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Building Act 1993

BUILDING PRACTITIONERS' INSURANCE MINISTERIAL ORDER

I, Richard Wynne, Minister for Planning, pursuant to section 135 of the **Building Act 1993** (Victoria), hereby revoke as from 15 February 2020 the Building Practitioners' Insurance Ministerial Order published in the Government Gazette No. S 293 dated 11 July 2019.

Pursuant to section 135 of the **Building Act 1993** (Victoria) 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	1.1 civil engineer 1.2 mechanical engineer 1.3 electrical engineer 1.4 fire safety engineer	A professional indemnity insurance policy of the kind specified in Part A below.
5. draftsman	1.1 building design (architectural) 1.2 building design (interior) 1.3 building design (services)	A professional indemnity insurance policy of the kind specified in Part A below.
6. builder	1.1 demolisher (low rise buildings) 1.2 demolisher (medium rise buildings) 1.3 demolisher (unlimited)	A public liability insurance policy of the kind specified in Part B below.
7. erector or supervisor (temporary structures)	1.1 class 1 1.2 class 2	A public liability insurance policy of the kind specified in Part B below.

SPECIAL

2. Commencement and effect

- 2.1 This Order takes effect on 15 February 2020.
- 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 and Part B for builder demolishers (low rise, medium rise and unlimited) and erectors 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 Subject to paragraph 4.3, 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 a 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 must –
- (1) extend to any claim arising from a contravention by the building practitioner 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
 - (2) contain provision for at least one automatic reinstatement to the minimum level of cover specified in paragraph 5; and
 - (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, and for all classes of practitioner in categories 4 and 5, 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 the company or partnership 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 company or partnership 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 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 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 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 is covered by 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 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 6 and 7

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 6 and 7;
- 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 6.1 and 6.2;
 - (2) \$10 million for building practitioners in class 6.3;
 - (3) \$5 million for building practitioners in classes 7.1 and 7.2;

- 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 15 January 2020

RICHARD WYNNE MP
Minister for Planning

Architects Act 1991

ARCHITECTS INSURANCE MINISTERIAL ORDER

I, Richard Wynne, Minister for Planning, pursuant to section 17A of the **Architects Act 1991** (Victoria) hereby revoke as from 15 February 2020 the Architects Insurance Ministerial Order published in the Government Gazette No. S 90 dated 12 May 2005.

Pursuant to section 17A of the **Architects Act 1991** (Victoria) I make the following Order requiring architects to be covered by insurance as specified.

Part A – Introductory

1 Purpose and effect of this Order

This Order:

- 1.1 requires the following class of architects to be covered by insurance; and
- 1.2 specifies the kind and amount of insurance by which such architects are required to be covered.

2 Commencement

This Order takes effect on 15 February 2020.

3 Class of architects and definitions

- 3.1 All architects registered under section 11 of the Act in the practicing class are required to be covered by insurance that complies with this Order.
- 3.2 In this Order:
Act means the **Architects Act 1991** (Victoria); and
Architect means an architect within the class of architects specified in paragraph 3.1.

Part B – Architects Professional Indemnity Insurance

4 Requirement to be covered by professional indemnity insurance

- 4.1 Every Architect as defined in this Order must be covered by a policy of professional indemnity insurance of the kind and in the amounts specified in this Part B unless otherwise exempt under the provisions of this Order.

5 Specifications as to the kind of professional indemnity insurance required

- 5.1 Subject to paragraph 5.3 the policy must indemnify the Architect against any civil liability in respect of any claim first made against the Architect 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 Architect in the conduct of the Architect's business as an architect or the business as an architect of an Approved Partnership or Approved Company of which the Architect is or was a member, director, principal executive officer or employee (including any reasonably related professional activities).

5.2 The policy must extend to any claim arising from a contravention by the Architect of the Australian Consumer Law as per Schedule 2 of the **Competition and Consumer Act 2010** (Commonwealth) and/or Part 2 of the **Australian Consumer Law and Fair Trading Act 2012** (Victoria) or the equivalent provisions of similar legislation in other States or Territories.

5.3

(1) The policy may contain a provision excluding liability for loss or damage arising from or concerning work carried out by a practicing architect 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) –

(d) ‘*external wall cladding product*’ has the same meaning as in the **Building Act 1993** (Victoria);

(e) ‘*high-risk external wall cladding product*’ has the same meaning as in the **Building Act 1993** (Victoria).

5.4 The policy may name as the insured either the Architect or the Approved Company or Approved Partnership of which the Architect is a director, principal executive officer, principal, partner or employee provided that the policy must provide indemnity to–

(a) persons who are at the commencement of or who become during the period of insurance directors, principal executive officers, principals, partners, directors or employees of the Approved Partnership or Approved Company or employees of a sole practitioner and who are registered Architects; and

(b) persons who are former principals, principal executive officers, partners, directors or employees of the Approved Partnership or Approved Company or employees of a sole practitioner and who are or have been, but no longer are, registered Architects;

in respect of any breach of a professional duty of care committed or allegedly committed by them whilst they are or were principals, principal executive officers, partners, directors or employees of the Approved Partnership, Approved Company or employees of a sole practitioner.

