment, be deemed to comply with this Order if he or she is covered by a professional liability policy which the council has taken out and maintained pursuant to the provisions of section 76A of the **Local Government Act 1989** (Vic) and which specifies or refers to building inspectors as persons to whom the insurance cover provided by the policy extends;
- 1.9.3 \$1 million for Building Practitioners in the category of Quantity Surveyor;
- 1.9.4 \$1 million for Building Practitioners in the category of Engineer provided always that an Engineer who is employed by a Council shall, to the extent that his or her work in the building industry is carried out in such employment, be deemed to comply with this Order if he or she is covered by a professional liability policy which the Council has taken out and maintained pursuant to the provisions of Section 76A of the **Local Government Act 1989** (Vic) and which specifies or refers to engineers employed by the Council as persons to whom the insurance cover provided by the policy extends;
- 1.9.5 \$1 million for Building Practitioners in the category of Draftsperson;
- 1.9.6 \$1 million for Building Practitioners in the category of Architect;
- 1.10 include, in addition to the limit of indemnity, payment of the costs and expenses incurred by the insured with the consent of the insurer in defending or settling any claim and, in respect of any one claim, the policy may limit this sum to \$100,000 or 20% of the limit of indemnity, whichever is the greater;
- 1.11 not, unless specifically authorised otherwise by the Minister, include any provision which requires that the insured shall bear an excess at the insured's own risk in any amount in respect of any one claim or occurrence exceeding:
- 1.11.1 \$5,000 for Building Practitioners acting as a sole practitioner in categories 1 to 6;
- 1.11.2 \$5,000 per professional, principal or director, up to a limit of \$40,000, for Building Practitioners in categories 1 and 2;
- 1.11.3 \$5,000 per professional, principal or director up to a limit of \$75,000, for Building Practitioners in categories 3 to 6;
- PROVIDED ALWAYS that:
- 1.11.4 the insured may apply in writing to the Minister for permission to bear an excess greater than the specified amounts; and
- 1.11.5 in deciding whether to authorise or reject any application made pursuant to sub-paragraph (1.11.4), the Minister may request any such further material, documents, financial or other information from the insured as the Minister deems necessary in order to reach a decision;
- 1.12 in the case of Building Practitioners in categories 1, 2, 4 and 6 who are:
- 1.12.1 appointed as an inspector pursuant to section 45 of the **Domestic Building Contracts Act 1995** (Vic); or

1.12.2 provide a report pursuant to section 137B(2) of the **Building Act 1993** (Vic);

indemnify the Building Practitioner in respect of claims arising out of any act, error or omission committed or allegedly committed by the Building Practitioner pursuant to such appointment or in respect of such report.

2. A professional indemnity policy issued to the members of Architeam Co-operative Ltd shall be deemed to comply with this Order if the limit of liability under that policy is a minimum of \$5 million for any one claim and in the aggregate during any one period of insurance notwithstanding that any acts, errors or omissions of the members are not committed in the course of the business of Architeam Co-operative Ltd.

B. Indemnity Insurance Policy for Building Practitioners in Category 7.1

The policy:

