



# Victoria Government Gazette

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## Building Act 1993

### BUILDING PRACTITIONERS' INSURANCE MINISTERIAL ORDER

I, Rob Hulls, Minister for Planning, pursuant to section 135 of the **Building Act 1993** hereby revoke as from 14 June 2005 the Building Practitioners' Insurance Ministerial Order published in the Government Gazette No. S 67 dated 16 April 2003.

Pursuant to section 135 of the **Building Act 1993** I make the following Order requiring Building Practitioners to be covered by insurance as specified.

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

This Order:

- 1.1 requires Building Practitioners in the categories and classes in columns 1 and 2 of the Table below to be covered by insurance; and
- 1.2 specifies in column 3 of the Table the kind and amount of insurance by which Building Practitioners are required to be covered.

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 Part A below.
2. Building inspector		A professional indemnity insurance policy of the kind specified in Part A below.
3. Quantity surveyor		A professional indemnity insurance policy of the kind specified in Part 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 Part 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 Part A below.
6. Builder	6.1 Commercial Builder (excluding the class of Commercial Builder Limited Restricted to Fitout – Non-structural)	An indemnity insurance policy of the kind specified in Part B below.
	6.2 Demolisher (low rise buildings)	A public liability insurance policy of the kind specified in Part C below.
	6.3 Demolisher (medium rise building)	A public liability insurance policy of the kind specified in Part C below.
	6.4 Demolisher (unlimited)	A public liability insurance policy of the kind specified in Part C below.

**SPECIAL**

Column 1 Category of Building Practitioner	Column 2 Class of Building Practitioner	Column 3 Kind of Insurance
7. Erector or Supervisor (temporary structures)	7.1 Class 1 7.2 Class 2.	A public liability insurance policy of the kind specified in Part C below.

## 2. Commencement and effect

- 2.1 This Order takes effect on 14 June 2005.
- 2.2 Any act performed, policy issued or anything done pursuant to the revoked Order shall not be invalidated or otherwise rendered unenforceable by reason of its revocation.

## 3. Requirement to be covered by insurance

Unless otherwise authorised by the Minister, every Building Practitioner must be covered by a policy of insurance of the kind and in the amounts specified in Part A for building surveyors, building inspectors, quantity surveyors, engineers, and draftspersons, Part B for commercial builders and Part C for builder demolisher (low rise, medium rise and unlimited) and erector and supervisors of temporary structures.

## Part A – Professional Indemnity Insurance for Building Practitioners in Categories 1 to 5

### 4. Specification as to the kind of professional indemnity insurance required

- 4.1 The policy of professional indemnity insurance required must indemnify the Building Practitioner against any civil liability in respect of any claim first made against the Building Practitioner during the period of insurance and notified to the insurer during such period which arises out of any breach of the professional duty of care of the Building Practitioner –
- (1) in the conduct of the Building Practitioner as a building surveyor, building inspector, quantity surveyor, engineer or draftsperson (including any reasonably related professional activities) or
  - (2) in the conduct of the business of building surveyor, building inspector, quantity surveyor, engineer or draftsperson (including any reasonably related professional activities) by a company or partnership of which the Building Practitioner is a director, principal, partner or employee.
- 4.2 The policy:
- (1) must extend to any claim arising from a contravention by the Building Practitioner of Part V of the **Trade Practices Act 1974** (Commonwealth) or Part 2 of the **Fair Trading Act 1999** (Victoria) or the equivalent provisions of similar legislation in other States and/or Territories; and
  - (2) must contain provision for at least one automatic reinstatement to the minimum level of cover specified in paragraph 5; and
  - (3) must not exclude liability for loss or damage arising out of or concerning building work as defined in the **Building Act 1993** (Victoria) in the State of Victoria.
- 4.3 The policy may name as the insured either the Building Practitioner or the partnership or company of which the Building Practitioner is a director, principal, partner or employee provided that the policy must provide indemnity to–
- (1) persons who are at the commencement of, or who become during, the period of insurance principals, partners, directors or employees of the partnership or company or employees of a sole practitioner and who are registered Building Practitioners in categories 1 to 5; and

- (2) persons who are former principals, partners, directors or employees of the partnership or company or employees of a sole practitioner and who are or have been, but no longer are, registered Building Practitioners in categories 1 to 5; in respect of any breach of a professional duty of care committed or allegedly committed by them whilst they are or were principals, partners, directors or employees of the partnership or company or employees of a sole practitioner.

**5. Specification as to the amount of professional indemnity insurance required**

The policy of insurance required must specify a limit of indemnity of either:

- (1) where the cost of the defence of claims (Defence Costs) are included in the limit of indemnity – not less than \$1.5 million for any one claim, and in the aggregate for all claims during any one period of insurance; or
- (2) where Defence Costs are not included in the limit of indemnity:
  - (a) not less than \$1 million for any one claim, and in the aggregate for all claims during any one period of insurance, not including Defence Costs; and
  - (b) not less than \$500,000 for any one claim, and in the aggregate for all claims during any one period of insurance, in respect of Defence Costs.

