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SPECIAL

BUILDING PRACTITIONERS BOARD—FEES 96/01

Pursuant to section 188 (1) (a) of the **Building Act 1993** I hereby issue the following Guideline concerning the fees payable to the Building Practitioners Board under Division 1 of Part 11. Note that section 188 (5) provides that the Building Practitioners Board must have regard to this Guideline in fixing its charges.

This Guideline repeals and replaces Guideline No. 94/02.

For building practitioners (not in the category of builder, class of domestic builder (unlimited), class of domestic builder (limited) or class of domestic builder (manager)).

Application fee—inclusive of annual registration fee for the first year.

For a person applying to register as a building practitioner in a single category or class of building practitioner under section 169. \$90

For each additional or subsequent application by the same person seeking registration in a different category or class of building practitioner except the category of builder class of domestic builder (unlimited), class of domestic builder (limited) or class of domestic builder (manager). \$30

Annual registration fee

Annual registration fee for registration as a building practitioner in a single category or class of building practitioner under section 172 (2). \$90

For each additional registration in a category or class of building practitioner held by the same person except the category of builder class of domestic builder (unlimited), class of domestic builder (limited) or class of domestic builder (manager). \$30

Late payment of annual registration fee under section 172 (4). \$30

For building practitioners in the category of builder, class of domestic builder (unlimited), class of domestic builder (limited) or class of domestic builder (manager)).

For a person who is not a nominated representative and/or a Director of a company or partner of a firm, approved by the Housing Guarantee Fund Limited prior to the Building (Qualifications) Regulations 1996 coming into operation.

Application fee—inclusive of annual registration fee for the first year.

For a person applying to register under \$380 section 169 in the category of builder, class of domestic builder (unlimited), class of domestic builder (limited) or class of domestic builder (manager).

For a person applying to register under \$320 section 169 in the category of builder, class of domestic builder (unlimited), class of domestic builder (limited) or class of domestic builder (manager) who is already registered by the Building Practitioners Board in another category or class.

For each additional or subsequent \$120 application for registration by the same person in the category of builder, class of domestic builder (unlimited), class of domestic builder (limited) or class of domestic builder (manager) by a person already registered in one of these classes.

Annual registration fee

For each registration as a building \$180 practitioner under section 172 (2) in the category of builder, class of domestic builder (unlimited) class of domestic builder (limited) or class of domestic builder (manager).

For each registration in the category of \$120 builder, class of domestic builder (unlimited), class of domestic builder (limited) or class of domestic builder (manager) where that person is also registered by the Building Practitioners Board.

Late payment of annual registration fee \$30 under section 172 (4).

For a person who is a nominated representative and/or a Director of a company or partner of a firm, approved by the Housing Guarantee Fund Limited prior to the Building (Qualifications) Regulations 1996 coming into operation.

Application fee—including annual registration fee for the first year.

For a person applying to register under \$180 section 169 in the category of builder, class of domestic builder (unlimited), class of domestic builder (limited) or class of domestic builder (manager).

For an additional or subsequent \$120 registration under section 169 in the category of builder, class of domestic builder (unlimited) class of domestic builder (limited) or class of domestic builder (manager) by a person already registered in another category or class.

Annual registration fee

For each registration in the category of \$180 builder, class of domestic builder (unlimited), class of domestic builder (limited) or class of domestic builder (manager).

For each registration in the category of \$120 builder, class of domestic builder (unlimited), class of domestic builder (limited) or class of domestic builder (manager) where that person is already registered by the Building Practitioners Board in another category or class.

Late payment of annual registration fee \$30 under section 172 (4).

ROBERT MACLELLAN
Minister for Planning

Building Act 1993 (Victoria)

MINISTERIAL ORDER

Domestic Building Insurance

Policy Issued in the Name of Builder

I, Robert Maclellan, Minister for Planning, pursuant to Section 135 of the **Building Act 1993** hereby make the following Order requiring building practitioners specified under Part A and the class of persons specified under Part B to be covered by insurance of the kind and amount specified hereunder.

1. Definitions

Schedule 1 Glossary of Defined Terms sets out those definitions referred to below as adopted from the **Domestic Building Contracts and Tribunal Act 1995** (Vic), the **Building Act 1993** (Vic) and the Building Code of Australia respectively and section 54 of the **Insurance Contracts Act 1984** (Cth).

1.1. Wherever used in this Ministerial Order:

“builder”, “defective”, “domestic building work”, “home” and “major domestic building contract” shall have the same meaning as those terms are defined in Section 3 of the **Domestic Building Contracts and Tribunal Act 1995**.

“building owner” means the person for whom domestic building work is being, or is about to be, carried out under a major domestic building contract and includes:

- (a) any person who is the owner for the time being of the land or building in respect of which the domestic building work was carried out under the contract; and
- (b) where such land or building is subject to the **Subdivision Act 1988**, the body corporate for that land or building.

“completion date” and “construct” shall have the same meaning as those terms are defined in Section 137 B (7) of the **Building Act 1993**. However, where the completion date cannot be determined under this definition it shall be the latest date that the builder attended the relevant building site for the purpose of completing or inspecting works or handing over possession to the building owner.

“disappearance” means cannot be found after due search and inquiry.

“DBCT Act” means the **Domestic Building Contracts and Tribunal Act 1995**.

“Domestic Building Tribunal” means the Domestic Building Tribunal established pursuant to section 51 of the DBCT Act,

“externally administered corporation” means a corporation:

- (a) in respect of which a provisional liquidator has been appointed and not since removed; or
- (b) that is being wound up; or
- (c) that is under administration; or
- (d) that has executed a deed of arrangement that has not yet terminated.

A body corporate becomes "insolvent" if:

- (a) an administrator of the body corporate is appointed under section 436A, 436B or 436C of the Corporations Law;
- (b) the body corporate commences to be wound up, or ceases to carry on business;
- (c) a receiver, or a receiver and manager, of property of the body corporate is appointed, whether by a Court or otherwise;
- (d) the body corporate enters into a compromise or arrangement with its creditors or a class of them.