1. shall indemnify the Building Practitioner against legal liability resulting from any claim or claims first made against the Building Practitioner during the period of insurance or during the period of any run-off cover and first notified to the insurer during such period and arising out of any act, error or omission on the part of the Building Practitioner in the conduct of the Building Practitioner's business as a builder or in relation to the conduct of the business as a builder of a company or firm of which the Building Practitioner is a director, principal, partner or employee;
2. may provide that indemnity be limited to circumstances where:
 - 2.1 such act, error or omission results in a structural defect; and
 - 2.2 such structural defect is discovered after the date of issue of the occupancy permit in respect of the building work (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 **Building Act 1993** of the certificate of final inspection of the building work or, if an occupancy permit is not required to be issued under the Building Act 1993, the date upon which the building work reaches practical completion; and
 - 2.3 "structural defect" is defined to mean any defect in the structural works which is attributable to defective design, defective or faulty workmanship and/or defective materials and which:
 - a) results in a regulatory authority(ies) closing or prohibiting the use of the building or any part thereof; or
 - b) does or would prevent the continued practical use of the building or any part thereof; or
 - c) results in destruction of the building or physical damage to the building or any part thereof; or
 - d) results in threat of imminent collapse that may reasonably be considered to cause destruction of the building or physical damage to the building or any part thereof; and
 - 2.4 "structural works" is defined to mean:
 - a) all internal and/or external load-bearing structures essential to the stability or strength of the building or any part thereof including, but not limited to, foundations, floors, walls, roof, columns and beams; and
 - b) all other works forming part of external walls and roofing but excluding weatherproofing works not designed to add strength or support to the building, moveable elements of external windows, doors and skylights;
3. may include indemnity for:
 - 3.1 fines, penalties, exemplary or punitive damages awarded by a court or in respect of such component in any settlement of a claim; or

- 3.2 liability to pay compensation in respect of indirect or consequential loss of any nature except for damages that represent reimbursement for direct financial loss covered by the policy;
- 3.3 liability to pay compensation in respect of bodily injury (which expression includes death and illness);
- 3.4 claims arising out of any work undertaken on domestic buildings;
4. shall contain at least one automatic reinstatement extension;
5. shall, subject to paragraphs 1 and 2 hereof, provide indemnity against legal liability in respect of claims for damages or compensation made against the Building Practitioner for misleading or deceptive conduct or conduct which is likely to mislead or deceive under Section 52, Section 53, Section 53A and Section 74 of the Trade Practices Act 1974 (Commonwealth) or Section 11 of the Fair Trading Act 1999 (Vic) or the equivalent provision of similar legislation in other States and/or Territories but excluding any claims arising from dishonest, fraudulent, malicious or criminal conduct;
6. may name as the insured either the Building Practitioner or the company or firm of which the Building Practitioner is a director, principal, partner or employee provided that where the insured is a firm or company the policy shall provide indemnity to:
 - 6.1 persons who are at the commencement of or who become during the period of insurance principals, partners, directors or employees of the firm or company and are registered Building Practitioners in category 7.1; and
 - 6.2 persons who are former principals, partners, directors or employees of the firm or company and who are or have been, but no longer are, registered Building Practitioners in category 7.1 in respect of acts, errors or omissions committed or allegedly committed by them whilst they were principals, partners, directors or employees of the firm or company;
7. shall contain a run-off provision which:
 - 7.1 automatically operates to continue cover available to any Building Practitioner insured under the policy who during the period of insurance ceases to be registered as a Building Practitioner;
 - 7.2 does not contain any requirement for such Building Practitioner, at the time of cessation of registration, to request such cover nor pay any additional premium for the provision of such cover; and
 - 7.3 shall not apply to an insured who held an indemnity insurance policy which was current prior to the date upon which this Order takes effect which otherwise complies with this Order if the insurer refuses by way of mutual agreement with its insured to cancel its policy or amend the policy to accord with paragraphs 7.1, 7.2, 8.1 and 8.2 of this Order and confirms such refusal in writing provided always that this exemption to the requirement of this Order shall not apply after the expiration of twelve months from the inception of such a policy;
8. shall not contain any term which limits the continuity of run-off cover to any time earlier than the earliest of the following:
 - 8.1 the expiry date of the policy should the insurer cease to provide insurance for that class of Building Practitioner; or
 - 8.2 the date when the insurer lawfully cancels the policy;provided always that the policy shall provide that it shall be a condition precedent to the limitation or cessation of run-off cover that in each case the insurer shall have first given to the Building Practitioner, including Building Practitioners who are covered by the policy and who have been, but no longer are, registered Building Practitioners in category 7.1, advance notice of one month of its intention to limit or cease the continuity of run-off cover;

