

Public and Products Liability Issued to Eligible Emergency Resource Providers by VMIA

For the period date 30 June 2014 to 30 June 2015

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Public and Products Liability Insurance

THIS POLICY incorporates the Definitions, Exceptions, Memoranda, Conditions, Schedule and Endorsements (if any) and any other terms herein contained which are to be read together and any word or expression to which a specific meaning has been given in any part of this Policy shall bear this meaning wherever it may appear unless such meaning is inapplicable to the context in which such word or expression appears.

WHEREAS the Insured carrying on the Business described in the Schedule hereto has made to the Victorian Managed Insurance Authority (hereinafter called "the VMIA") a written proposal and declaration and/or representations which shall be the basis of this contract and deemed to be incorporated herein and the particulars therein set forth in all cases shall be deemed to be furnished by the Insured for the indemnity hereinafter contained.

NOW THIS POLICY WITNESS that in consideration of the payment of the Premium and subject to the terms, Definitions, Exceptions, Memoranda, Conditions, Endorsements (if any) and Limits of Liability incorporated herein the VMIA agrees to indemnify the Insured for all amounts in excess of the Deductible which the Insured shall become legally liable to pay as compensation in respect of Personal Injury and/or Property Damage happening during a Supply Period and during the Period of Insurance within the Geographical Limits and caused by an Occurrence in connection with an Eligible Emergency.

Supplementary Payments

With respect to the indemnity afforded by this Policy the VMIA will:

- (a) defend in the Insured's name and on the Insured's behalf any suit against the Insured alleging such Personal Injury and/or Property Damage and seeking damages on account thereof, even if such suit is groundless, false or fraudulent; and the VMIA may make such investigation, negotiation and settlement of any claim or suit as it deems expedient; but the VMIA shall not be obliged to pay any claim or judgment or to defend any suit after the applicable limit of the VMIA's liability has been exhausted by payment of judgments or settlements;
- (b) pay all expenses incurred by the VMIA, all costs taxed against the Insured in any such suit and all interest accruing after entry of judgment until the VMIA has paid, tendered or deposited in court that part of such judgment which does not exceed the limit of the VMIA's liability thereon;
- (c) reimburse the Insured for all reasonable expenses, other than loss of earnings, incurred with the consent of the VMIA;
- (d) pay expenses incurred by the Insured for the rendering of first aid to others at the time of any Occurrence of Personal Injury.
- (e) pay all legal costs incurred by the Insured with the consent of the VMIA for representation of the Insured at:
 - (i) any Coroner's Inquest or Inquiry
 - (ii) any proceedings in any Court in connection with liability insured against by this Policy.

PROVIDED THAT the amounts thus incurred shall not increase the VMIA's Limit of Liability which applies to all amounts paid or payable under this Policy.

Definitions

Wherever used in this Policy, the following terms shall be deemed to have the meanings ascribed to them below:

1. "Insured" means:

an Eligible Emergency Resource Provider and its directors, officers and employees.

2. "Eligible Emergency Resource Provider" means:

- (a) the Commonwealth of Australia and any State of the Commonwealth of Australia other than the State of Victoria, including any agency or instrumentality thereof having an emergency response function; or
- (b) a company or person who supplies, for the purposes of responding to an Eligible Emergency, labour, professional services or Equipment but does not include:
 - (i) a company which or person who, prior to the happening of an Eligible Emergency, is under an obligation (whether contractual or statutory) to supply or make available for reward labour, professional services or Equipment for use in connection with or the purposes of, inter alia, an Eligible Emergency; or
 - (ii) a volunteer emergency worker as defined in s.4 of the *Emergency Management Act 1986*.

3. "Tasking Agency" means:

- (a) the State of Victoria or any agency or instrumentality of the State of Victoria (including a participating body as defined in s.3 of the *Victorian Managed Insurance Authority Act 1996*); or
- (b) a volunteer organisation which is domiciled in the State of Victoria and which has a response or recovery role specified under the Emergency Management Manual Victoria, a Divisional Emergency Response Plan or a Regional Emergency Recovery Plan.