A natural person becomes "insolvent" if:

- (a) a creditor's petition or a debtor's petition is presented under Division 2 or 3 of Part IV of the **Bankruptcy Act 1966** (Cth) ("Bankruptcy Act") against:
 - (i) the person,
 - (ii) a partnership in which the person is a partner, or
 - (iii) 2 or more joint debtors who include the person;
- (b) the person's property becomes subject to control under Division 2 of Part X of the Bankruptcy Act;
- (c) the person executes a deed of assignment or deed of arrangement under Part X of the Bankruptcy Act; or
- (d) the person's creditors accept a composition under Part X of the Bankruptcy Act.

"insolvent under administration" means a person who is a bankrupt in respect of a bankruptcy from which the person has not been discharged and includes:

- (a) a person who has executed a deed of arrangement under Part X of the Bankruptcy Act (or the corresponding provisions of the law of another jurisdiction) where the terms of the deed have not been fully complied with; and
- (b) a person whose creditors have accepted a composition under Part X of the Bankruptcy Act (or the corresponding provisions of the law of another jurisdiction) where a final payment has not been made under that composition.

"insured" means the builder in the case of Part A and the owner builder in the case of Part B.

"insurer" means the issuer or provider of the policy.

"major domestic building work" in relation to Part B means domestic building work whose value exceeds \$5,000 at the time such work is carried out.

"owner-builder" means a builder in relation to major domestic building work excluding a builder to which Part A applies.

"policy" means a policy of insurance subject to the **Insurance Contracts Act 1984** (Cth) which otherwise complies with this Order.

"run off cover" means a new policy which provides equivalent cover to that provided under a policy previously issued in compliance with this Order.

PART A

(Refer sections 135 (1) (a), (c) and 137A of the **Building Act 1993**)

Category and class of Building Practitioner	Kind of Policy
Builder—Class of Domestic Builder	A completion and liability policy of the kind specified in clause 2 hereunder issued in the name of the builder.

2. Risks To Be Covered By Required Insurance in respect of Part A.

2.1. Part A applies to any builder who enters into or proposes to enter into a major domestic building contract.

2.2 In respect of Part A, the builder shall procure a policy in favour of the builder indemnifying the insured against claims made by a building owner for any losses or damage during the period of insurance which result from:

2.2.1 domestic building work which is defective, which expression includes:

- (a) breach of any warranties implied under Section 8 of the DBCT Act in respect of work carried out under a domestic building contract, such warranties being that the builder warrants that:
 - (i) the work will be carried out in a proper and workmanlike manner and in accordance with the plans and specifications set out in the contract;

- (ii) all materials to be supplied by the builder for use in the work will be good and suitable for the purpose for which they are used and that, unless otherwise stated in the contract, those materials will be new;
 - (iii) the work will be carried out in accordance with, and will comply with, all laws and legal requirements including, without limiting the generality of this warranty, the **Building Act 1993** and the regulations made thereunder;
 - (iv) the work will be carried out with reasonable care and skill and will be completed by the date (or within the period) specified by the contract;
 - (v) if the work consists of the erection or construction of a home, or is work intended to renovate, alter, extend, improve or repair a home to a stage suitable for occupation, the home will be suitable for occupation at the time the work is completed;
 - (vi) if the contract states the particular purpose for which the work is required, or the result which the building owner wishes the work to achieve, so as to show that the building owner relies on the builder's skill and judgement, then the work and any material used in carrying out the work will be reasonably fit for that purpose or will be of such a nature and quality that they might reasonably be expected to achieve that result;
- (b) a failure to maintain a standard or quality of building work specified in the contract;
- 2.2.2 non-completion of the domestic building work due to the:
- (a) death or legal incapacity of the builder;
 - (b) disappearance of the builder;
 - (c) builder becoming insolvent;
 - (d) builder becoming insolvent under administration;
 - (e) builder becoming an externally administered corporation;
 - (f) cancellation or suspension of the builder's registration as a building practitioner under the **Building Act 1993**; or
 - (g) early termination of the major domestic building contract by the building owner as a result of the builder's wrongful failure or refusal to complete the building work.
- 2.2.3 loss of deposit or progress payment or any part thereof;
- 2.2.4 alternative accommodation, removal and/or storage costs reasonably and necessarily incurred as a result of any event under clause 2.2; and
- 2.2.5 conduct by the builder in connection with a major domestic building contract which contravenes Sections 52 or 53 of the **Trade Practices Act 1974** (Cth) or Sections 11 or 12 of the **Fair Trading Act 1985** (Vic) provided however that the insurer may limit its liability for claims under this head to the cost of rectifying the relevant domestic building works.
- 2.3 The policy shall state that the risks for which the builder is indemnified include the acts and omissions of all persons contracted by the builder to perform the building work under the relevant major domestic building contract resulting in loss or damage of the kind referred to under clause 2.2.
- 3. Persons whom Required Insurance shall benefit.**
- 3.1 The policy shall provide that the indemnity applies in respect of any claim made against the builder by a building owner.
- 3.2 The policy shall provide that in respect of clause 2.2.1, the indemnity applies in respect of any claim made against the builder by any person who is or may become entitled to the benefit of any of those warranties (see Section 137 A (2) (a) and (b) of the **Building Act 1993**); and
- 3.3 The policy shall provide that, in respect of clause 2.2.2, the indemnity applies in respect of any claim made against the builder by any assignee of the building owner's rights under the relevant major domestic building contract.
- 4. Period of Insurance under Part A**
- 4.1 The policy shall provide that the builder shall be indemnified as required by this Order for a period commencing on the date of the first

major domestic building contract or date of issue of the building permit for the relevant work (whichever is earlier) which is not or has not been covered by a guarantee issued under the **House Contracts Guarantee Act 1987** or other insurance issued in accordance with any other Order concerning required insurance for the building practitioners and class of persons specified in this Order and subject to clause 4.2, the policy shall expire no earlier than 30 days after the anniversary of the builder's registration or renewal of registration.