9. shall not, save and except as provided in paragraphs 1 and 2 hereof, exclude liability for loss or damage arising out of or concerning building work as defined in the Building Act 1993 (Vic) in the State of Victoria, unless such liability would otherwise have been excluded by the insurer's standard wording for professional indemnity insurance for other categories of Building Practitioners at the time of this Ministerial Order or, if the insurer has no such standard wording at that time, by the wording of a type of professional indemnity insurance policy normally available for other categories of Building Practitioners within the insurance industry at that time, provided always that the policy pursuant to this Order shall not contain any term which:
 - 9.1 requires as a prerequisite to cover for there to have been a breach of professional duty; or
 - 9.2 excludes cover for defective design, defective or faulty workmanship and/or defective materials;
10. shall have a retroactive date:
 - 10.1 where the insured is a sole practitioner, not later than the date at which the Building Practitioner was first registered as a Building Practitioner; and
 - 10.2 where the insured is a firm or company, for each principal, partner, director or employee of the firm or company not later than the date which the principal, partner, director or employee, as the case may be, was first registered as a Building Practitioner;
11. shall require the insurer to give notice of any proposed cancellation by the insurer of the policy to the Registrar, Building Practitioners Board of the State of Victoria on the same day that the notice is given to the insured;
12. shall require the insurer to give immediate notice to the Registrar, Building Practitioners Board of the State of Victoria of any notice of cancellation of the policy received from the insured;
13. shall provide a limit of indemnity for any one claim and in the aggregate during any one period of insurance of not less than the lesser of:
 - 13.1 twice the turnover of the insured for commercial building work undertaken during the period of insurance or \$1 million, whichever is the greater; or
 - 13.2 \$10 million;
14. shall include, in addition to the limit of indemnity, payment of the costs and expenses incurred by the insured with the consent of the insurer in defending or settling any claim and, in respect of any one claim, the policy may limit this sum to \$100,000.00 or 20% of the limit of indemnity, whichever is the greater;
15. shall not, unless specifically authorised otherwise by the Minister, include any provision which requires that the insured shall bear an excess at the insured's own risk in any amount in respect of any one claim exceeding 2% of the value of the contract out of which the claim arises and provided always that:
 - 15.1 the policy may provide that the minimum excess for any one claim covered by the policy shall be \$25,000.00;
 - 15.2 the insured may apply in writing to the Minister for permission to bear an excess greater than the specified amounts; and
 - 15.3 in deciding whether to authorise or reject any application made pursuant to sub-paragraph (2), the Minister may request such further material, documents, financial or other information from the insured as the Minister deems necessary in order to reach a decision;
16. may exclude liability for loss or damage arising out of or concerning building work carried out pursuant to a building approval or building permit which was issued prior to 20 April 1995.

C. Public Liability Insurance Policy for Building Practitioners in Categories 7.2, 7.3, 7.4, 8.1 and 8.2

1. The policy:

- 1.1 shall provide indemnity in respect of all sums which the Building Practitioner shall become legally liable to pay for compensation (excluding punitive or exemplary damages) in respect of personal injury or property damage caused by an occurrence in connection with the Building Practitioner's business as a Building Practitioner or as a Building Practitioner of a company or firm of which the Building Practitioner is a director, principal, partner or employee;
- 1.2 may name as the insured either the Building Practitioner or the company or firm of which the Building Practitioner is a director, principal, partner or employee provided that where the insured is a firm or company the policy shall provide indemnity to persons who are at the commencement of or who become during the period of insurance principals, partners, directors or employees of the firm or company and are registered Building Practitioners in categories 7.2, 7.3, 7.4, 8.1 and 8.2;
- 1.3 shall not, save and except as provided in paragraph 1 hereof, exclude liability for loss or damage arising out of or concerning building work as defined in the **Building Act 1993** (Vic) in the State of Victoria, unless such liability would otherwise have been excluded by the insurer's standard wording for public liability insurance for the category of Building Practitioner at the time of this Ministerial Order provided always that the policy pursuant to this Order shall not contain any terms which exclude cover by reason of claims in respect of personal injury or property damage having arisen directly or indirectly from or having been caused by or in connection with the erection, demolition, alteration of and/or addition to buildings or temporary structures by or on behalf of the insured, or any vibration, or any removal or weakening of support caused thereby;
- 1.4 shall require the insurer to give notice of any proposed cancellation by the insurer of the policy to the Registrar, Building Practitioners Board of the State of Victoria on the same day that the notice is given to the insured;
- 1.5 shall require the insurer to give immediate notice to the Registrar, Building Practitioners Board of the State of Victoria of any notice of cancellation of the policy received from the insured;
- 1.6 shall specify a limit of indemnity for any one claim during any one period of insurance of not less than:
 - a) \$5 million for Building Practitioners in categories 7.2 and 7.3;
 - b) \$10 million for Building Practitioners in category 7.4
 - c) \$5 million for Building Practitioners in categories 8.1 and 8.2;

