

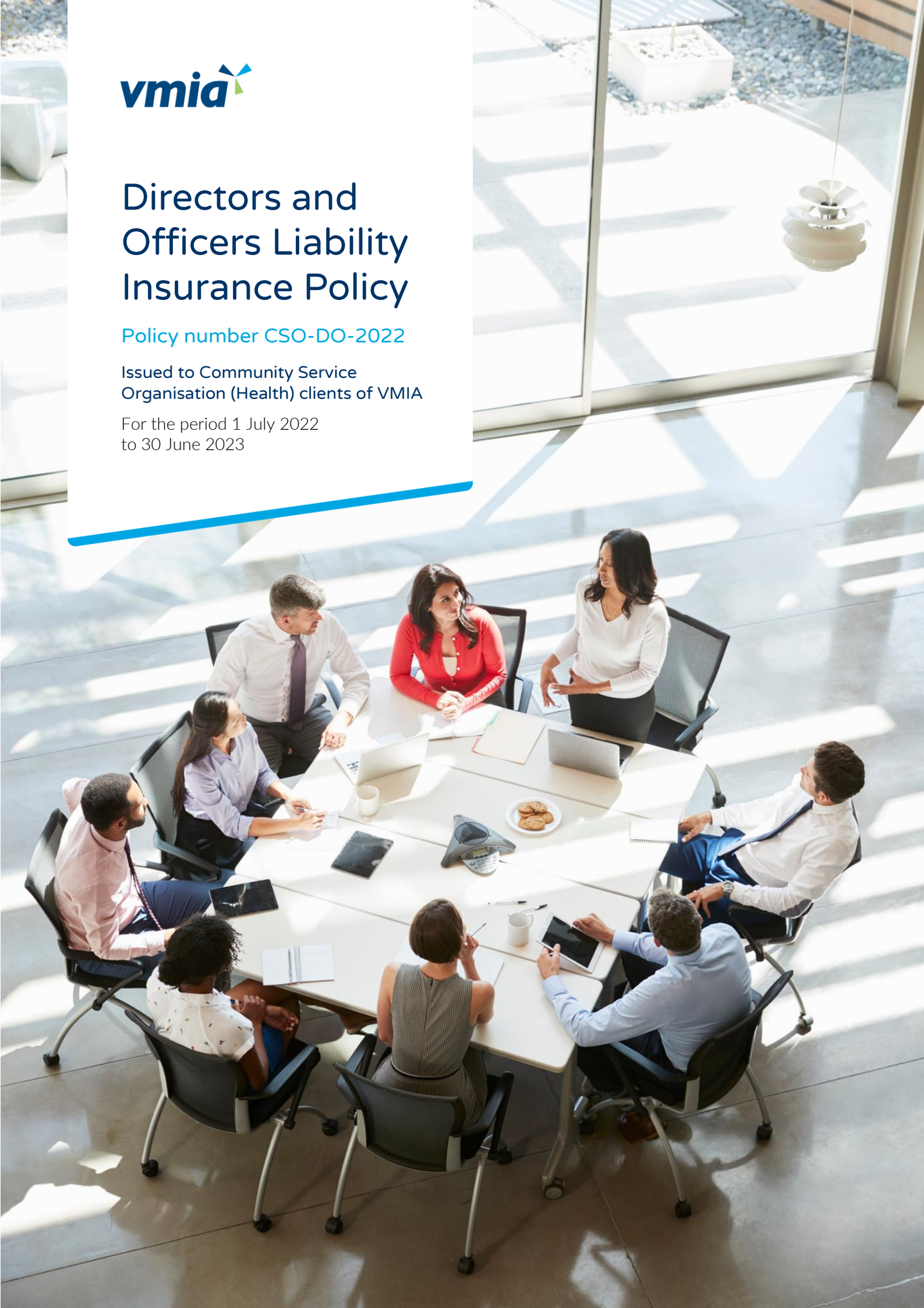


Directors and Officers Liability Insurance Policy

Policy number CSO-DO-2022

Issued to Community Service Organisation (Health) clients of VMIA

For the period 1 July 2022 to 30 June 2023



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**VMIA is the Victorian
Government's insurer
and risk adviser**

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Insurance Authority



Victorian Managed Insurance Authority (VMIA) acknowledges the Traditional Custodians of the land on which we do business and we pay our respects to Elders past, present and emerging. We acknowledge the important contribution that Aboriginal and Torres Strait Islander peoples make in creating a thriving Victoria.

About this Insurance Policy

This **Policy** incorporates the Schedule, Conditions, Exclusions, Definitions and Endorsements (if any) and any other terms herein (**Policy**) 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.

The Victorian Managed Insurance Authority (VMIA) is a **Statutory Authority** established under section 5 of the Victorian Managed Insurance Authority Act 1996 (Vic) (VMIA Act). Its functions, as set out in section 6 of the VMIA Act, include acting as an insurer for, or providing insurance services to, Government Departments and participating bodies.

The **Named Insured** are eligible community based organisations receiving funding from Victorian Government.

In addition to providing funding to the **Named Insured**, the Victorian Government has undertaken to arrange Directors and Officers insurance on behalf of the **Named Insured** via its insurer, VMIA.