4. "Supply Period" means:

in relation to each Insured the period during which that Insured supplies or makes available, pursuant to a request by or on behalf of a Tasking Agency, labour, professional services or Equipment which is or are under the control and direction of a Tasking Agency for the purposes of responding to an Eligible Emergency. The Supply Period begins when the Insured supplies or makes available the labour, professional services or Equipment and ends when the personnel providing the labour, services and/or the Equipment return to the Insured's usual place of business or cease to be under the control and direction of a Tasking Agency, whichever is the earlier.

5. "Eligible Emergency" means:

an emergency of a kind referred to in Column 1 of the Table of Control Agencies for emergency response in Part 6 of the Emergency Management Manual Victoria, the response to which is handled by a Tasking Agency, and which emergency is due to the actual or imminent happening of an occurrence or the manifestation of circumstances which harms or endangers or threatens to harm or endanger the safety or health of persons in Victoria or which destroys or damages or threatens to destroy or damage property in Victoria or an element of the Victorian environment. For the purpose of this insurance "Eligible Emergency" includes subsequent urgent post event activities where insurance cover is not otherwise available.

6. "Equipment" means:

plant, (including scaffolding, temporary structures and portable buildings), machinery and equipment.

7. "Personal Injury" means:

- (a) bodily injury, death, sickness, disease, disability, shock, fright, mental anguish and/or mental injury including loss of services resulting therefrom;
- (b) wrongful entry or wrongful eviction or other invasion of privacy;
- (c) assault and battery not committed by or at the direction of the Insured unless committed for the purpose of preventing or eliminating danger to persons or property.

8. "Property Damage" means:

- (a) physical loss or destruction of or damage to tangible property which occurs during the Period of Insurance, including the loss of use thereof at any time resulting therefrom; or
- (b) loss of use of tangible property which has not been physically lost, destroyed or damaged provided such loss of use is caused by an Occurrence during the Period of Insurance.

9. "Occurrence" means:

an event, including continuous or repeated exposure to substantially the same general conditions, which results in Personal Injury and/or Property Damage neither expected nor intended from the standpoint of the Insured. All Occurrences of a series consequent on or attributable to one source or original cause shall be deemed one Occurrence.

In respect of claims in regard to disease, one event shall mean a series of individual insured losses attributable to the same disease. The disease shall be defined by the World Health Organisation (WHO). However, where there is no such definition, it shall be as defined by a competent Local Health Authority. All individual insured losses shall be aggregated into one single loss and the date of occurrence for such losses shall be the date of the first insured loss. However, no aggregation shall include losses that occur later than 6 months from the expiry of the policy. One event is deemed to end when no new loss occurs for more than 30 days from the last individual insured loss.

10. "Medical Persons" means:

medical practitioners, medical nurses, dentists and first aid attendants.

11. "Public Liability" means:

the Insured's legal liability for Personal Injury and/or Property Damage, caused by an Occurrence in connection with the Business, other than Products Liability as hereinafter defined.

12. "Products Liability" means:

the Insured's legal liability for Personal Injury and/or Property Damage arising out of the Insured's Products or reliance upon a representation or warranty made at any time with respect thereto, but only if the Personal Injury or Property Damage occurs after physical possession of such products has been relinquished to others.

13. "The Insured's Products" means:

anything manufactured, grown, extracted, altered, treated, produced, processed, sold, supplied, distributed, imported, exported, repaired, serviced, installed, assembled, erected or constructed by or on behalf of the Insured, including packaging or containers, in the course of the Business and after it has ceased to be in the possession or under the control of the Insured, and any other thing the Insured is "deemed" to have manufactured.

14. The "Geographical Limits" means:

anywhere in the State of Victoria or elsewhere in Australia but only while travelling to or from an Eligible Emergency happening in the State of Victoria.

15. "Vehicle" means:

any type of machine on wheels or on self-laid tracks made or intended to be propelled by other than manual or animal power and any trailer or other attachment made or intended to be drawn by any such machine.

16. "Watercraft" means:

any vessel craft or thing made or intended to float on or in or travel on or through water.

17. "Aircraft" means:

any craft or object designed to travel through air or space.

18. "Bushfire" means:

fire, the initial effect of which is destruction of or damage to natural vegetation (which term shall include trees).