PROVIDED ALWAYS that if the Building Practitioner is registered in more than one of the categories specified, the policy shall specify the greatest limit of indemnity referred to in paragraphs 1.6(a), 1.6(b) and 1.6(c), as the case may be;

- 1.7 shall include, in addition to the limit of indemnity, payment of the costs and expenses incurred by the insured with the consent of the insurer in defending or settling any claim and, in respect of any one claim, the policy may limit this sum to 20% of the limit of indemnity;
- 1.8 shall not, unless specifically authorised otherwise by the Minister, include any provision which requires that the insured shall bear an excess at the insured's own risk in any amount in respect of any one claim exceeding:
 - a) \$2,000 for Building Practitioners in categories 7.2 and 7.3;

- b) \$5,000 for Building Practitioners in category 7.4;
- c) \$2,000 for Building Practitioners in categories 8.1 and 8.2;

PROVIDED ALWAYS that:

- d) if the Building Practitioner is registered in more than one of the categories specified, the excess shall not exceed the lowest of the amounts referred to in paragraphs 1.8(a), 1.8(b) and 1.8(c), as the case may be;
 - e) the insured may apply in writing to the Minister for permission to bear an excess greater than the specified amounts; and
 - f) in deciding whether to authorise or reject any application made pursuant to sub-paragraph (5), the Minister may request any such further material, documents, financial or other information from the insured as the Minister deems necessary in order to reach a decision.
2. This Order shall not apply to a Building Practitioner who is covered by a public liability insurance policy which was current prior to the date upon which this Order takes effect which substantially complies with this Order if the insurer refused by way of mutual agreement with its insured to cancel its policy or amend its policy to accord with this Order and confirms such refusal in writing provided always that this exemption of the requirement of this Order shall not apply after the expiration of 12 months from the inception of such a policy.

This Order shall have effect from 4 December 2002 PROVIDED ALWAYS that any act performed, policy issued or anything done pursuant to the revoked Orders shall not be invalidated or otherwise rendered unenforceable by reason of their revocation.

Dated 28 October 2002

THE HON. MARY DELAHUNTY, MP
Minister for Planning

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

VGG General is published each Thursday and provides information regarding Acts of Parliament and their effective date of operation; Government notices; requests for tenders; as well as contracts accepted. Private Notices are also published.

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Subscriptions

The *Victoria Government Gazette* is available by three subscription services:

General and Special — \$187.00 each year

General, Special and Periodical — \$249.70 each year

Periodical — \$124.30 each year.

All prices include GST.

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

Government Information and Communications Branch

Department of Premier and Cabinet

Level 3, 356 Collins Street

Melbourne 3000

Victoria Australia

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125 Highbury Road, Burwood

Victoria, Australia 3125

Telephone enquiries: (03) 9926 1233

Facsimile (03) 9926 1292

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Melbourne 3000

Telephone enquiries (03) 9600 0977

Price Code A