This **Policy** sets out the insurance the Victorian Government has arranged for the **Named Insured** through VMIA

Schedule

Policy Number:	CSO-DO-2022	
Named Insured:	State Government of Victoria funded Community Service Organisations	
Organisation:	As declared on the Certificate of Currency	
Period of Insurance:	From: 01 July 2022 at 12:00:01am Australian Eastern Standard Time To: 30 June 2023 at 11:59.59pm Australian Eastern Standard Time	
Limit of Liability:	\$20,000,000 any one Claim and in the aggregate in anyone Period of Insurance per Organisation, subject to non-accumulation and Sub-limits, inclusive of legal costs and expenses	
Number of Reinstatements:	Unlimited	
Sub-limits:	Benefit	Sub-Limit
	Employment Practices Violation Sub-limit	The Policy Limit of Liability
	Protection of Freedom	\$1,000,000
	Protection of Assets	\$1,000,000
	Public Media Expenses	\$250,000
	Fines and Penalties	\$5,000,000
	Pollution Liability	\$1,000,000
Deductible:	Officer – Nil Public Body – Nil Employment Practices Violation – Nil Pollution Liability Claim – Nil	
Retroactive Date:	1 January 1992 excluding known Claims and circumstances	
Territorial Limit:	Anywhere in Australia as per clause 4.1	

For and on behalf of

Victorian Managed Insurance Authority



Angela Kelly
Chief Insurance Officer

Dated: 01 July 2022

1. Indemnity

Subject to all the terms and conditions of this **Policy** (including, without limitation, clause 3.3 in relation to the aggregate **Limit of Liability**, any applicable **Sub-limits**, the exclusions, the schedule and any endorsements), the Authority provides the indemnity set out in sections 1 and 2 of this **Policy** in accordance with the indemnity under the VMIA Act.

Where a liability of the **Officer** falls within clause 1.1.1 and one or more other clauses in sections 1 or 2 of this **Policy**, the Authority's obligation to indemnify the **Officer** shall be determined by the clause which more specifically deals with that type of liability and is subject to any qualifications, conditions, exceptions or restrictions in that clause.

1.1. Indemnity for Officer and Entity Liability

- 1.1.1 VMIA will indemnify the **Officer** against any amount the **Officer** becomes legally liable to pay in respect of a **Claim** made against him or her as an **Officer** of the **Named Insured**, except to the extent the **Officer** has been indemnified by the **Named Insured** for such legal liability.
- 1.1.1.1 subject to sub clauses 1.1.1.3 and 1.1.1.4 and sections 3, 4, 5 and 6 of this **Policy** VMIA will indemnify the **Named Insured** against any amount the **Named Insured** becomes legally liable to pay in respect of a **Claim** made against it in relation to a liability incurred by an **Officer** whilst acting in their capacity as an **Officer** of the **Named Insured**
- 1.1.1.2 in addition to clause 1.1.1.1, but subject to sub clauses 1.1.1.3 and 1.1.1.4, VMIA will also provide to the **Named Insured** indemnities under clauses 2.1, and 2.2 of section 2 of this **Policy** in excess of the amounts payable under clause 1.1.1.1
- 1.1.1.3 for the purposes of this clause 1.1.1, references to **Officer** in clauses 2.1, 2.2, and 2.12 of section 2 and sections 3, 4, 5 and 6 of this **Policy** shall to the extent consistent with the context be interpreted as a reference to the **Named Insured**
- 1.1.1.4 for the purposes of this cover pursuant to clause 1.1.1 and the avoidance of doubt, except to the extent the **Named Insured** is entitled to indemnity pursuant to clause 1.2.1 of this **Policy**, the **Named Insured** will not be entitled to indemnity pursuant to clauses 2.8, 2.9 and 2.10 of this **Policy**, and subject to clauses 2.1 and 2.2 of this **Policy** but otherwise notwithstanding anything else to the contrary in the **Policy**, VMIA shall not be liable to make any payment under this **Policy** for:
- a. personal injury or property damage caused by the discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, but this exclusion does not apply if such discharge, dispersal, release or escape arises out of a sudden identifiable, unexpected and unintended happening which takes place in its entirety at a specific time and place during the Period of Insurance. Expenses for the prevention of such contamination or pollution shall also form part of this exclusion and shall not be recoverable under this **Policy**.

This exclusion shall not apply to any liability arising out of the discharge, dispersal, release or escape of legionellae bacteria.
 - b. Fines, penalties, punitive or exemplary damages, taxes, levies, imposts or duties;
- 1.1.2 In addition to clause 1.1.1, except to the extent the **Officer** has been indemnified by the **Named Insured** for such **Professional Fees** or other legal costs or other expenses, VMIA will indemnify the **Officer** for:
- 1.1.2.1 all **Professional Fees** incurred by the **Officer** as an **Officer** of the **Named Insured** in respect of a **Claim** covered by this **Policy**; and
- 1.1.2.2 all other legal costs and other expenses incurred by the **Officer** as an **Officer** of the **Named Insured** that are specifically covered by this **Policy**.
- 1.1.3 The indemnity in this **Policy** is restricted to the following types of **Claim** and is subject to clause 3.2.1:

OFFICIAL

- 1.1.3.1 a **Claim** that is first made against the **Officer** during the **Period of Insurance**, and is immediately notified to VMIA in writing either during the **Period of Insurance** or within 30 days after it ends; and
- 1.1.3.2 a **Claim** that:
 - a. is first made against the **Officer**, and is immediately notified to VMIA in writing, later than the period set out in clause 1.1.3.1; and
 - b. arises from **Facts** notified to VMIA as soon as practicable after the **Officer** became aware of them, and either during the **Period of Insurance** or within 30 days after it ends.
- 1.1.3.3 For the purpose of clause 1.1.3.2, where a subsequent **Claim** is made after the **Period of Insurance** that is directly related or based on a **Claim** notice of which has previously been provided or on **Facts** previously notified in accordance with this **Policy**, then the **Claim** will be deemed to have been made on the date that the first mentioned **Claim** or **Facts** were notified.
- 1.1.4 Any failure to notify **Facts** to VMIA shall not be deemed to be an omission within the meaning of Section 54 of the Insurance Contracts Act 1984 (Cth).
- 1.1.5 Notwithstanding clause 1.1.3, VMIA will indemnify the **Officer** in accordance with this clause 1.1 in respect of a **Claim** that arises from **Facts** that were known to the **Officer**, but were not notified to VMIA during a previous **Period of Insurance** to the **Period of Insurance** or within 120 days after that previous **Period of Insurance** ended, if:
 - 1.1.5.1 VMIA had agreed to indemnify the **Officer** at the time the **Facts** first became known to the **Officer** ('the previous indemnity period') and has continued to agree to indemnify the **Officer** against such **Claims** from then until the date of actual notification;
 - 1.1.5.2 but for the failure of the **Officer** to notify VMIA during the previous indemnity period, the **Officer** would have been entitled to indemnity from VMIA for the **Claim** during the previous indemnity period;
 - 1.1.5.3 but for the exclusion in clause 4.2.1.6 the **Officer** would be entitled to indemnity for the **Claim** under this **Policy**; and
 - 1.1.5.4 the **Officer** has not committed or attempted to commit fraudulent nondisclosure or fraudulent misrepresentation in respect of the **Claim**.
- 1.1.6 VMIA is only liable to indemnify the **Officer** under clause 1.1.5 to the extent that it would have been obliged to indemnify the **Officer** under the terms of indemnity in effect during the previous indemnity period. VMIA may reduce its liability to the **Officer** by the amount that fairly represents the extent to which VMIA has been prejudiced as a result of the late notification.

1.2. Indemnification of Named Insured

- 1.2.1 VMIA will reimburse the **Named Insured** for any payment made by it in respect of a liability incurred by an **Officer** that the **Named Insured** is required or permitted to indemnify the **Officer** against, and in respect of which the **Officer** would otherwise be entitled to an indemnity under sections 1 or 2 of this **Policy**.

2. Additional indemnities

In addition to section 1 of this **Policy**, VMIA will also provide the following indemnities in excess of any amount otherwise payable under section 1 of this **Policy**:

2.1. Legal costs and other costs and expenses of Investigations and Raids

VMIA will indemnify the **Officer** or reimburse the **Named Insured** to the extent that it has indemnified the **Officer** against reasonable legal costs and other costs and expenses (including reasonable travel, accommodation and meal expenses) incurred by or on behalf of the **Officer** as an **Officer** of the **Named Insured** with VMIA's prior written consent (which consent shall not be unreasonably withheld or delayed) in:

- 2.1.1 responding to, preparing for, attending at or in connection with an Investigation that the Officer becomes aware of during the **Period of Insurance**; and
- 2.1.2 responding to a **Raid**.

2.2. Advancement of legal costs and other costs and expenses and deemed approval of emergency costs

- 2.2.1 Except to the extent that VMIA has denied indemnity, VMIA will within a reasonable time after it receives an invoice containing all of the information requested by it, advance to the **Officer** or the **Named Insured** to the extent that it has indemnified the **Officer**, the **Professional Fees** and legal costs and other costs and expenses (as the case may be) that are covered by clauses 1.1, 1.2, 2.1, 2.3, 2.7, 2.8, 2.9 and 2.10 of this **Policy**, prior to the final resolution of the relevant **Claim, Employment Practices Violation, Investigation** or **Raid** (as the case may be).
- 2.2.2 Any amount advanced under clause 4.1 must be repaid by the **Officer** (or the **Named Insured** if an amount is paid to it) to VMIA in the event and to the extent that it is ultimately determined by VMIA that the amount is not covered by this **Policy**.
- 2.2.3 In determining whether **Professional Fees** or legal costs and other costs and expenses (as the case may be) in respect of a **Claim, Investigation** or **Raid** are not covered by this **Policy**, VMIA may not rely on exclusion 4.2.1.3, 4.2.1.4, 4.2.1.5, 4.2.10 or 4.2.1.11 unless the proviso in that exclusion is satisfied.
- 2.2.4 If there is any dispute between VMIA and the **Officer** or the **Named Insured** on behalf of the **Officer** with respect to the application of this clause, it shall be resolved in accordance with the dispute resolution procedure set out in clause 6.5.
- 2.2.5 If, due to an emergency, VMIA's prior written consent cannot reasonably be obtained if required by this **Policy** before **Professional Fees** or legal costs and other expenses (as the case may be) in respect of a **Claim** or **Raid** are incurred, then VMIA will be deemed to approve such **Professional Fees**, legal costs or other expenses. The total aggregate amount of **Professional Fees** or legal costs or other expenses deemed to be approved and payable as such under this extension is 10% of the **Limit of Liability**.

2.3. Employment Practices Violation

- 2.3.1 If an **Employment Practices Violation Sub-limit** is specified in the Schedule VMIA will indemnify the **Officer** and the **Named Insured** in respect of any **Claim** (including reasonable **Professional Fees**) against it arising out of an **Employment Practices Violation**.

Always provided that:

- 2.3.1.1 The employment violation was committed in good faith by the **Insured**; and
- 2.3.1.2 the **Insured** was not aware of the wrongful nature of such violation and would not have been so aware after making reasonable inquiry, which includes independent external legal advice.

