



# Victoria Government Gazette

No. S 90 Thursday 12 May 2005  
By Authority, Victorian Government Printer

## Architects Act 1991

### ARCHITECTS INSURANCE MINISTERIAL ORDER

I, Rob Hulls, Minister for Planning, pursuant to section 17A of the **Architects Act 1991** 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 14 June 2005.

##### 3 Class of architects and definitions

- 3.1 The class of architects required to be covered by insurance under this Order is all architects who are registered under section 11 of the Act and who carry out work as an architect or who intend to carry out work as an architect.

- 3.2 In this Order:

**Act** means the **Architects Act 1991**; 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 The policy of professional indemnity insurance 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 Part V of the **Trade Practices Act 1974** (Commonwealth) or Part 2 of the **Fair Trading Act 1999** or the equivalent provisions of similar legislation in other States or Territories.
- 5.3 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

**SPECIAL**

- (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** 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 4 May 2005

ROB HULLS, MP  
Minister for Planning

---

This page left blank intentionally

This page left blank intentionally

This page left blank intentionally

## **craftsmanpress**



The *Victoria Government Gazette* is published by The Craftsman Press Pty Ltd with the authority of the Government Printer for the State of Victoria

© State of Victoria 2005

This publication is copyright. No part may be reproduced by any process except in accordance with the provisions of the Copyright Act.

Address all enquiries to the Government Printer for the State of Victoria  
Level 2 1 Macarthur Street  
Melbourne 3002  
Victoria Australia

### **How To Order**

	<b>Mail Order</b>	<b>Craftsman Press Pty Ltd</b> 125 Highbury Road Burwood 3125 DX – 32510 Burwood
	<b>Telephone</b>	(03) 9926 1233
	<b>Fax</b>	(03) 9926 1292
	<b>email</b>	gazette@craftpress.com.au
	<b>Retail &amp; Mail Sales</b>	<b>Information Victoria</b> 356 Collins Street Melbourne 3000
	<b>Telephone</b>	1300 366 356
	<b>Fax</b>	(03) 9603 9920
	<b>Retail Sales</b>	<b>City Graphics</b> Level 1 520 Bourke Street Melbourne 3000
	<b>Telephone</b>	(03) 9600 0977
	<b>Fax</b>	(03) 9600 0989

**Price Code A**