4.2 The policy shall provide that, unless and until the run-off cover pursuant to clause 11.7 is invoked and operative, the builder shall be liable to renew, purchase or otherwise maintain a policy sufficient to cover the liabilities of the builder as required by this Order, for the period expiring not earlier than the day six (6) years and six (6) months from the completion date of the last major domestic building contract entered into by the builder or earlier termination of that contract.

5. Permissible Policy Limitations under Part A

5.1 The policy may limit indemnity for claims against the insured which may otherwise arise under the major domestic building contract in the nature of liquidated damages for delay or damages for delay provided that any such limitation shall not extend to any increase in rectification costs caused by the effluxion of time.

5.2 The policy may provide that if the builder fails to complete, for any reason listed under clause 2.2.2, then the insurer is not liable to indemnify the insured against claims for the whole or a specified part of any payment made under the major domestic building contract which exceeds the amount that ought to have been paid in accordance with sections 11 and 40 of the DBCT Act.

PART B

Specified Class of Person	Kind of Policy
Owner-Builder of homes or other buildings on land zoned 6 hereunder issued in for residential purposes the name of owner-builder.	A liability policy of the kind specified in clause 6 hereunder

6. Risks To Be Covered By Required Insurance in respect of Part B.

6.1 Part B applies to an owner-builder where that person sells or proposes to sell a property upon which major domestic building work was completed within six (6) years and six (6) months prior to the date or proposed date of sale.

6.1 In respect of Part B, the owner-builder shall procure a policy of insurance in the name of the owner-builder which shall indemnify the insured against any claims against the owner-builder by a subsequent owner of the property for any losses or damage during the period of insurance which result from domestic building work which is defective, which expression includes :

6.2.1 any breach of the warranties implied under section 137C of the **Building Act 1993** into every contract of sale to which section 137B applies, such warranties being that the owner-builder (vendor referred to in section 137C) warrants that:

- (a) all domestic building work was carried out in a proper and workmanlike manner; and
- (b) all materials used in the domestic building work were good and suitable for the purpose for which they were used and that, unless otherwise stated in the contract of sale, those materials were new; and
- (c) that domestic building work was carried out in accordance with all laws and legal requirements including, without limiting the generality of this warranty, the **Building Act 1993** and regulations made thereunder; and

6.2.2 alternative accommodation, removal and/or storage costs reasonably and necessarily incurred as a result of any event under clause 6.2.1.

7. Persons whom Required Insurance shall benefit under Part B.

7.1. The policy shall provide that the indemnity shall apply in respect of any claims made against the owner-builder by:

7.1.1 any person who is the purchaser of the relevant land or building;

7.1.2 a successor in title to the purchaser; and

7.1.3 where such land or building is subject to the **Subdivision Act 1988**, the body corporate for that land or building.

8. Period of Insurance under Part B

8.1 The policy shall provide that the period in respect of which claims may be made will commence no later than the date of the relevant contract of sale and expire not earlier than the day six (6) years and six (6) months after the completion date of the major domestic building work to which the contract of sale relates the PROVIDED HOWEVER that the period of insurance may be effected by the automatic operation of a provision in the policy for run off cover.

9. Permissible Policy Limitations under Part B

9.1 The policy may provide that the insurer is not liable to indemnify the insured in respect of any defect which is referred to in the report required to be provided to a purchaser pursuant to Section 137B of the **Building Act 1993**.

PART C

10. Minimum Requirements To Apply To Both Parts A and B

10.1 Permissible Requirements.

In relation to Parts (A) and (B) the policy may:

10.1.1 include a provision which requires the insured to bear at the insured's own risk:

- (a) an excess of not greater than one thousand dollars (\$1,000) in respect of a claim made after five (5) years from the completion date;
- (b) an excess of not greater than seven hundred and fifty dollars (\$750) in respect of a claim made between three (3) years and five (5) years from the completion date;
- (c) an excess of not greater than five hundred dollars (\$500) in respect of a claim made between (twelve) 12 months and three (3) years from the completion date;
- (d) a claim under five hundred dollars (\$500) in respect of a claim made between three (3) and twelve (12) months from the completion date provided however that a claim of \$500 or more may relate to more than one

defect where the amount claimed for any one or more defects is less than \$500.

PROVISOS

- (i) No excess shall apply:
 - (a) in the case of Part A, either in respect of any claim made under a policy between the date of the relevant major domestic building contract or date of issue of the building permit for the relevant work (whichever is earlier) and the expiration of three (3) months from the completion date; or where a claim relates to non-completion in accordance with Clause 2.2.2; and
 - (b) in the case of Part B, where the relevant contract of sale occurs prior to the expiration of three (3) months from the completion date, in respect of any claim made under a policy between the date of the relevant contract of sale and the expiration of three (3) months from the completion date.
 - (ii) An excess may be applied only once in relation to any claim comprising more than one defect or two or more claims which relate to the same defect.
 - (iii) The date when a claim is made for the purpose of this clause, shall be the earlier of the date when a person in respect of whose claims the insured is indemnified by the policy first notifies the insured or the insurer (as the case may be) of a circumstance which may give rise to a claim by the insured or the date a claim is made.
- 10.1.2(a) limit the aggregate liability of the insurer under the policy to not less than One Hundred Thousand Dollars (\$100,000) (or, where the policy relates to more than one home, One Hundred Thousand Dollars (\$100,000) per home) plus reasonable legal costs and expenses of any claimant against the insured associated with the successful enforcement of a claim against the insured or the insurer; or
- (b) limit or exclude liability of the insurer for the legal costs of any claimant

against the insured which are not directly or indirectly related to the enforcement of the policy or a claim against the insured in respect of which the insured is indemnified under the policy.