2.4. Presumptive Indemnification

- 2.4.1 In the event and to the extent that the **Named Insured** fails to indemnify an **Officer** due to:
- 2.4.1.1 if the **Named Insured** is a body corporate, **Financial Impairment** of the **Named Insured**; or
 - 2.4.1.2 refusal of the **Named Insured** to indemnify the **Officer**,

and provided the **Named Insured** is permitted by or required by law to indemnify the **Officer**, then VMIA shall indemnify the **Officer** on behalf of the **Named Insured**. The **Officer** will only be liable for the **Deductible** (if any) applicable to the **Officer** and not the **Deductible** (if any) applicable to the **Named Insured**. In the event that the **Named Insured** fails to indemnify the **Officer** due to (if the **Named Insured** is a body corporate) **Financial Impairment** of the **Named Insured** no **Deductible** will be applicable.

2.5. Run off cover

- 2.5.1 If during the **Period of Insurance**:
- 2.5.1.1 this **Policy** is not renewed or replaced with any other directors and officers or managerial liability **Policy**; or
 - 2.5.1.2 the **Named Insured** or that part of the **Named Insured** where the **Officer** performs his or her functions:
 - a. ceases to exist; or
 - b. due to a merger with or acquisition by another **Organisation**, ceases to be the same entity,
- a run off period of 7 years shall be available under this **Policy** with the effect that any **Claim** may be notified during such period for indemnity under section 1 and 2 of the **Policy**. For the avoidance of doubt, such run off cover shall be available to any **Officer** who retired prior to the end of the **Period of Insurance**.
- 2.5.2 The run off period shall commence from the date on which any of the events in clauses 2.5.1.1, or 2.5.1.2 first occurs.
- 2.5.3 Notwithstanding anything else to the contrary in this **Policy** the indemnity provided in clause 2.5.1 shall:
- 2.5.3.1 only apply in respect of acts or omissions of the **Officer** in the capacity as an **Officer** of the **Named Insured** committed prior to the earliest of the events in clauses 2.5.1.1 and 2.5.1.2; and
 - 2.5.3.2 only apply in excess of any other applicable insurance in force available to the **Officer** and of any indemnification provided to the **Officer** by a person other than the **Named Insured**.
- 2.5.4 Where clause 2.5.3.2 applies, the **Officer** must take such steps as VMIA reasonably requests to obtain payment under the relevant **Policy/ies** or indemnification.

2.6. New Officers and change in Control

- 2.6.1 VMIA will automatically indemnify in accordance with this **Policy** a person who becomes an **Officer** of the **Named Insured** and the **Named Insured** to the extent it indemnifies such a person after the commencement of this **Policy**. A separate disclosure to VMIA regarding the new **Officer** is not required during the **Period of Insurance** for this automatic cover to apply.
- 2.6.2 If during the **Period of Insurance** there is a **Trigger Event** in relation to a **Named Insured** then the cover provided under this **Policy** only applies in relation to:
- 2.6.2.1 acts or omissions or matters occurring prior to the **Trigger Event** in respect of that **Named Insured**; and
 - 2.6.2.2 acts or omissions or matters the subject of an **Investigation**, where the act, omission or matter occurred or transpired prior to the **Trigger Event**.

The **Named Insured** shall give VMIA notice of the **Trigger Event** as soon as practicable.

2.7. Spouses, estate and legal representatives

- 2.7.1 VMIA will indemnify in accordance with this **Policy** against any **Claim** brought against:
- 2.7.1.1 the spouse or domestic partner of the **Officer**;
 - 2.7.1.2 the estate or legal representative of the **Officer** if he or she is deceased, mentally incapacitated, bankrupt or otherwise not able to manage his or her own affairs,
- to the extent that the **Claim** is in respect of an act or omission of the **Officer** which **Claim** would, if it had been brought against the **Officer**, have been indemnified under this **Policy**.
- 2.7.2 VMIA will indemnify the spouse or domestic partner of the **Officer** for a **Claim** seeking to enforce a damages award made against marital community property, property jointly held by the **Officer** and the spouse or domestic partner, or property transferred from the **Officer** to the spouse or domestic partner to the extent that the **Claim** is in respect of an act or omission of the **Officer** which **Claim** would, if it had been brought against the **Officer**, have been indemnified under this **Policy**.

2.8. Protection of Freedom

- 2.8.1 VMIA will indemnify the **Officer** and the **Named Insured** to the extent it indemnifies the **Officer** for:
- 2.8.1.1 reasonable legal costs and other expenses to defend, resist or challenge:
 - a. extradition proceedings in any jurisdiction;
 - b. deportation on revocation of previously valid immigration status; or
 - c. custody or restriction of physical freedom by government, police, law enforcement agency or other government, legal or judicial agency;
 - 2.8.1.2 the cost of procuring a guarantee or bond (other than any collateral) for an amount required by a court in connection with a **Claim** indemnified under section 1 or clauses 2.1 or 2.3 of this **Policy**;
 - 2.8.1.3 reasonable fees for counselling or tax advice associated with the events referred to in clauses 2.8.1.1 (a), (b) or (c), incurred by or on behalf of the **Officer** as an **Officer** of the **Named Insured** in connection with a **Claim** indemnified under section 1 or clauses 2.1 or 2.3 of this **Policy** and incurred with VMIA's prior written consent (which shall not be unreasonably withheld or delayed).

Sub-Limit

The total amount payable under this clause 2.8.1 is limited to the **Protection of Freedom Sub-limit** stated in the Schedule.