Exceptions

The VMIA shall not be liable for claims in respect of:

- (a) Personal Injury sustained by any employee or any deemed employee of the Insured arising out of and in the course of employment in the Insured's business under contract of service, apprenticeship or deeming provision of any legislation:
 - (i) to the extent the Insured is liable under any Workers' Compensation Statute or Regulation and for which the relevant Workers Compensation or Employers Indemnity policy will respond to any claim. In the event that an employee, deemed employee or any person in the service of the Insured is injured in non-working hours whilst in or on property owned, occupied or used by the Insured this shall not be deemed to be an event arising out of employment by the Insured, but only to the extent to which it does not form a claim under the Insured's Workers Compensation or Employers Indemnity Policy.
Provided that this exception (a)(i) shall not apply:
 - 1. to any person whilst undertaking voluntary work for the Insured;
or
 - 2. with respect to liability of others assumed by the Insured under a written contract.
 - (ii) relating to Employment Practices. For the purpose of this exclusion (a)(ii), "Employment Practices" shall mean any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, sexual harassment or discrimination in respect of employment by the Insured.
- (b) damage to property owned by the Insured;

- (c) damage to the Insured's Products if such damage is caused by any defect therein or the harmful nature or unsuitability thereof but this Exclusion shall be restricted to the defective or harmful or unsuitable part of the Insured's product and shall not apply to any resultant damage caused to the remainder of such product.
- (d)
 - (i) the cost of making any refund on the price paid for any of the Insured's Products;
 - (ii) the cost of or damages claimed in relation to the withdrawal, recall, inspection, repair, replacement or loss of use of the Insured's Products if such products are withdrawn from the market or from use because of any known or suspected defect or deficiency therein;
 - (iii) the cost of performing, completing, correcting or improving any work undertaken by the Insured;
- (e) Personal Injury and/or Property Damage arising out of the ownership, possession or use by the Insured of any Vehicle in respect of which at the time of the Occurrence giving rise to any claim, insurance would have been provided by virtue of any Act or Ordinance relating to the use of any motor Vehicle:

Notwithstanding this Exclusion the Policy will provide indemnity for Personal Injury and/or Property Damage:

- (i) Caused by or arising from the delivery or collection of goods to or from any Vehicle where such Personal Injury or Property Damage occurs beyond the limits of any carriageway or thoroughfare;
 - (ii) Arising out of the loading or unloading of or the delivery or collection of goods from any Vehicle used in work undertaken by or on behalf of the Insured but not in the physical or legal control of The Insured;
 - (iii) Arising out of the use of any Vehicle as a tool of trade;
 - (iv) Arising from the use of any Vehicle (other than registered vehicles owned or used by or on behalf of the Insured) in the physical or legal control of the Insured where such occurs in a car park owned or operated by the Insured;
 - (v) Arising from any Vehicles requiring registration and/or compulsory liability Insurance but only to the extent that such indemnity is not provided under any statutory compulsory liability insurance. Insurance is further provided where there has been an accidental or erroneous failure to maintain registration or statutory compulsory liability insurance.
 - (vi) Arising from damage to any bridge, weighbridge, road or anything beneath caused by the weight of any vehicle or trailer or of the load carried thereon.
 - (vii) Arising from any unregistered vehicles, owned, operated or for which the insured is responsible, other than whilst being used on a public street or road (which is defined as, any land opened or dedicated as a public road under any Act or law, including any bridge, tunnel, culvert, causeway or ford).
- (f) Personal Injury or Property Damage caused by or arising out of or in connection with:
- The ownership, maintenance, use or operation, loading or unloading by or on behalf of the Insured of:
- (i) any Watercraft whilst afloat or any conveyance designed to travel on water supported by air pressure. This Exclusion (f) (i) shall not apply to:
 - 1. Watercraft whose length does not exceed 8 meters;

