

Ministerial Insurance Order - *Required Insurance for Accredited Building Practitioners 2008* approved on 15 July 2008. Published in the Tasmanian Government Gazette on 30 July 2008 and effective 30 August 2008. This document incorporates Order amendments dated 10 November 2008 and 11 May 2011.

Building Act 2000
Ministerial Insurance Order
Required Insurance for Building Practitioners 2008

I. Purpose and effect of this Order

Pursuant to section 48 of the *Building Act 2000*, the following Order requires accredited building practitioners in the categories in Column 1 of the Table below to be covered by insurance. Specified in Column 2 of the Table is the kind of insurance by which they are required to be covered under Part 4 of the Act.

<i>Column 1</i>	<i>Column 2</i>
Building Practitioner Category	Type of required insurance
Building Surveyor	Professional Indemnity in Part A.
Assistant Building Surveyor	Professional Indemnity in Part A.
Architect	Professional Indemnity in Part A.
Engineer	Professional Indemnity in Part A.
Civil Designer	Professional Indemnity in Part A.
Building Designer	Professional Indemnity in Part A; or only ⁽¹⁾ Contract Works as specified in Part C.
Building Services Designer	Professional Indemnity in Part A.
Construction Manager	Professional Indemnity in Part A.
Builder	Contract Works in Part C and Public Liability in Part B.
Fire Protection Services Builder	Contract Works in Part C and Public Liability in Part B.
Demolisher	Public Liability in Part B.

- (1) A Building Designer (Restricted, Limited or Domestic) whose accreditation is limited to designs for works which are to be built by that person as an accredited Builder (Low Rise, Medium Rise or Open) is not required to have Professional Indemnity Insurance.

2. Interpretation

In this Order:

“Act” means the *Building Act 2000*;

“Company, firm or authority” includes a council, municipal or other statutory authority or body and an Agency or Department of the Crown.

3. Commencement of Order and effect

This Order commences one month after the date of publication in the *Gazette*. Any act performed, or anything done pursuant to the revoked Order shall not be invalidated or otherwise rendered unenforceable by reason of its revocation.

4. Requirement to be covered by insurance

- 4.1. To comply with section 23 of the Act an accredited building practitioner must be covered by a policy of insurance of the kind and in the amounts specified in the Table and Parts A - C of this Order.
- 4.2. To comply with section 49 of the Act an accredited building practitioner is covered by the required insurance if they:
 - (a) hold the required insurance; or
 - (b) the building work carried out by or on the behalf of the accredited practitioner is covered by the required insurance.

A – Professional Indemnity Insurance

A1 Liability to be Covered

- A.1.1 The policy shall indemnify the building practitioner against legal liability resulting from any claim or claims first made against the building practitioner during the period of insurance and first notified to the insurer during such a period and arising out of any act, error or omission on the part of the building practitioner in the conduct of the building practitioner’s business as a building practitioner, or in relation to a company, firm or authority conducting the business of a building practitioner of which the building practitioner is a director, partner or employee.
- A.1.2 The policy is required to provide indemnity against legal liability in respect of claims for damages or compensation made against the building practitioner from misleading or deceptive conduct or conduct which is likely to mislead or deceive under sections 18, 29, 60 and 61 of Schedule 2 of the Competition and Consumer Act 2010 (Commonwealth) but excluding any claims arising from dishonest, fraudulent, malicious or criminal conduct.

A2 Amount and Period of Insurance

- A2.1 The policy can specify a limit for any one claim and in the aggregate for any one period of insurance for building practitioners accredited in the categories in the table below of not less than the amount listed:

Category of Building Practitioner	Amount
Building Surveyor	\$1 million
Assistant Building Surveyor	\$1 million
Architect	\$1 million
Engineer	\$1 million
Civil Designer	\$1 million

Building Designer – <i>Restricted</i>	\$1 million
Building Designer – <i>Limited</i>	\$750,000
Building Designer – <i>Domestic</i>	\$500,000
Building Services Designer – <i>Restricted</i>	\$1 million
Building Services Designer – <i>Limited</i>	\$750,000
Building Services Designer – <i>Domestic</i>	\$500,000
Construction Manager – <i>Open</i>	\$1 million
Construction Manager – <i>Medium Rise</i>	\$750,000
Construction Manager – <i>Low Rise</i>	\$500,000

A.2.2 If a building practitioner accredited in one of the categories listed in A.2.1 is employed or appointed by a company, firm or authority he shall be deemed to comply with this Order to the extent that his work in the building industry is carried out pursuant to such employment or appointment if the company, firm or authority's professional indemnity policy specifically extends to that category of the building practitioner.