2.9. Protection of Assets

- 2.9.1 VMIA will indemnify the **Officer** and the **Named Insured** to the extent it indemnifies the **Officer** for reasonable legal costs and other expenses incurred by or on behalf of the **Officer** as an **Officer** of the **Named Insured**:
- 2.9.1.1 in relation to any action or proceedings seeking the revocation of a disqualification of the **Officer** from acting as an **Officer** or an **Executive Officer** of a **Named Insured**;
 - 2.9.1.2 in relation to any action or proceedings seeking the revocation of a disqualification of the **Officer** from acting as an **Executive Officer** of another **Organisation**, which disqualification resulted from a **Claim** that is indemnified under section 1 or clauses 2.1 or 2.3 of this **Policy**; or
 - 2.9.1.3 in defending or resisting any action or proceedings in connection with a **Claim** that is indemnified under section 1 or clauses 2.1 or 2.3 of this **Policy** seeking an order for the freezing of assets or bank accounts, creation of a caveat or a charge over assets or property, confiscation of assets or property, or suspending or limiting access to assets or property of the **Officer**, or in relation to any action or proceedings by the **Officer** seeking the revocation of such an order.

Sub-Limit

The total amount payable under this clause 2.9.1 limited to the **Protection of Assets Sub-limit** stated in the Schedule in the aggregate for all legal costs and other expenses.

2.10. Public Media Expenses

2.10.1 VMIA will indemnify the **Officer** and the **Named Insured** to the extent it indemnifies the **Officer** for reasonable public media costs and expenses incurred by or on behalf of the **Officer** as an **Officer** of the **Named Insured**:

2.10.1.1 in connection with any action or proceedings to extradite the **Officer**; or

2.10.1.2 to mitigate any adverse effect on the **Officer's** reputation following a successful final exoneration or defence of a **Claim**,

in connection with a **Claim** indemnified under section 1 or clauses 2.1 or 2.3 of this **Policy** and incurred with VMIA's prior written consent (which shall not be unreasonably withheld or delayed).

Sub-Limit

The total amount payable under this clause 2.10.1 limited to the **Public Media Expenses Sub-limit** stated in the Schedule in the aggregate for all media costs and expenses.

2.11. Legal representation

2.11.1 Where one or more **Officers** are entitled to legal representation under this **Policy**, and such representation by the same lawyers will cause a material conflict of interest, then the **Officers** shall be entitled to separate legal representation to the extent required to resolve the conflict of interest.

2.12. Indemnity in relation to fines and penalties

2.12.1 Unless prohibited by law, VMIA will indemnify the **Officer** and the **Named Insured** to the extent it indemnifies the **Officer** against legally insurable fines or penalties imposed upon the **Officer** in respect of a **Claim** made, or **Facts** notified, in accordance with section 1.

Sub-limit

The total amount payable under this clause 2.12.1 is limited to the **Fines and penalties Sub-limit** stated in the Schedule in the aggregate for all fines and penalties. For the avoidance of doubt, the Sub-Limit does not apply to **Professional Fees** and legal costs and other expenses incurred in connection with a **Claim** resulting in a fine or penalty, where those **Professional Fees**, costs or expenses are otherwise covered by this **Policy**.

3. Conditions

3.1. Liability only to indemnify excess over other insurance

- 3.1.1 VMIA's liability to indemnify the **Officer** and the **Named Insured** to the extent it indemnifies the **Officer** is restricted to a liability to indemnify (as applicable) the **Officer** or **Named Insured** for the excess over the amount of any indemnity (as applicable) the **Officer** or **Named Insured** is entitled to under any applicable **Policy** of insurance in force available to (as applicable) the **Officer** or **Named Insured** and, where so provided, any indemnification provided to (as applicable) the **Officer** by a person other than the **Named Insured** or to the **Named Insured** by any person. VMIA will however indemnify the **Officer** or **Named Insured** for any self-insured retention that the **Officer** or **Named Insured** is required to pay under such other **Policy** but only for the amount that exceeds the **Officer's** or **Named Insured's** self-insured retention or **Deductible** under this **Policy** (if any).

3.2. Liability only to indemnify excess over other indemnity

- 3.2.1 VMIA is not liable to indemnify the **Officer** to the extent that the **Named Insured** is legally required or permitted to indemnify the **Officer**, and does so.

3.3. Limit of Liability and Deductible

- 3.3.1 The **Limit of Liability** is the total amount payable by VMIA under this **Policy**. Without limitation of the preceding sentence, the **Limit of Liability** is the total amount payable by VMIA in respect of all **Claims** in the aggregate made against **Officers** (or, in the case of alleged **Employment Practices Violations**, **Officers** and **Named Insured** (or either)), in respect of the **Period of Insurance**, including any **Claim** accepted by VMIA pursuant to clause 1.1.3 and any **Professional Fees** or legal costs and other costs and expenses incurred by VMIA under section 1, section 2 and clauses, 5.3 and/ or 5.4 of this **Policy**, and including any payment of a self-insured retention under clause 3.1, and any reimbursement paid under clause 1.2.1. **Sub-limits** of liability are part of and are not payable in addition to the **Limit of Liability**. Consequently, VMIA is only liable to indemnify a particular **Officer** or **Named Insured** or any other person it is liable to indemnify under this **Policy** up to the amount which, with all other amounts VMIA has paid or is liable to pay to or on behalf of **Officers** or **Named Insured** or other persons in respect of the **Period of Insurance**, equals the **Limit of Liability** and VMIA shall have no further obligation to make any additional payments whatsoever under this **Policy**. For the purposes of this clause, a **Claim** is made in respect of the **Period of Insurance** if the **Officer** is entitled to an indemnity in respect of it under clause 1.1.