2. Operations by independent contractors for whom the Insured is held liable.
 - (ii) Any Aircraft.
 - (g) (i) any consequences of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power;
 - (ii) any legal liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from:
 1. ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
 2. the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
 3. nuclear weapons material.
 - (h) Products Liability where such liability has been assumed by the Insured under any contract or agreement, except to the extent that such liability would otherwise have attached notwithstanding such contract or agreement; but this exception shall not apply to those written contracts designated in the Schedule nor to liability assumed by the Insured under a warranty of the fitness or quality of the Insured's Products;
 - (i) any breach of duty owed in a professional capacity, including errors and omissions, by the Insured and/or persons for whose breaches of such duty the Insured may be legally liable;
but this exception shall not apply to:
the rendering of or failure to render professional medical advice or dental advice by Medical or dental Persons employed by the Insured to provide first aid on the Insured's premises provided that such premises do not include a hospital, community health centre, nursing home, Ambulance or other premises where the Insured's primary occupation involves medical or dental treatment.
 - (j) (i) any liability for Personal Injury and/or Property Damage directly or indirectly arising out of the discharge, dispersal, release or escape of Pollutants into or upon land, the atmosphere or any water course or body of water;
 - (ii) the cost of removing, nullifying or cleaning up Pollutants;
- Provided that this exception shall not apply if such discharge, dispersal, release or escape is caused by a sudden, identifiable, unintended and unexpected event which takes place in its entirety at a specific time and place.
- Provided further, however, that in respect of the United States of America/ Canadian jurisdiction, this Policy will not cover any liability for:
1. Personal Injury or Bodily Injury, or loss of, damage to or loss of use of property directly or indirectly caused by seepage, pollution or contamination
 2. the cost of removing, nullifying or cleaning-up seeping, polluting or contaminating substances
 3. fines, penalties, punitive or exemplary damages.
- "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant including (but not limited to) smoke, vapours, soot, fumes, acids, alkalis, chemicals and waste. "Waste" includes material to be recycled, reconditioned or reclaimed.

- (k) liability arising out of the publication of a libel or other defamatory or disparaging material or the utterance of a slander;
- (l) Personal Injury and/or Property Damage caused by or arising out of any of the Insured's Products manufactured specifically for and installed in any Aircraft or caused by or arising out of products which the Insured knew would be so installed where such products are essential to the operation and/or navigation of such Aircraft;
- (m) liability for Personal Injury or Property Damage (including loss of use of property) directly caused by or arising from:
 - (i) Mining, processing, transportation, distribution and/or storage of asbestos,
 - (ii) Manufacture of asbestos products or processing material containing asbestos,
 - (iii) Any process of removal, decontamination, treatment or control of asbestos;

Item (iii) shall only apply to liability arising in consequence of inhalation of asbestos fibre or damage to or loss of use of property due to the presence of asbestos.
- (n) Personal Injury and Property Damage arising from the operation of trains and trams within the State of Victoria (which includes passenger liability outside the State of Victoria);
- (o) liability for punitive and exemplary damages;
- (p) loss of use of tangible property which has not been physically injured or destroyed caused by:
 - (i) a delay in or lack of performance by or on behalf of the Insured of any contract or agreement, or
 - (ii) the failure of the Insured's products to meet the level of performance, quality, fitness or durability warranted or represented by the Insured;

but this exclusion does not apply to loss of use of other tangible property arising out of the sudden and accidental physical injury to or destruction of the Insured's Products or work performed by or on behalf of the Insured after such products or work have been put to use by any person or organisation other than an Insured;
- (q) liability arising from any condition directly or indirectly caused by or associated with Human T-Cell Lymphotropic Virus type 111 (HTLV 111) or Lymphadenopathy Associated Virus (LAV) or the mutants derivatives or variations thereof or in any way related to Acquired Immune Deficiency Syndrome or any syndrome or condition of a similar kind howsoever it may be named.
- (r) the medical or dental treatment (or failure to medically or dentally treat) any person, including consultation, advice, examination, transportation and also the nursing thereof. Such treatment refers to both traditional and non-traditional medicine and/or dentistry.

This exclusion shall also apply to claims arising out of the use of the Insured's Products provided to any person in the course of medical or dental treatment or nursing activities.
- (s) loss, injury, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any Act of Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

Act of Terrorism means an act, including but not limited to the use of force or violence and/or threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisations(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This exclusion also applies to loss, injury, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any Act of Terrorism.

If the VMIA alleges that by reason of this exclusion, any loss, injury, damage, cost or expense is not covered by this Policy the burden of proving the contrary shall be upon the Insured.

In the event any portion of this exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

- (t) This policy shall not apply to any liability directly or indirectly caused by or alleged to be caused by or contributed to, in whole or in part, by or arising out of the presence, ingestion, inhalation or absorption of or exposure to silica products, silica fibres, silica dust or silica in any form, or to any obligation of the insured to indemnify any party because of Personal Injury or Property Damage arising out of the presence, ingestion, inhalation or absorption of or exposure to silica products, silica fibres, silica dust or silica in any form.
- (u) Personal injury and/or property damage caused by or arising out of the use of or authorisation of Dieldrin.

