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SPECIAL

BUILDING PRACTITIONERS INSURANCE MINISTERIAL ORDER

I, Robert Maclellan, Minister for Planning and Local Government, pursuant to Section 135 of the **Building Act 1993** ("the Act") hereby make the following supplementary order to my Order dated 13 May 1996 and published in the Government Gazette 16 May 1996 ("the Consolidated Order").

A Building Practitioner in the categories and classes specified in the Consolidated Order may apply to the Minister for exemption from the requirement to be covered by liability insurance of the kinds and to the extent specified in the Consolidated Order if:

1. The Building Practitioner is covered by a guarantee ("the Guarantee") obtained from a banking or financial institution ("the Guarantor") by:

1.1 the Building Practitioner; or

1.2 the company or firm of which the Building Practitioner is a director, principal, partner or employee provided that, in such case, the Guarantee provides cover to:

1.2.1 persons who are at the commencement of or who become during the period of the Guarantee principals, partners, directors or employees of the firm or company and are registered building practitioners in categories 1 to 8; and

1.2.2 persons who are former principals, partners, directors or employees of the firm or company and who are or have been, but no longer are, registered building practitioners in categories 1 to 8, or, in the case of Architects, no longer are registered as Architects under the **Architects Act 1991**, in respect of acts, errors or omissions committed or allegedly committed by them whilst they were

principals, partners, directors or employees of the firm or company;

pursuant to which the Guarantor guarantees satisfaction of the liabilities of the Building Practitioner to the extent that these would be indemnified by a policy of insurance which complies with the Consolidated Order and PROVIDED ALWAYS that the Guarantee shall:

1.3 contain a provision, in substitution for the requirements specified in paragraphs 1.5 and 1.6 of Section A and paragraphs 7 and 8 of Section B of the consolidated Order which:

1.3.1 automatically applies to continue the operation of the Guarantee for any building practitioner who during the period of the Guarantee ceases to be registered as a building practitioner or, in the case of an Architect, ceases to be registered as an Architect under the **Architects Act 1991**;

1.3.2 does not contain any requirement for the Building Practitioner at the time of cessation of registration to require such continuation of operation of the Guarantee nor pay any consideration for the provision of such continuation of the Guarantee; and

1.3.3 does not contain any term which limits the continuity of operation of the Guarantee to any time less than ten years from the date upon which the Building Practitioner ceases to be registered as a building practitioner;

1.4 contain a provision requiring production for inspection of the Guarantee and/or certification by the Guarantor that the Guarantee issued by it complies with this Order upon request of any person who enters into or proposes to enter into an agreement

with or otherwise engages the Building Practitioner to carry out or perform building works during the period of the Guarantee;

1.5 require the Building Practitioner or, where paragraph 1.2 applies, the said company or firm, and the Guarantor to provide the Registrar, Building Practitioners Board of the State of Victoria, with:

1.5.1 annual confirmation of maintenance of the Guarantee and certification by the Guarantor that the Guarantee issued by it complies with this Order; and

1.5.2 immediate notice of any discharge or proposed discharge of the Guarantee;

1.6 provide that the Building Practitioner or, where paragraph 1.2 applies, the said company or firm, irrevocably authorises the Guarantor and that the Guarantor agrees to pay the amount of any sum payable by the Building Practitioner to another person ("the Claimant") pursuant to:

1.6.1 any judgment or order, including any order for costs, made against the Building Practitioner and/or the said company or firm in civil proceedings issued against them or any of them by the Claimant in respect of liabilities of which the Building Practitioner and/or the said company or firm is entitled to satisfaction under the Guarantee upon production by the Claimant to the Guarantor of an authenticated copy of the said judgment or order;

1.6.2 any agreement between the Building Practitioner and/or the said company or firm and the Claimant in which any claim by the Claimant against the Building Practitioner and/or the said company or firm in respect of liabilities of which the Building Practitioner and/or the said company or firm is entitled to satisfaction under the Guarantee is compromised and liability to pay the said sum is admitted upon

production by the Claimant to the Guarantor of a verified copy of the said agreement as executed by the parties thereto.

2. The Guarantor is an organisation whose assets exceed its liabilities by not less than \$2,000,00 during the period in which the Guarantee is maintained by the Building Practitioner and, in the Minister's opinion, the Guarantor is and is likely to continue to be able to meet its liabilities.

In the event of any inconsistency between the provisions of this Order and the Consolidated Order as to the specifications of the Guarantee, the provisions of this Order shall prevail.

In deciding whether to authorise or reject any application for exemption from the requirement for a Building Practitioner to be covered by liability insurance of the kinds and the extent specified in the Consolidated Order, the Minister may request such further material, documents, financial or other information from the Building Practitioner or, where paragraph 1.2 applies, the said company or firm, and the Guarantor as the Minister deems necessary in order to reach a decision.

Any exemption granted by the Minister pursuant to this Order shall be for a period of one year and may be renewable upon application by the Building Practitioner.

This Order shall have effect from 12 August 1996.

Dated 4 July 1996

ROBERT MACLELLAN
Minister for Planning and Local Government



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