This clause 3.3.1 is subject to clause 6.4.

- 3.3.2 Only one **Deductible** will be applicable to all **Claims** or **Professional Fees**, legal costs or other expenses covered by sections 1 and 2 of this **Policy** arising out of the same related or repeated series of acts or omissions.

4. Exclusions

4.1. Geographic limitations

- 4.1.1 This **Policy** shall apply to the activities directly connected with the **Named Insured's** business in Victoria. VMIA shall not be liable to make any payment under this **Policy** whatsoever in respect of activities directly connected with the **Insured's** interstate operations unless otherwise agreed and endorsed in writing by VMIA.

4.2. Exclusion of Claims arising from certain conduct or events

- 4.2.1 VMIA is not liable to indemnify the **Officer** or the **Named Insured** in respect of a **Claim** (including, without limitation, **Claims** involving an alleged **Employment Practices Violation**), **Professional Fees** or legal costs or other expenses that would otherwise be covered under sections 1 or 2 of this **Policy** in connection with, arising from or based upon:
- 4.2.1.1 The issue of a prospectus, explanatory memorandum or other document which contains an offer for the issue, sale or transfer of securities, or any information or data obtained, developed or collated in the process of preparing such prospectus, explanatory memorandum or other document or the making of any written or verbal representations in connection with such prospectus, explanatory memorandum or other document.
 - 4.2.1.2 The provision of professional services or the failure to provide professional services in any capacity except that of an **Officer** of the **Named Insured**.
 - 4.2.1.3 The **Officer** gaining a personal profit or advantage or receiving any remuneration to which he or she is not legally entitled, provided that this exclusion shall only apply where the above is established by a judgment or other finding (other than in proceedings brought by or against VMIA) by a court or tribunal with jurisdiction at law to finally determine the matter (including the outcome of any appeal) or by written admission by the **Officer**.
 - 4.2.1.4 The **Officer** improperly benefiting from a securities transaction as a result of using information that is not available to other purchasers and sellers of those securities, provided that this exclusion shall only apply where the above is established by a judgment or other finding (other than in proceedings brought by or against VMIA) by a court or tribunal with jurisdiction at law to finally determine the matter (including the outcome of any appeal) or by written admission by the **Officer**.
 - 4.2.1.5 A dishonest, fraudulent, criminal or malicious act or omission of the **Officer** (whether or not the **Officer** gained or will gain an advantage from it), provided that this exclusion shall only apply where the above is established by a judgment or other finding (other than in proceedings brought by or against VMIA) by a court or tribunal with jurisdiction at law to finally determine the matter (including the outcome of any appeal) or by written admission by the **Officer**.
 - 4.2.1.6 An act or omission or **Facts** that, at the time VMIA issues this **Policy**, the **Officer** or **Named Insured** knows might give rise to a **Claim**.
 - 4.2.1.7 An act or omission or **Facts** notice of which has been provided under any **Policy** in force prior to the first day of the **Period of Insurance** and if such **Policy** covers such **Claim**, including, without limitation, a **Claim** involving an alleged **Employment Practices Violation**, **Professional Fees** or legal costs or other expenses or would cover such but for the exhaustion of limits of liability.
 - 4.2.1.8 Any liability of a person other than an **Officer** for which the **Officer** assumes liability or is called upon to pay pursuant to contract and for which the **Officer** would not have been independently liable apart from contract.
 - 4.2.1.9 Any amount for which the **Officer** incurs liability or is called upon to pay in consequence of any intentional breach of contract by the **Officer** or on his or her behalf, provided that this exclusion shall only apply where the above is established by a judgment or other finding (other than in proceedings brought by or against VMIA) by a court or tribunal with jurisdiction at law to finally determine the matter (including the outcome of any appeal) or by written admission by the **Officer**.

- 4.2.1.10 Any conduct or contravention in respect of which a liability is the subject of a prohibition in section 199B(1) of the Corporations Act 2001 (Cth), provided that this exclusion shall only apply where the above is established by a judgment or other finding (other than in proceedings brought by or against VMIA) by a court or tribunal with jurisdiction at law to finally determine the matter (including the outcome of any appeal) or by written admission by the **Officer**.
- 4.2.1.11 The discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere, or any water course or body of waters unless the discharge, dispersal, release or escape is sudden and accidental.
- This exclusion shall only apply to the part of any **Claim** that exceeds the Pollution Liability Sub-limit, and does not apply to Professional Costs that are otherwise payable in accordance with this **Policy**. The Pollution Liability Sub-limit does not include **Professional Fees**, which are payable up to the **Limit of Liability**
- 4.2.1.12 Any **Claim** brought or maintained outside the Commonwealth of Australia, resulting from conduct occurring in whole or in part outside of Australia, or resulting from the application of laws of any country, state or territory outside the Commonwealth of Australia.
- This exclusion 4.2.1.12 shall not apply to the extent that it is permissible for VMIA to provide indemnity under this **Policy** and not in breach of any local or foreign laws.
- 4.2.1.13 Any action brought by or on behalf of any **Named Insured** against any **Officer** who is an **Employee** in respect of any loss or liability which any **Named Insured** may suffer or incur, directly or vicariously as a result of any conduct of the **Employee** in connection with their employment.
- This exclusion 4.2.1.13 shall not apply to duties as a director, secretary, member of the board of management or other capacity in respect of the management of the **Named Insured**.
- 4.2.2 VMIA is not liable to provide any indemnity whatsoever, including reimbursement under clause 1.2, to or in favour of an **Organisation** that is comprised within the term “**Named Insured**” that an **Officer** serves as an **Outside Director**.
- 4.2.3 VMIA is not liable to indemnify any **Insured** for the **Deductible**. Where the **Deductible** payable by the **Named Insured** is the same or greater than the **Deductible** payable by the **Officer**, and the **Named Insured** indemnifies the **Officer**, or is reimbursed by VMIA, then only the **Deductible** applicable to the **Named Insured** will apply and VMIA must account for any **Deductible** paid by or on behalf of the **Officer** (whether it is directly paid, or paid by way of deduction from amounts payable under this **Policy**).