**6. When a Building Practitioner is covered by the required insurance**

- 6.1 A Building Practitioner is covered by insurance for the purposes of this Order if the Building Practitioner:
  - (1) holds the insurance; or
  - (2) is not a party to the insurance but is specified or referred to in the insurance, whether by name or otherwise, as a person to whom the insurance cover extends.
- 6.2 A Building Practitioner is covered by insurance for the purposes of this Order if the Building Practitioner in the category of Building Surveyor, Building Inspector or Engineer is appointed, employed or nominated by a municipal council for the performance of the functions of municipal building surveyor, building inspector or engineer (respectively) to the extent that such functions are carried out pursuant to such appointment, employment or nomination and provided he or she is covered by an appropriate professional indemnity insurance policy taken out by the municipal council.
- 6.3 Before a Building Surveyor enters into an agreement under section 215 of the **Building Act 1993** (Victoria), the limit of indemnity under the relevant policy of professional indemnity insurance must be not less than \$5 million for any one claim and in aggregate during any one period of insurance.
- 6.4 A policy of professional indemnity insurance issued by Civic Mutual Plus to local government shall meet the requirements of this Order if the limit of liability meets the requirements of paragraph 6.3.
- 6.5 A Building Practitioner is covered by insurance for the purposes of this Order if the Building Practitioner in the category of draftsperson is registered as an Architect under the **Architects Act 1991** (Victoria) and holds insurance complying with the requirements of any Ministerial Order made under section 17A of the **Architects Act 1991**.
- 6.6 A Building Practitioner is covered by insurance for the purposes of this Order if the Building Practitioner is in the category of draftsperson and has cover under a policy of professional indemnity insurance issued to members of an Approved Co-operative and cover under that policy meets the then current requirements of the Ministerial Order made under section 17A of the **Architects Act 1991**. An Approved Co-operative for the purposes of this paragraph 6.6 is a Co-operative approved under section 17A of the **Architects Act 1991** (Victoria).

**Part B – Indemnity Insurance Policy for Building Practitioners in Category 6.1****7. Specification of the kind of indemnity insurance required**

- 7.1 The policy of indemnity insurance must indemnify the Building Practitioner against any civil 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 builder (including any reasonably related activities)–
- (1) which business is conducted as a sole trader; or
  - (2) which business is conducted as a company or partnership of which the Building Practitioner is a director, principal, partner or employee.
- 7.2 The policy may provide that indemnity be limited to circumstances where:
- (1) such act, error or omission results in a structural defect; and
  - (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** or a certificate of final inspection has not been issued, the date upon which the building work reaches practical completion; and
  - (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:
    - (i) results in a regulatory authority(ies) closing or prohibiting the use of the building or any part thereof; or
    - (ii) does or would prevent the continued practical use of the building or any part thereof; or
    - (iii) results in destruction of the building or physical damage to the building or any part thereof; or
    - (iv) 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
  - (4) “structural works” is defined to mean:
    - (v) 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
    - (vi) 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.
- 7.3 The policy may exclude indemnity for:
- (1) fines, penalties, exemplary or punitive damages awarded by a court or in respect of such component in any settlement of a claim; or
  - (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) liability to pay compensation in respect of bodily injury (which expression includes death and illness); and
  - (4) claims arising out of any work undertaken on domestic buildings.

- 7.4 The policy shall, subject to paragraphs 7.1 and 7.2 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.
- 7.5 The policy may name as the insured either the Building Practitioner or the company or partnership of which the Building Practitioner is a director, principal, partner or employee provided that where the insured is a partnership or company the policy shall provide indemnity to:
- (1) persons who are at the commencement of or who become during the period of insurance principals, partners, directors or employees of the partnership or company and are registered Building Practitioners in category 6.1; and
  - (2) persons who are former principals, partners, directors or employees of the partnership or company and who are or have been, but no longer are, registered Building Practitioners in category 6.1 in respect of acts, errors or omissions committed or allegedly committed by them whilst they were principals, partners, directors or employees of the partnership or company.
- 7.6 The policy shall not, save and except as provided in paragraphs 7.1 and 7.2 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:
- (1) requires as a prerequisite to cover for there to have been a breach of professional duty; or
  - (2) excludes cover for defective design, defective or faulty workmanship and /or defective materials.

## 8. Specification as the amount of indemnity required

- 8.1 The policy 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:
- (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
  - (2) \$10 million.
- 8.2 The policy 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.
- 8.3 The policy must contain at least one automatic reinstatement extension to the minimum level of cover specified in paragraphs 8.1 and 8.2.

**Part C – Public Liability Insurance Policy for Building Practitioners in Categories 6.2, 6.3, 6.4, 7.1 and 7.2****9. Specification of the kind of insurance required**

The policy of public liability insurance:

- 9.1 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;
- 9.2 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 6.2, 6.3, 6.4, 7.1 and 7.2;
- 9.3 shall not, save and except as provided in paragraph 9.1 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 structure by or on behalf of the insured, or any vibration, or any removal or weakening of support caused thereby.

**10. Specification as to the amount of insurance required**

The policy must:

- 10.1 specify a limit of indemnity for any one claim during any one period of insurance of not less than:
  - (1) \$5 million for Building Practitioners in categories 6.2 and 6.3;
  - (2) \$10 million for Building Practitioners in category 6.4;
  - (3) \$5 million for Building Practitioners in categories 7.1 and 7.2;
- 10.2 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.

Dated 4 May 2005

ROB HULLS MP  
Minister for Planning

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