10.1.3 subject to the application of section 54 of the **Insurance Contracts Act 1984** (Insurer may not refuse to pay claims in certain circumstances) which shall apply or be deemed to apply to all policies issued pursuant to this Order, include a provision whereby the insured is not entitled to make a claim under a policy unless the person who is making a claim against the insured has notified either the insured, either orally or in writing, or that person or the insured has notified the insurer in writing, within one hundred and eighty (180) days of the date when the claimant against the insured first became aware, or might reasonably be expected to have become aware, of some fact or circumstance which may give rise to the claim provided however that the insurer may refuse to accept any claims after the expiration of six (6) years and six (6) months from the completion date.

10.1.4 restrict or exclude the application of the policy in respect of any claim against the insured in respect of the following works: landscaping, paving, retaining structures, driveways or fencing; unless any such works:

- (a) are integral to the construction of a building;
- (b) require the issue of a building permit under the Regulations to the **Building Act 1993**;
- (c) could result in water penetration of or within a building;
- (d) could adversely affect health or safety;
- (e) adversely affect the structural adequacy of a building; or
- (f) are not completed for any reason under clause 2.2.2.

10.1.5 restrict or exclude the application of the policy in respect of any claim against the insured to such loss or damage as could be reasonably expected to result from fair wear and tear of the domestic building works or failure by the building owner to reasonably maintain such works.

10.1.6 require the insured, in relation to a claim or prospective claim, as the case may be:

- (a) to make reasonable efforts to assist and inform the insurer or their agent; and
- (b) subject to the building owner's right upon reasonable grounds, (which may include loss of confidence in the subject insured) to refuse access to any builder, to attend the relevant building site for the purpose of inspection and/or rectification or completion of domestic building works.

10.1.7 where the domestic building works is subject to the **Subdivision Act 1988** (Vic) and a claim is paid by the insurer in relation to the common property of a building or complex of multiple homes then the amount of cover in respect of any one home shall be reduced by not more than an amount calculated by dividing the amount paid under the claim by the number of homes comprised in the building or complex.

11. Mandatory Requirements

In relation to Parts A and B the policy shall contain provisions to the following effect:

11. the insurer shall comply with any order made by the Domestic Building Tribunal against the insured in respect of risks otherwise covered by the policy upon default by the insured in complying with such order.

11.2 where a claim is not determined as to liability by the insurer within ninety (90) days of receipt then, unless the insurer obtains an extension of time from the relevant building owner or the Domestic Building Tribunal, the insurer shall be deemed to have accepted liability for the claim.

11.3 the policy is issued in compliance with this Ministerial Order and if any term of the policy conflicts or is inconsistent with this Order then the policy shall be read and be enforceable as if it complies with this Order.

11.4 an insurer is not entitled to avoid liability under a policy on the ground that the policy was obtained by misrepresentation or non-disclosure by the insured or that the policy premium was not paid providing, in the latter case, that a certificate evidencing insurance has issued or the insurer has otherwise accepted cover.

11.5 if a person gives notice of a defect to the insured or the insurer, that person is to be taken for the purposes of the 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.

11.6 where the insured is a firm or company, provide indemnity to—

- (a) 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 under Part A;
- (b) persons who are former principals, partners, directors and employees of the firm or company and who have been, but no longer are, registered building practitioners under Part A;

11.7 run-off cover which:

- (a) automatically operates to continue cover available to any insured under the policy during the period of insurance required by this Order where:
 - (i) in the case of Part A, any event under clause 2.2.2 occurs or the builder's registration under the **Building Act 1993** is suspended or cancelled; or
 - (ii) in the case of Part B, the insured dies or the policy expires prior to the expiration of the minimum period of insurance required by this Order; and
- (b) does not contain any requirement for such insured to either request such cover or pay any additional premium for the provision of such cover; and

11.8 not contain any term which limits the continuity of run-off cover to any time earlier than the earliest of the following:

- (a) the expiry date or any anniversary date of any scheme of insurance covering the category of builder or class of person subject to this Order should the insurer cease to be an insurer in whole or in part of any scheme of insurance for that category of builder or class of person; or
- (b) the expiry date of the policy should the insurer cease to provide insurance for that category of builder or class of person; or
- (c) the date when the insurer ceases to trade;

11.9 have a retroactive date:

- (a) where the insured is a sole practitioner, not later than the date at which the insured first purchased a liability policy (as specified by this Order) as or as a prerequisite to being a registered building practitioner; and
- (b) 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 at which the principal, partner, director or employee, as the case may be, first purchased a liability policy (as specified by this Order) as a registered building practitioner;

11.10 the insurer shall comply with any order made by the Domestic Building Tribunal against the insured in respect of risks for which the insured is indemnified under the policy;

11.12 upon the occurrence of any event under clause 2.2.2 (including such events as may apply to an owner-builder), any person ("the owner") entitled to claim against the insured in respect of any risks for which the insured is indemnified under the policy may enforce the policy directly against the insurer for the benefit of the owner and for the purpose of such enforcement the owner shall have the same rights and entitlements as the insured would have had under any legislation applicable to the insured.

12. Notification to Building Practitioners Board

Insurers shall notify the Building Practitioners Board as soon as practicable in the event that:

- (a) a builder is refused insurance, ceases to be eligible to renew or procure insurance or fails to purchase a replacement policy of the type specified herein unless the insured has purchased run off cover as defined herein;
- (b) subject to the form, content and frequency of notification as advised by the Minister from time to time, any claim under a policy is settled or paid, by agreement or otherwise.

PART D

Special Exclusions and Exemptions

12. This Order shall not apply to a person who is registered under Part 11 of the **Building Act 1993** under the Category of builder, class of demolisher and who is solely engaged in the carrying out, managing or arranging to carry out the demolition of a home or building on land zoned for residential purposes.