A3 Mandatory Provisions

A3.1 The policy may name as the insured either the building practitioner or the company, firm or authority of which the building practitioner is a director, partner or employee. If the insured is the company, firm or authority the policy must provide indemnity to:

- (a) persons who are at the commencement of or become during the period of insurance directors, partners or employees of the company, firm or authority and are accredited building practitioners in categories to which Part A applies.
- (b) persons who are former directors, partners or employees of the company, firm or authority and who are or have been accredited building practitioners in categories to which Part A applies, in respect of acts, errors or omissions committed or allegedly committed whilst they were directors, partners or employees of the company, firm or authority.

A3.2 The policy is required to contain at least one automatic reinstatement extension.

A.4 Standard Exclusions

A.4.1 Nothing in this Order prevents an approved professional indemnity policy from containing exceptions and exclusions (not inconsistent with this Order) of a kind that, in accordance with standard practice, are generally included in policies of the same kind.

A.5 Allowable Limitations

A 5.1 The policy can impose a limitation on claims in accordance with section 255 of the *Building Act 2000*, which provides that a building action cannot be brought after a period of 10 years starting on the date on which the cause of the action first accrues.

A.6 Other Matters

A.6.1 The policy is required to be compatible with section 49 of the *Building Act 2000* and sections 20, 48, 49 and 51 of the *Insurance Contracts Act 1984* (Cth).

- A.6.2 This Order shall not apply to a building practitioner who is covered by a policy which was current prior to the date upon which this Order takes effect which substantially complies with Part A2 of this Order.
- A.6.3 For the purposes of complying with this Order it is not necessary that the insurance be provided by one policy only, or that the insurance be provided by one insurer only, provided that this Order is complied with.
- A.6.4 The policy may provide a greater insurance cover than that required by this Order.
- A.6.5 The indemnification of officers and servants of the State of Tasmania provided under the *State Service Act 2000* Ministerial Direction No. 8 of 1st July 2003, satisfies the requirements of this Part.

B – Public Liability Insurance

B.1 Liability to be Covered

- B.1.1 The policy is required to provide indemnity in respect of all claims which the building practitioner becomes 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, firm or authority of which the building practitioner is a director, partner or employee.
- B.1.2 The policy is to include construction liability cover for damage to existing property where the building practitioner has physical or legal control.

B.2 Amount and Period of Insurance

- B.2.1 The policy can limit indemnity for any one claim during any one period of insurance to not less than \$5 million.
- B.2.2 The policy shall include in addition to the limit of indemnity, 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 to 20% of the limit of indemnity.

B.3 Mandatory Provisions

- B.3.1 The policy may name as the insured either the building practitioner or the company, firm or authority of which the building practitioner is a director, partner or employee provided that where the insured is a company, firm or authority the policy shall provide indemnity to persons who are at the commencement or who become during the period of insurance directors, partners or employees of the company, firm or authority and are accredited building practitioners in categories to which Part B applies.

B.4 Standard Exclusions

- B.4.1 Nothing in this Order prevents an approved public liability policy from containing exceptions and exclusions (not inconsistent with this Order) of a kind that, in accordance with standard practice, are generally included in policies of the same kind provided always that the policy 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 by or on behalf of the insured, or any vibration, or any removal or weakening of support caused thereby.

B.5 Other Matters

- B.5.1 This Order shall not apply to a building practitioner who is covered by a public liability insurance policy which was current prior to the date upon which this Order takes effect which substantially complies with Parts B.1 and B.2 of this Order.
- B.5.2 For the purposes of complying with this Order it is not necessary that the insurance be provided by one policy only, or that the insurance be provided by one insurer only, provided that this Order is complied with.
- B.5.3 The policy may provide a greater insurance cover than that required by this Order.
- B.5.4 The indemnification of officers and servants of the State of Tasmania provided under the *State Service Act 2000* Ministerial Direction No. 8 of 1st July 2003, satisfies the requirements of this Part.

C – Contract Works Insurance

C.1 Interpretation

In this Part:

“Construction Period”

The Policy will indemnify the Persons Insured against unforeseen physical loss or damage to the Contract Works during the Construction Period.

“Contract Works” shall mean works of engineering construction or mechanical installation or erection, including formwork, falsework, temporary works, temporary buildings, scaffolding, hoardings, principal supplied or free-issue materials, materials for incorporation in the works, and additions and alterations to or refurbishment of pre-existing buildings and structures.