6 Specifications as to the amount of professional indemnity insurance required

The policy of insurance required under paragraph 5 must:

6.1 specify a limit of indemnity of either:

6.1.1 where the cost of the defence of claims (Defence Costs) are included in the limit of indemnity – not less than \$1.2 million for any one claim, and in the aggregate for all claims during any one period of insurance; or

- 6.1.2 where Defence Costs are not included in the limit of indemnity, both:
- (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 \$200,000 or 20 percent of the limit of indemnity (whichever is greater) for any one claim, and in the aggregate for all claims during any one period of insurance, in respect of Defence Costs; and
- 6.2 provide for at least one automatic reinstatement of the aggregate limit or limits of indemnity referred to in paragraph 6.1.

Part C – Other Requirements

7 When an Architect is covered by the required insurance

An Architect is covered by insurance for the purposes of this Order if the Architect:

- 7.1 holds the insurance; or
- 7.2 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.

Part D – Co-operative Member Architects

8 Architects who are members of an Approved Co-operative

- 8.1 An architect is deemed to comply with the requirements for insurance under this Order whilst he or she is a Co-operative Member Architect and insurance is held by that Co-operative which meets the requirements of this paragraph 8.
- 8.2 A Co-operative Member Architect is an Architect who is covered by a policy of professional indemnity insurance provided by a Co-operative (under the **Co-operatives Act 1996**) of which he or she is a member and which is approved by the Board. The Architect is a Co-operative Member Architect subject to the provisions of this paragraph 8 for as long as he or she remains a Co-operative Member Architect.
- 8.3 Where a Co-operative Member Architect is a member of an Approved Co-operative and the Approved Co-operative has a professional indemnity policy of insurance which covers the Architect and satisfies the requirements in paragraph 8.4, the Co-operative Member Architect is exempt from compliance with paragraph 4.
- 8.4 The requirements for the purposes of paragraph 8.3 are:
- 8.4.1 the policy complies with paragraph 5;
 - 8.4.2 an Actuary (who is a Fellow or an Accredited Member of the Institute of Actuaries of Australia) has certified in writing (with a copy provided to the Board) that the policy for each annual policy period provides cover for the Architects who are members of the Approved Co-operative that is no less comprehensive than that required under paragraph 6 having regard to:
 - (a) the limit of indemnity in the policy;
 - (b) the excess (if any) in the policy;
 - (c) the impact of the aggregation of risks;
 - (d) the number of persons covered by the policy;
 - (e) the claims history of those persons;
 - (f) the practice areas of those persons;
 - (g) the turnover of those persons;
 - (h) the risk management education and assistance provided to those persons by the Approved Co-operative; and
 - (i) any other matters the Actuary considers relevant.

Part E – Transitional**9 Deemed compliance during transition period**

For the purposes of this Part E the following terms have the following meaning:

Effective Date means the commencement date of this Order;

Building Practitioners' Order means the Building Practitioners' Insurance Ministerial Order made under section 135 of the **Building Act 1993** (Victoria) as in force immediately before the Effective Date;

Employee Architect means an Architect who is or was employed in the capacity as an employee by an Employer Architect or Approved Partnership or Approved Company to carry out work as an architect in the business as an architect of the Employer Architect, Approved Partnership or Approved Company (as the case may be) but does not include an Architect while and to the extent that he or she carries out work as an architect in any other capacity; and

Employer Architect means an Architect who, whether as a sole practitioner or as a member of an Approved Partnership, employs or employed another Architect in the capacity as an employee to carry out work as an architect in the business as an architect of the sole practitioner or Approved Partnership.

Where:

- 9.1 immediately before the Effective Date an Architect is covered by a policy which complies with the Building Practitioners' Order in respect of the carrying out of work as an Architect; and
- 9.2 the policy is due to expire within 12 months of the Effective Date, the policy is deemed to comply with this Order until the earlier of:
 - 9.3 the date the policy expires;
 - 9.4 the date the policy is cancelled by the insurer or the insured;
 - 9.5 the date the policy ceases to comply with the Building Practitioners' Order; or
 - 9.6 the first anniversary of the Effective Date.

10 Deemed compliance where change in employment during transition period

Where:

- 10.1 on the Effective Date an Architect (the first Architect) is covered by a policy (the first policy) which is deemed to comply with this Order in accordance with paragraph 9 in relation to the first Architect; and
- 10.2 while the first policy continues to be deemed to comply with this Order in relation to the first Architect, the first Architect becomes:
 - 10.2.1 an Employee Architect of an Employer Architect, an Approved Partnership or an Approved Company;
 - 10.2.2 a member of an Approved Partnership; or
 - 10.2.3 a director or principal executive officer of an Approved Company, and commences to be covered by a policy (the second policy) of the Employer Architect, the Approved Partnership or the Approved Company (as the case may be) which, at the time the first Architect commences to be covered by the second policy, is deemed to comply with this Order in accordance with paragraph 9 in relation to other Architects,

the second policy is deemed to comply with this Order in relation to the first Architect from the time the first Architect commences to be covered by the second policy until the earlier of:

- 10.3 the date the second policy expires;
- 10.4 the date the second policy is cancelled by the insurer or the insured;

10.5 the date the second policy ceases to comply with the Building Practitioners' Order; or

10.6 the first anniversary of the Effective Date.

Dated 15 January 2020

RICHARD WYNNE, MP
Minister for Planning

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