13. A builder who is solely engaged in the carrying out, managing or arranging to carry out the construction or erection of Class 10 buildings or structures (as defined in the Building Code of Australia) is not required to be covered by insurance until 31 October, 1996.

14. A guarantee issued pursuant to the **House Contracts Guarantee Act 1987** is deemed to comply with this Order.

15. In the case of any particular major domestic building contract to which Part A applies or sale by an owner builder to which Part B applies, a person who complies with this Order shall not be required to comply with any other Order concerning required insurance for the building practitioners or class of persons as specified in this Order. However, a person does not comply with this Order or any other Order and is not covered by the required insurance for the purposes of Part 9 or Part 11 of the **Building Act 1993** if that person, having previously complied with this Order, fails to maintain the required insurance for the period of insurance specified under this Order.

16. (a) The insured may apply in writing to the Minister for permission to bear an excess greater than the amounts specified in clause 10.1.1; and
- (b) In deciding whether to authorise or reject the application and what terms and conditions should apply to any authorisation 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.

This Order shall have effect from 1 May 1996.

Dated 11 March 1996

ROBERT MACLELLAN
Minister for Planning

SCHEDULE 1
GLOSSARY OF DEFINED TERMS

Domestic Building Contracts and Tribunal Act 1995

"builder" means a person who, or a partnership which—

- (a) carries out domestic building work; or
- (b) manages or arranges the carrying out of domestic building work; or
- (c) intends to carry out, or to manage or arrange the carrying out of, domestic building work.

"defective", in relation to domestic building work, includes—

- (a) a breach of any warranty listed in section 8;
- (b) a failure to maintain a standard or quality of building work specified in the contract.

"domestic building work" means any work referred to in section 5 that is not excluded from the operation of this Act by section 6.

"home" means any residential premises and includes any part of a commercial or industrial premises that is used as a residential premises but does not include—

- (a) a caravan within the meaning of the **Caravan Parks and Movable Dwellings Act 1988** or any vehicle used as a residence; or
- (b) any residence that is not intended for permanent habitation; or
- (c) a rooming house within the meaning of the **Rooming Houses Act 1990**; or
- (d) a motel, residential club, residential hotel or residential part of licensed premises under the **Liquor Control Act 1987**; or
- (e) a nursing home, hospital or accommodation associated with a hospital; or
- (f) any residence that the regulations state is not a home for the purposes of this definition.

"major domestic building contract" means a domestic building contract in which the contract price for the carrying out of domestic building work is more than \$5,000 (or any higher amount fixed by the regulations).

Building Act 1993

"completion date" means—

- (a) the date of issue of the occupancy permit in respect of the building (whether or not the occupancy permit is subsequently cancelled or varied); or
- (b) if an occupancy permit is not issued, the date of issue under Part 4 of the certificate of final inspection of the building work for the construction of the building.

"construct" in relation to a building, means—

- (a) build, rebuild, erect or re-erect the building; or
- (b) make alterations to the building; or
- (c) enlarge or extend the building; or
- (d) cause any other person to do anything referred to in paragraph (a), (b) or (c) in relation to the building; or
- (e) manage or arrange the doing of anything referred to in paragraph (a), (b) or (c) in relation to the building.

Insurance Contracts Act 1984 (Cth)

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.

Building Code of Australia

Class 10: a non-habitable building or structure—

- (a) Class 10a—a non-habitable building being a private garage, carport, shed, or the like; or
- (b) Class 10b—a structure being a fence, mast, antenna, retaining or free standing wall, swimming pool, or the like.

Building Act 1993 (VICTORIA)

MINISTERIAL ORDER

Domestic Building Insurance

Policy Issued in the Name of Building Owner

I, Robert Maclellan, Minister for Planning, pursuant to Section 135 of the **Building Act 1993** hereby make the following Order requiring the building practitioners specified under Part A and the class of persons specified under Part B to be covered by insurance of the kind and amount specified hereunder.

1. Definitions

Schedule 1 Glossary of Defined Terms sets out those definitions referred to below as adopted from the **Domestic Building**

Contracts and Tribunal Act 1995 (Vic), the **Building Act 1993** (Vic) and the Building Code of Australia respectively and section 54 of the **Insurance Contracts Act 1984** (Cth).

1.1. Wherever used in this Ministerial Order: "builder", "building owner", "defective", "domestic building work", "home" and "major domestic building contract" shall have the same meaning as those terms are defined in Section 3 of the **Domestic Building Contracts and Tribunal Act 1995**.

"completion date" and "construct" shall have the same meaning as those terms are defined in Section 137 B (7) of the **Building Act 1993**. However, where the completion date cannot be determined under this definition it shall be the latest date that the builder attended the relevant building site for the purpose of completing or inspecting works or handing over possession to the building owner.

"disappearance" means cannot be found after due search and inquiry.

"DBCT Act" means the **Domestic Building Contracts and Tribunal Act 1995**.

"Domestic Building Tribunal" means the Domestic Building Tribunal established pursuant to section 51 of the DBCT Act.

"externally administered corporation" means a corporation:

- (a) in respect of which a provisional liquidator has been appointed and not since removed; or
- (b) that is being wound up; or
- (c) that is under administration; or
- (d) that has executed a deed of arrangement that has not yet terminated.

A body corporate becomes "insolvent" if:

- (a) an administrator of the body corporate is appointed under section 436A, 436B or 436C of the Corporations Law;
- (b) the body corporate commences to be wound up, or ceases to carry on business;
- (c) a receiver, or a receiver and manager, of property of the body corporate is appointed, whether by a Court or otherwise;
- (d) the body corporate enters into a compromise or arrangement with its creditors or a class of them.

A natural person becomes "insolvent" if:

- (a) a creditor's petition or a debtor's petition is presented under Division 2 or 3 of Part IV of the **Bankruptcy Act 1966** (Cth) ("Bankruptcy Act") against:
 - (i) the person,
 - (ii) a partnership in which the person is a partner, or
 - (iii) 2 or more joint debtors who include the person;
- (b) the person's property becomes subject to control under Division 2 of Part X of the Bankruptcy Act;
- (c) the person executes a deed of assignment or deed of arrangement under Part X of the Bankruptcy Act; or
- (d) the person's creditors accept a composition under Part X of the Bankruptcy Act.