4.3. Exclusion of Claims made by certain people

- 4.3.1 VMIA shall not be liable to make any payment under this **Policy** in respect of a **Claim** made against an **Officer** which is brought by or on behalf of the **Named Insured** or the State of Victoria with the acquiescence, assent, concurrence, or approval of the **Officer** (consent) where such consent is given voluntarily (rather than legally required) with the intention of encouraging the making of a **Claim**.

4.4. Exclusion of Radioactivity risk

- 4.4.1 VMIA is not liable to indemnify the **Officer** or the **Named Insured** in respect of a **Claim** arising from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. For the avoidance of doubt, this exclusion does not apply to radioactive materials or waste commonly found in hospitals and other medical or medical research institutions.

4.5. Exclusion of conduct occurring prior to Retroactive Date

- 4.5.1 VMIA is not liable to indemnify the **Officer** or the **Named Insured** in respect of a **Claim** (including, without limitation, **Claims** involving an alleged **Employment Practices Violation**), **Professional Fees** or legal costs or other expenses that would otherwise be covered under sections 1 or 2 of this **Policy** in connection with, arising from or based upon any acts, errors or omissions or a **Wrongful Act** which occurred prior to the **Retroactive Date** if one is stated in the Schedule.

5. Making a claim to be indemnified

5.1. Conditions precedent to an Officer's right to be indemnified

- 5.1.1 The following are conditions precedent to VMIA's liability under this **Policy** to indemnify an **Officer**:
- 5.1.1.1 the **Officer** must not admit liability for, or settle, a **Claim** including, without limitation, a **Claim** involving an alleged **Employment Practices Violation**, without VMIA's prior written consent (which consent shall not be unreasonably withheld or delayed);
 - 5.1.1.2 the **Officer** must give VMIA any information or do anything else VMIA reasonably requires for the purpose of investigating, defending or settling a **Claim** including, without limitation a **Claim** involving an alleged **Employment Practices Violation**.

5.2. Conditions precedent to Named Insured's right to be indemnified

- 5.2.1 The following are conditions precedent to VMIA's liability under this **Policy** to indemnify the **Named Insured**:
- 5.2.1.1 the **Named Insured** must not admit liability for, or settle, a **Claim** including, without limitation, a **Claim** involving an alleged **Employment Practices Violation** without VMIA's prior written consent (which consent shall not be unreasonably withheld or delayed); and
 - 5.2.1.2 the **Named Insured** must give VMIA any information or do anything else that VMIA reasonably requires for the purpose of investigating, defending or settling a **Claim** including, without limitation, a **Claim** involving an alleged **Employment Practices Violation**.

5.3. VMIA may settle Claims with the Officer's consent

- 5.3.1 VMIA:
- 5.3.1.1 is entitled (but not obliged), at its own cost, to take over and **Control** the conduct of the **Investigation**, defence and settlement of a **Claim** against an **Officer** including, without limitation, a **Claim** involving an alleged **Employment Practices Violation** against the **Officer**; and
 - 5.3.1.2 may with an **Officer's** consent settle a **Claim** against the **Officer** including, without limitation a **Claim** involving an alleged **Employment Practices Violation** against the **Officer**.

In relation to a **Claim** alleging an **Employment Practices Violation** by an **Officer** (but not otherwise), the **Officer** shall be entitled to effectively associate in the **Investigation**, defence and settlement of the **Claim** and shall be consulted in advance by VMIA regarding the **Investigation**, defence and settlement, including the negotiation of any settlement of such **Claim**.

If an **Officer** does not consent to a settlement proposed by VMIA of a **Claim** against the **Officer** including, without limitation, a **Claim** involving an alleged **Employment Practices Violation** by the **Officer**, VMIA may only settle the **Claim** in accordance with the dispute resolution procedure set out in clause 6.5.

If a **Claim** is made against an **Officer** by the **Named Insured**, VMIA shall have no duty or obligation to communicate with any other **Officer** or any **Named Insured** in relation to that **Claim**.

5.4. VMIA may settle Claims with the Named Insured's consent

- 5.4.1 If indemnity is sought by the **Named Insured** pursuant to clause 1.2, VMIA may settle the **Claim** including, without limitation a **Claim** involving an alleged **Employment Practices Violation** with the **Named Insured's** consent. If the **Named Insured** does not consent, VMIA may only settle the **Claim** in accordance with the dispute resolution procedure set out in clause 6.5. VMIA is entitled (but not obliged), at its own cost, to take over and **Control** the conduct of the **Investigation**, defence and settlement of a **Claim** where an **Employment Practices Violation** is alleged.

