

Building Act 1993**BUILDING PRACTITIONERS' AND ENDORSED BUILDING ENGINEERS' INSURANCE MINISTERIAL ORDER**

I, Richard Wynne, Minister for Planning, pursuant to section 135 of the **Building Act 1993** (Victoria), hereby revoke as from 1 August 2021 the Building Practitioners' Insurance Ministerial Order published in the Government Gazette No. S 19 dated 17 January 2020 and the Building Practitioners' Insurance Ministerial Order published in the Government Gazette No. G 22 dated 29 May 2014.

Pursuant to section 135 of the **Building Act 1993** (Victoria) I make the following Order requiring building practitioners and endorsed building engineers 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;
- 1.2 specifies in column 3 of the Table the kind and amount of insurance by which building practitioners are required to be covered; and
- 1.3 requires endorsed building engineers to be covered by a professional indemnity insurance policy of the kind specified in Part A below.

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. draftsman	4.1 building design (architectural) 4.2 building design (interior) 4.3 building design (services)	A professional indemnity insurance policy of the kind specified in Part A below.
5. builder	5.1 demolisher (low rise buildings) 5.2 demolisher (medium rise buildings) 5.3 demolisher (unlimited)	A public liability insurance policy of the kind specified in Part B below.
6. erector or supervisor (temporary structures)	6.1 class 1 6.2 class 2	A public liability insurance policy of the kind specified in Part B below.

2 Commencement and effect

- 2.1 This Order takes effect on 1 August 2021.
- 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 and draftspersons and Part B for builder demolishers (low rise, medium rise and unlimited) and erectors and supervisors of temporary structures. Every endorsed building engineer must be covered by a policy of insurance of the kind and in the amounts specified in Part A.

Part A – Professional Indemnity Insurance for endorsed building engineers and building practitioners in Categories 1 to 4

4 Specification as to the kind of professional indemnity insurance required

- 4.1 Subject to paragraph 4.3, the policy of professional indemnity insurance required must indemnify the building practitioner or endorsed building engineer against any civil liability in respect of any claim first made against the building practitioner or endorsed building engineer 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 or endorsed building engineer –
- 4.1.1 in the conduct of the building practitioner as a building surveyor, building inspector, quantity surveyor or draftsperson or in the conduct of the endorsed building engineer (including any reasonably related professional activities); or
- 4.1.2 in the conduct of the business of a building surveyor, building inspector, quantity surveyor, draftsperson or endorsed building engineer (including any reasonably related professional activities) by a company or partnership of which the building practitioner or endorsed building engineer is a director, principal, partner or employee.
- 4.2 The policy must –
- 4.2.1 extend to any claim arising from a contravention by the building practitioner or endorsed building engineer of the Australian Consumer Law as per Schedule 2 of the **Competition and Consumer Act 2010** (Commonwealth) and/or Part 2 of **Australian Consumer Law and Fair Trading Act 2012** (Victoria) or the equivalent provisions of similar legislation in other States and/or Territories; and
- 4.2.2 contain provision for at least one automatic reinstatement to the minimum level of cover specified in paragraph 5; and
- 4.2.3 not exclude liability for loss or damage arising out of or concerning building work as defined in the **Building Act 1993** (Victoria), except in accordance with paragraph 4.3 below.
- 4.3
- (1) For practitioners in categories 1, 2 and 3, for all classes of practitioner in category 4 and for endorsed building engineers, the policy may contain a provision excluding liability for loss or damage arising from or concerning building work as defined in the **Building Act 1993** (Victoria) where the claim directly relates to or is connected with –
- (a) an external wall cladding product that does not comply with the requirements of the Building Code of Australia, an Australian Standard or any other law of the Commonwealth, Victoria or any other State or Territory to the extent that it applies to cladding; or

- (b) an external wall cladding product that is installed, used or applied to a building in a manner that does not comply with the requirements of the Building Code of Australia, an Australian Standard or any other law of the Commonwealth, Victoria or any other State or Territory to the extent that it applies to cladding; or
 - (c) a high-risk external wall cladding product that is installed, used or applied to a building in a manner that does not comply with any declaration made under section 192B of the **Building Act 1993** (Victoria).
 - (2) For the purposes of subparagraph (1) –
 - (a) ‘*external wall cladding product*’ has the same meaning as in the **Building Act 1993** (Victoria);
 - (b) ‘*high-risk external wall cladding product*’ has the same meaning as in the **Building Act 1993** (Victoria).
- 4.4 The policy may name as the insured either the building practitioner or endorsed building engineer or the company or partnership of which the building practitioner or endorsed building engineer 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 company or partnership or employees of a sole practitioner and who are registered building practitioners in categories 1 to 4 or endorsed building engineers; and
 - (2) persons who are former principals, partners, directors or employees of the company or partnership or employees of a sole practitioner and who are or have been, but no longer are, registered building practitioners in categories 1 to 4 or endorsed building engineers –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 company or partnership 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 costs 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 or endorsed building engineer is covered by insurance**

- 6.1 A building practitioner or endorsed building engineer is covered by insurance for the purposes of this Order if the building practitioner or endorsed building engineer –
 - (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 or endorsed building engineer is covered by insurance for the purposes of this Order if the building practitioner in the category of building surveyor or building inspector, or the endorsed building engineer, is appointed, employed or

nominated by a municipal council for the performance of the functions of municipal building surveyor, building inspector or endorsed building 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 MAV Insurance 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 draftsman is registered as an architect under the **Architects Act 1991** 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 draftsman 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**.

Part B – Public Liability Insurance Policy for building practitioners in Categories 5 and 6

7. Specification of the kind of public liability insurance required

The policy of public liability insurance –

- 7.1 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 partnership of which the building practitioner is a director, principal, partner or employee;
- 7.2 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 company or partnership 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 company or partnership and are registered building practitioners in categories 5 and 6;
- 7.3 shall not, save and except as provided in paragraph 8.1 hereof, exclude liability for loss or damage arising out of or concerning building work as defined in the **Building Act 1993** (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.

8. Specification as to the amount of public liability insurance required

The policy must –

- 8.1 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 classes 5.1 and 5.2;
 - (2) \$10 million for building practitioners in class 5.3;
 - (3) \$5 million for building practitioners in classes 6.1 and 6.2;
- 8.2 include, in addition to the limit of indemnity, provision for 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 17 June 2021