"insolvent under administration" means a person who is a bankrupt in respect of a bankruptcy from which the person has not been discharged and includes:

- (a) a person who has executed a deed of arrangement under Part X of the Bankruptcy Act (or the corresponding provisions of the law of another jurisdiction) where the terms of the deed have not been fully complied with; and
- (b) a person whose creditors have accepted a composition under Part X of the Bankruptcy Act (or the corresponding provisions of the law of another jurisdiction) where a final payment has not been made under that composition.

"insured":

- (a) means in the case of Part A, the building owner under a major domestic building contract and includes any person who is the owner for the time being of the land or building in respect of which the domestic building work was carried out under the contract but does not include the builder or the owner-builder;
- (b) means in the case of Part B, the purchaser referred to in section 137B (2) of the **Building Act 1993** and includes any subsequent person who is the owner for the time being of the land or building

in respect of which the domestic building work was carried out;

- (c) in the case of either Part, where the land or building in respect of which domestic building work is carried out is subject to the **Subdivision Act 1988** (Vic), shall be deemed to mean and include the body corporate for that land or building.

"insurer" means the issuer or provider of the policy.

"major domestic building work" in relation to Part B means domestic building work whose value exceeds \$5,000 at the time such work is carried out.

"owner-builder" means a builder in relation to major domestic building work excluding a builder to which Part A applies.

"policy" means a policy of insurance subject to the **Insurance Contracts Act 1984** (Cth) which otherwise complies with this Order.

PART A

(Refer sections 135 (1) (a), (b) and 137A of the **Building Act 1993**)

Category and class of Building Practitioner

Builder—Class of	Kind of Policy
Domestic Builder	A completion and liability policy of the kind specified in clause 2 hereunder issued in the name of the building owner.

2. Risks To Be Covered By Required Insurance in respect of Part A.

2.1. Part A applies to any builder who enters into or proposes to enter into a major domestic building contract.

2.2 In respect of Part A, the builder shall procure a policy in the name of the building owner which shall indemnify the insured against all losses and damage during the period of insurance which result from:

2.2.1 domestic building work which is defective, which expression includes:

- (a) breach of any warranties implied under Section 8 of the DBCT Act in respect of work carried out under a domestic building contract, such warranties being that the builder warrants that:

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- (i) the work will be carried out in a proper and workmanlike manner and in accordance with the plans and specifications set out in the contract;
- (ii) all materials to be supplied by the builder for use in the work will be good and suitable for the purpose for which they are used and that, unless otherwise stated in the contract, those materials will be new;
- (iii) the work will be carried out in accordance with, and will comply with, all laws and legal requirements including, without limiting the generality of this warranty, the **Building Act 1993** and the regulations made thereunder;
- (iv) the work will be carried out with reasonable care and skill and will be completed by the date (or within the period) specified by the contract;
- (v) if the work consists of the erection or construction of a home, or is work intended to renovate, alter, extend, improve or repair a home to a stage suitable for occupation, the home will be suitable for occupation at the time the work is completed;
- (vi) if the contract states the particular purpose for which the work is required, or the result which the building owner wishes the work to achieve, so as to show that the building owner relies on the builder's skill and judgement, then the work and any material used in carrying out the work will be reasonably fit for that purpose or will be of such a nature and quality that they might reasonably be expected to achieve that result;
- (b) a failure to maintain a standard or quality of building work specified in the contract;

2.2.2 non-completion of the domestic building work due to the:

- (a) death or legal incapacity of the builder;

- (b) disappearance of the builder;
- (c) builder becoming insolvent;
- (d) builder becoming insolvent under administration;
- (e) builder becoming an externally administered corporation;
- (f) cancellation or suspension of the builder's registration as a building practitioner under the **Building Act 1993**; or
- (g) early termination of the major domestic building contract by the building owner as a result of the builder's wrongful failure or refusal to complete the building work.

2.2.3 loss of deposit or progress payment or any part thereof;

2.2.4 alternative accommodation, removal and/or storage costs reasonably and necessarily incurred as a result of any event under clause 2.2; and

2.2.5 conduct by the builder in connection with a major domestic building contract which contravenes Sections 52 or 53 of the **Trade Practices Act 1974** (Cth) or Sections 11 or 12 of the **Fair Trading Act 1985** (Vic) provided however that the insurer may limit its liability for claims under this head to the cost of rectifying the relevant domestic building works.

2.3 The policy shall state that the risks for which the building owner and successors in title are indemnified include the acts and omissions of all persons contracted by the builder to perform the building work under the relevant major domestic building contract resulting in loss or damage of the kind referred to under clause 2.2.

3. Persons to whom Required Insurance under Part A shall extend.

3.1 The policy shall provide that the indemnity in respect of clauses 2.2.1 and 2.2.4 extends to each person who is or may become entitled to the benefit of any of those warranties (see Section 137 A (2) (a) and (b) of the **Building Act 1993**).

3.2 The policy shall provide that the indemnity in respect of clauses 2.2.2 and 2.2.3 extends to any assignee of the building owner's rights under the major domestic building contract.

4. Period of Insurance under Part A

4.1 The policy shall provide that the period in respect of which claims may be made will commence on the date of the relevant major domestic building contract or date of issue of the building permit for the relevant work (whichever is earlier) and expire not earlier than the day six (6) years and six (6) months from the completion date of the domestic building work or earlier termination of the contract.

5. Permissible Policy Limitations under Part A

5.1 The policy may limit claims which may otherwise arise under the major domestic building contract in the nature of liquidated damages for delay or damages for delay provided that any such limitation shall not extend to any increase in rectification costs caused by the effluxion of time.