Memoranda

Except to the extent that this Policy is hereby modified under the following Memoranda, the terms, Conditions, Exceptions and other provisions of this Policy shall apply.

1. Policy Jacket

Wherever this Policy is contained in the VMIA's own policy jacket, then the wording of this Policy shall be deemed to replace all the terms, conditions and exclusions contained in the said jacket.

2. Cross Liability

The inclusion of more than one person or organisation as Insured under this Policy shall not in any way affect the rights of any such person or organisation either as respects any claim, demand, suit or judgment made or in favour of any employee of such other Insured or otherwise it being the intent of this Policy to protect such person or organisation covered as Insured in the same manner as though a separate policy had been issued to each person or organisation.

Nothing contained in this memorandum shall operate to increase the VMIA's Limits of Liability as stated herein.

3. Waiver of Subrogation Rights

Notwithstanding anything contained herein to the contrary VMIA waives all rights of subrogation against all parties comprising the Insured and others who have contractually bound the Insured to waive such rights.

VMIA also waives all rights of subrogation against any employee or member of the Insured's family unless the conduct of such persons which gave rise to an occurrence was serious or wilful misconduct.

Conditions

1. Insured's Duties In The Event Of An Occurrence, Claim Or Suit

- (a) In the event of an Occurrence (or the likelihood of an Occurrence) the Insured shall immediately, at its own expense, take all reasonable steps to prevent Personal Injury and/or Property Damage arising or continuing out of such Occurrence.
- (b) Whenever the Insured has information from which the Insured may reasonably conclude that an Occurrence covered hereunder involves injuries or damages which, in the event that the Insured be held liable, is likely to involve this Policy, notice shall be given by or on behalf of the Insured to the VMIA or any of its authorised agents as soon as practicable.

Provided, however, that failure to give notice of any Occurrence which at the time of its happening did not appear to involve this Policy, but which at a later date would appear to give rise to any claim(s) or liability hereunder, shall not prejudice such claim(s).

2. Application of Insured's Deductible

For the purpose only of determining the application of the Insured's Deductible with respect to liability for Personal Injury and/or Property Damage arising out of Bushfire Liability it is agreed that:

All related or unrelated Bushfires which occur during any Period of one hundred and sixty eight (168) hours shall be considered as one Occurrence.

3. Fraudulent Claim

If any claim be in any respect fraudulent or if any fraudulent means or devices be used by the Insured or anyone acting on behalf of the Insured to obtain any benefit under this Policy, the VMIA may deny liability in respect of such claim and may cancel this Policy as hereinafter provided.

4. Inspection of Premises

The VMIA shall be permitted but not obliged to inspect the Insured's property and operations at any time. Neither the VMIA's right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking on behalf of or for the benefit of the Insured or others to determine or warrant that such property or operations are safe.

5. Applicable Law

Should any dispute arise between the Insured and the VMIA over the application of this Policy, such dispute shall be determined in accordance with the laws of the State of Victoria.

6. Observance of Terms and Conditions

The due observance and fulfilment of these Conditions and the other terms of this Policy by the Insured, insofar as the same are capable of being construed as such, are conditions precedent to any liability of the VMIA to make any payment under this Policy.

Privacy Statement

VMIA is committed to protecting your privacy. Any personal information collected, handled, stored or disclosed about you through our services will be managed in accordance with the *Victorian Managed Insurance Act 1996*, *Information Privacy Act 2000* and the *Health Records Act 2001*.

Personal information means information or an opinion that is recorded about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

Collection and use of Personal Information

VMIA will only collect and record personal information via this website if it is provided directly to us and is necessary for us to perform our functions or activities; for example VMIA will need to collect personal information, to send requested information, or to act on feedback provided. In particular, personal information is collected in the following situations:

- when you send us an email
- when you use our online services, such as completing a form electronically
- when you register as a site user
- when you provide feedback by email or by using the feedback form on our website.

Access and Correction

If you:

- want to have access to the personal information (if any) that we hold about you
- want to know more about what sort of information we hold, for what purposes and how we deal with that information
- believe that personal information that we hold about you is not accurate, complete and up to date; or
- have concerns about your privacy rights,

please contact VMIA's Information Privacy Officer on 03 9270 6912.