“Contract Works Insurance” includes insurance policies of a type that comply with this Order including those policies commonly known as Construction Insurance.

“Maintenance Period”

A period specified in the insured Contract, commencing at the expiry of the Construction Period. Where a Maintenance Period is required by the construction Contract conditions, the Persons Insured will be indemnified against unforeseen physical loss of, or damage to, the Contract Works from any cause, not otherwise excluded, and which:

- (a) manifests itself during the Maintenance Period and
- (b) originates from:
 - (i) a cause (unless excluded) occurring and arising out of the Contract Works carried out by the Persons Insured during the Construction period and at the Contract Site; or
 - (ii) an act or omission of any of the Persons Insured during the course of operations carried out by such Persons Insured in complying with the requirements of a defects policy or Maintenance provisions of the contract.

“Persons Insured” shall mean:

- the principal, and
- the head contractor or principal contractor, and
- the accredited building practitioner, and
- any director, partner, officer or employee of any of the Persons Insured, but only for liability incurred by them while acting within the scope of their duties in such capacity, and
- subcontractors of Persons Insured, (excluding professional consultants) being a legal entity with whom the Persons Insured have entered into a sub-contract or sub agreement for any part of the Contract Works, but only to the extent required for such sub-contract or sub agreement.

“Sum Insured”

The policy of contract works will insure as a minimum, the value of the works with allowance for removal of debris and professional fees as described in clause C.2.2 of this Part.

C.2 Liability to be Covered

C.2.1 The policy of Contract Works will indemnify the Insured against unforeseen physical loss of or damage to any Contract Works insured under a policy, from any cause (unless of a type excluded), occurring during the period of insurance at the Contract Site (or elsewhere including transit, if permitted by the individual policy) during the Construction Period, and any Maintenance Period.

C.2.2 Following loss or damage indemnifiable under C.2, the policy shall provide for costs and expenses necessarily incurred for:

- (a) Demolition of damaged Contract Works and removal of debris;
- (b) Professional fees necessarily incurred by the Persons Insured in reinstatement of the Contract Works.

C.3 Standard Exclusions

C.3.1 Nothing in this Order prevents a Contract Works Insurance policy from containing exceptions and exclusions (not inconsistent with this Order) of a kind that, in accordance with standard practice, are generally included in Contract Works Insurance policies.

C.3.2 The policy can exclude:

- (a) the cost of making good fair wear and tear or gradual deterioration but shall not exclude the loss or damage resulting therefrom;
- (b) the cost of making good faulty design, workmanship and materials but shall not exclude the loss or damage resulting therefrom;
- (c) consequential loss of any kind, but shall not exclude loss of or damage to the works;
- (d) damages for delay in completing or for the failure to complete the works;
- (e) loss or damage resulting from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel resulting from any cause;
- (f) loss or damage resulting from war, invasion, act of foreign enemies, hostilities,(whether war be declared or not),civil war, rebellion,

revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government or public authority.

C.4 Other Matters

- C.4.1 The policy is required to be compatible with section 49 of the *Building Act 2000* and sections 20, 48, 49 and 51 of the *Insurance Contracts Act 1984* (Cth).
- C.4.2 .The indemnification of officers and servants of the State of Tasmania provided under the *State Service Act 2000* Ministerial Direction No. 8 of 1st July 2003, satisfies the requirements of this Part.

Explanatory Note:

The *Ministerial Insurance Order - Required Insurance for Accredited Building Practitioners 2008* has been made for the following reasons:

- It uses the same terminology as the *Scheme for the Accreditation of Building Practitioners 2008*.
- The *Housing Indemnity Amendment Act 2008* has repealed the mandatory requirement for builders to purchase housing indemnity insurance under the *Housing Indemnity Act 1992*.
- The Ministerial Insurance Order Amendment 2008 was to clarify:
 - that a Building Designer (Restricted, Limited or Domestic) whose accreditation is limited to designs for works which are to be built by that person as an accredited Builder (Low Rise, Medium Rise or Open) is not required to have Professional Indemnity Insurance; and
 - to insert a new Clause B1.2.
- The Ministerial Insurance Order Amendment 2011 was to update references to applicable legislation as the *Trade Practices Act 1974* and the *Fair Trading Act 1990* had been repealed and replaced by the Commonwealth's *Competition and Consumer Act 2010*.