5.2 The policy may provide that if the builder fails to complete, for any reason listed under clause 2.2.2, then the insurer is not liable for the whole or a specified part of any payment made under the major domestic building contract which exceeds the amount that ought to have been paid in accordance with sections 11 and 40 of the DBCT Act.

PART B

(Refer sections 135 (1) (b), (c) and 137B of the **Building Act 1993**)

Specified Class of Person	Kind of Policy
Owner-builder of homes or other buildings on land zoned 6 hereunder issued in for residential purposes	A liability policy of the kind specified in clause 6 hereunder issued in the name of the purchaser from an owner-builder.

6. Risks To Be Covered By Required Insurance in respect of Part B.

6.1 Part B applies to an owner-builder where that person sells or proposes to sell a property upon which major domestic building work was completed within six (6) years and six (6) months prior to the date or proposed date of sale.

6.2 In respect of Part B, the owner-builder shall procure a policy of insurance in the name of the purchaser referred to in section 137B(2) of the **Building Act 1993** (or in the case of a sale by auction, the policy shall be subject only to completing the name of the successful

purchaser) which shall indemnify the insured against all losses and damage during the period of insurance which result from:

6.2.1 any breach of the warranties implied under section 137C of the **Building Act 1993** into any contract of sale to which section 137B applies, such warranties being that the owner-builder (vendor referred to in section 137C) warrants that:

- (a) all domestic building work was carried out in a proper and workmanlike manner; and
- (b) all materials used in the domestic building work were good and suitable for the purpose for which they were used and that, unless otherwise stated in the contract of sale, those materials were new; and
- (c) that domestic building work was carried out in accordance with all laws and legal requirements including, without limiting the generality of this warranty, the **Building Act 1993** and regulations made thereunder; and

6.2.2 alternative accommodation, removal and/or storage costs reasonably and necessarily incurred as a result of any event under clause 6.2.1.

7. Persons to whom Required Insurance shall extend under Part B.

The policy shall provide that the insurance cover shall extend to any person who is a successor in title to the purchaser.

8. Period of Insurance under Part B

8.1 The policy shall provide that the period in respect of which claims may be made will commence no later than the date of the relevant contract of sale and expire not earlier than a date six (6) years and six (6) months after the completion date of the major domestic building work to which the contract of sale relates.

9. Permissible Policy Limitations under Part B

9.1 The policy may provide that the insurer is not liable in respect of any defect which is referred to in the report required to be provided to a purchaser pursuant to Section 137 B of the **Building Act 1993**.

PART C

10. Minimum Requirements To Apply To Both Parts A and B

10.1 Permissible Requirements.

In relation to Parts A and B the policy may:

10.1.1 include a provision which requires the insured to bear at the insured's own risk:

- (a) an excess of not greater than one thousand dollars (\$1,000) in respect of a claim made after five (5) years from the completion date;
- (b) an excess of not greater than seven hundred and fifty dollars (\$750) in respect of a claim made between three (3) years and five (5) years from the completion date;
- (c) an excess of not greater than five hundred dollars (\$500) in respect of a claim made between (twelve) 12 months and three (3) years from the completion date;
- (d) a claim under five hundred dollars (\$500) in respect of a claim made between three (3) and twelve (12) months from the completion date provided however that a claim of \$500 or more may relate to more than one defect where the amount claimed for any one or more defects is less than \$500.

PROVISOS

(i) No excess shall apply:

- (a) in the case of Part A, either in respect of any claim made under a policy between the date of the relevant major domestic building contract or date of issue of the building permit for the relevant work (whichever is earlier) and the expiration of three (3) months from the completion date; or where a claim relates to non-completion in accordance with Clause 2.2.2; and
- (b) in the case of Part B, where the relevant contract of sale occurs prior to the expiration of three (3) months from the completion date, in respect of any claim made under a policy between the date of the relevant contract of sale and

the expiration of three (3) months from the completion date.

- (ii) An excess may be applied only once in relation to any claim comprising more than one defect or two or more claims which relate to the same defect.
- (iii) The date when a claim is made for the purpose of this clause, shall be the earlier of the date when the claimant first notifies the insured or the insurer (as the case may be) of a circumstance which may give rise to a claim or the date a claim is made.

10.1.2(a) limit the aggregate liability of the insurer under the policy to not less than One Hundred Thousand Dollars (\$100,000) (or, where the policy relates to more than one home, One Hundred Thousand Dollars (\$100,000) per home) plus reasonable legal costs and expenses associated with the successful enforcement of a claim against the insurer; or

- (b) limit or exclude liability of the insurer for the legal costs of the claimant which are not directly or indirectly related to the enforcement of the policy.

10.1.3 subject to the application of section 54 of the **Insurance Contracts Act 1984** (Insurer may not refuse to pay claims in certain circumstances) which shall apply or be deemed to apply to all policies issued pursuant to this Order, include a provision whereby a person entitled to make a claim under a policy cannot do so unless that person has notified either the builder, either orally or in writing, or the insurer in writing, within one hundred and eighty (180) days of the date when that person first became aware, or might reasonably be expected to have become aware, of some fact or circumstance which may give rise to the claim provided however that the insurer may refuse to accept any claims after the expiration of six (6) years and six (6) months from the completion date.

10.1.4 restrict or exclude the application of the policy in respect of any of the following works: landscaping, paving, retaining structures, driveways or fencing; unless any such works:

- (a) are integral to the construction of a building;

- (b) require the issue of a building permit under the Regulations to the **Building Act 1993**;

- (c) could result in water penetration of or within a building;
- (d) could adversely affect health or safety;
- (e) adversely affect the structural adequacy of a building; or
- (f) are not completed for any reason under clause 2.2.2

10.1.5 restrict or exclude the application of the policy to such loss or damage as could be reasonably expected to result from fair wear and tear of the domestic building works or failure by the insured to reasonably maintain such works.

10.1.6 require the insured, in relation to a claim or prospective claim, as the case may be:

- (a) to make reasonable efforts to assist and inform the insurer or their agent;
- (b) to provide reasonable access to the relevant building site for the purpose of inspection and/or rectification or completion of domestic building works; and
- (c) to permit access for the purpose of (b) above to a builder nominated or approved by the insurer, subject to the insured's right upon reasonable grounds, (which may include loss of confidence in the subject builder) to refuse access to any builder.

10.1.7 where the domestic building works is subject to the **Subdivision Act 1988** (Vic) and a claim is paid by the insurer in relation to the common property of a building or complex of multiple homes then the amount of cover in respect of any one home shall be reduced by not more than an amount calculated by dividing the amount paid under the claim by the number of homes comprised in the building or complex.

10.2 Mandatory Requirements

In relation to Parts A and B the policy shall contain provisions to the following effect:

10.2.1 where the insurer has notice of the relevant proceedings, the insurer is required to comply with any order made by the Domestic Building Tribunal against the builder in respect of risks otherwise covered by the policy upon default by the builder in complying with such order.

10.2.2 where a claim is not determined as to liability by the insurer within ninety (90) days

of receipt then, unless the insurer obtains an extension of time from the insured or the Domestic Building Tribunal, the insurer shall be deemed to have accepted liability for the claim.

10.2.3 the policy is issued in compliance with this Ministerial Order and if any term of the policy conflicts or is inconsistent with this Order then the policy shall be read and be enforceable as if it complies with this Order.

10.2.4 an insurer is not entitled to avoid liability under a policy on the ground that the policy was obtained by misrepresentation or non-disclosure by the builder or that the policy premium was not paid providing, in the latter case, that a certificate evidencing insurance has issued or the insurer has otherwise accepted cover.

10.2.5 if a person gives notice of a defect, that person is to be taken for the purposes of the 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.

11. Notification to Building Practitioners Board

Insurers shall notify the Building Practitioners Board as soon as practicable in the event that:

- (a) a builder is refused insurance or ceases to be eligible to renew or procure insurance; and
- (b) subject to the form, content and frequency of notification as advised by the Minister from time to time, any claim under a policy is settled or paid, by agreement or otherwise.

PART D

Special Exclusions and Exemptions

12. This Order shall not apply to a person who is registered under Part 11 of the **Building Act 1993** under the Category of builder, class of demolisher and who is solely engaged in the carrying out, managing or arranging to carry out the demolition of a home or building on land zoned for residential purposes.

13. A builder who is solely engaged in the carrying out, managing or arranging to carry out the construction or erection of Class 10 buildings or structures (as defined in the

Building Code of Australia) is not required to be covered by insurance until 31 October, 1996.

14. A guarantee issued pursuant to the **House Contracts Guarantee Act 1987** is deemed to comply with this Order.

15. In the case of any particular major domestic building contract to which Part A applies or sale by an owner builder to which Part B applies, a person who complies with this Order shall not be required to comply with any other Order concerning required insurance for the building practitioners or class of persons as specified in this Order. However, a person does not comply with this Order and is not covered by the required insurance for the purposes of Part 9 or Part 11 of the **Building Act 1993** if that person, having previously complied with another Order, fails to maintain the required insurance for the period of insurance specified under that other Order.

This Order shall have effect from 1 May, 1996.

Dated 11 March 1996

ROBERT MACLELLAN
Minister for Planning

SCHEDULE 1

GLOSSARY OF DEFINED TERMS

Domestic Building Contracts and Tribunal Act 1995

"builder" means a person who, or a partnership which—

- (a) carries out domestic building work; or
- (b) manages or arranges the carrying out of domestic building work; or
- (c) intends to carry out, or to manage or arrange the carrying out of, domestic building work.

"building owner" means the person for whom domestic building work is being, or is about to be, carried out.

"defective", in relation to domestic building work, includes—

- (a) a breach of any warranty listed in section 8;
- (b) a failure to maintain a standard or quality of building work specified in the contract.

"domestic building work" means any work referred to in section 5 that is not excluded from the operation of this Act by section 6.

"home" means any residential premises and includes any part of a commercial or industrial premises that is used as a residential premises but does not include—

- (a) a caravan within the meaning of the **Caravan Parks and Movable Dwellings Act 1988** or any vehicle used as a residence; or
- (b) any residence that is not intended for permanent habitation; or
- (c) a rooming house within the meaning of the **Rooming Houses Act 1990**; or
- (d) a motel, residential club, residential hotel or residential part of licensed premises under the **Liquor Control Act 1987**; or
- (e) a nursing home, hospital or accommodation associated with a hospital; or
- (f) any residence that the regulations state is not a home for the purposes of this definition.

"major domestic building contract" means a domestic building contract in which the contract price for the carrying out of domestic building work is more than \$5,000 (or any higher amount fixed by the regulations).

Building Act 1993

"completion date" means—

- (a) the date of issue of the occupancy permit in respect of the building (whether or not the occupancy permit is subsequently cancelled or varied); or
- (b) if an occupancy permit is not issued, the date of issue under Part 4 of the certificate of final inspection of the building work for the construction of the building.

"construct" in relation to a building, means—

- (a) build, rebuild, erect or re-erect the building; or
- (b) make alterations to the building; or
- (c) enlarge or extend the building; or
- (d) cause any other person to do anything referred to in paragraph (a), (b) or (c) in relation to the building; or
- (e) manage or arrange the doing of anything referred to in paragraph (a), (b) or (c) in relation to the building.

Insurance Contracts Act 1984 (Cth)

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

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state or condition of that subject
matter to alter.

Building Code of Australia

Class 10: a non-habitable building or
structure-

- (a) Class 10a—a non-habitable building
being a private garage, carport, shed, or
the like; or
 - (b) Class 10b—a structure being a fence,
mast, antenna, retaining or free
standing wall, swimming pool, or the
like.
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