6. General

6.1. Cancellation, avoidance and rescission

- 6.1.1 VMIA is entitled to cancel this **Policy** in respect of any **Officer** or **Named Insured** that has:
- 6.1.1.1 failed to comply with the duty of disclosure that would apply if this **Policy** were a contract of insurance to which the Insurance Contracts Act 1984 (Cth) applies;
 - 6.1.1.2 failed to comply with the duty of utmost good faith that would apply if this **Policy** were a contract of insurance to which the Insurance Contracts Act 1984 (Cth) applies;
 - 6.1.1.3 made material misrepresentation before this **Policy** was issued;
 - 6.1.1.4 failed to comply with a material provision of this **Policy**; or
 - 6.1.1.5 made a fraudulent **Claim** under this **Policy**.
- 6.1.2 VMIA may exercise any right to cancel cover in respect of an **Officer** or **Named Insured** under clause 6.1.1 by giving the **Named Insured** not less than 21 days prior written notice of cancellation.
- 6.1.3 Without limitation of clause 6.1.4, the cancellation of this **Policy** in respect of any **Officer** or **Named Insured** does not affect this **Policy** in respect of any other **Officer** or **Named Insured**.
- 6.1.4 Subject to clause 6.1.1, VMIA must not avoid, rescind or otherwise terminate this **Policy** in whole or in part for any reason, other than a termination that is mutually agreed in writing between VMIA and the **Named Insured** named as the Policyholder.

6.2. Obligations apply to Officers separately and protection of Innocent Insureds

- 6.2.1 Indemnity under this **Policy** for an **Insured** shall not be prejudiced by any act or omission by, or any knowledge or information possessed by, any other **Insured**. In particular:
- 6.2.1.1 no statement or omission in an application to VMIA for indemnity or any of its attachments, and no knowledge or information possessed by an **Insured** (whether before or after the commencement of this **Policy**), shall be imputed to any other **Insured**;
 - 6.2.1.2 for the purpose of determining the availability of indemnity under this **Policy** including (without limitation) the applicability of any exclusion:
 - a. no state of mind or knowledge or information possessed by any **Insured** (whether before or after the commencement of this **Policy**) shall be imputed to any other **Insured**; and
 - b. no act, statement, representation, conduct, breach (including, without limitation, a breach of this **Policy**), contravention, error or omission of any **Insured** (whether before or after the commencement of this **Policy**) shall be imputed to any other **Insured**.
 - 6.2.1.3 Without limiting clauses 6.2.1.1 and 6.2.1.2, where an act, omission, knowledge or information of an **Insured** entitles VMIA to refuse or reduce indemnity under this **Policy** (either in respect of a particular **Claim** or more generally), VMIA shall not refuse or reduce indemnity for any other **Insured** on the basis of the first **Insured's** act, omission, knowledge or information.
- 6.2.2 Without limiting clause 6.2.1 but subject to clause 6.1:
- 6.2.2.1 where:
 - a. one or more **Insureds**:
 - I. breach a duty or obligation owed by the **Insured** to VMIA (whether the duty or obligation arises under this **Policy**, statute or otherwise and whether or not the breach is fraudulent and whether or not it occurred before or after the inception of this **Policy**); or
 - II. engage in any other act, conduct or omission whether or not it is fraudulent and whether engaged in before or after the inception of this **Policy**; and

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- b. the breach, act, conduct or omission enables VMIA to exercise any legal rights having the effect of denying cover in whole or in part (whether in respect of a particular **Claim** or more generally) ("**Cover Limiting Rights**");
- c. one or more innocent **Insureds** ("**Innocent Insureds**") were not knowingly involved in the breach, act, conduct or omission; and
- d. but for this clause VMIA is legally entitled to and intends to exercise the **Cover Limiting Rights**.

6.2.2.2 then:

- a. VMIA, if legally entitled to do so, may exercise the **Cover Limiting Rights** against the **Insureds** other than the **Innocent Insureds** ("**Breach Insureds**") subject to complying with any applicable legal requirements; and
- b. VMIA must not exercise the **Cover Limiting Rights** against any **Innocent Insureds**; and
- c. the exercise of any **Cover Limiting Rights** against any **Breach Insureds** must not affect the cover under this **Policy** for the **Innocent Insureds**.

6.2.3 Nothing in clauses 6.2.1 and 6.2.2 (or either) is to be construed as increasing the **Limit of Liability** specified in the Schedule.

6.3. Application of *Insurance Contracts Act 1984* (Cth)

6.3.1 Subject to clauses 6.3.2, 3.3.3 and 6.3.4, this **Policy** is to be construed as if it were a contract of insurance to which the Insurance Contracts Act 1984 (Cth) applies, on the basis that VMIA is an insurer and the **Named Insured** and the **Officers** are the **Insured**.

6.3.2 Clause 6.3.1 does not apply:

6.3.2.1 where a provision of the Insurance Contracts Act is specifically excluded by this **Policy**; and

6.3.2.2 in all other cases, where a provision of the Insurance Contracts Act is inconsistent with a provision of this **Policy**, in which case the latter provision will prevail to the extent of any inconsistency.

6.3.3 The following sections of the Insurance Contracts Act are specifically excluded from applying to this **Policy**:

11A, 11AA 11AAA – 11E, 15, 21A, 22, 25, 29, 30, 32, 32A, 37, 38, 39, 40(2), 42, 43, 45, 48AA, 48A 52, 55A, 58, 69, 70, 71, 74, 75, 76, 76A

6.3.4 Notwithstanding anything to the contrary, under no circumstances will VMIA be deemed to incorporate any penalty provision in this **Policy** or be subject to any penalty or penalty provisions of the Insurance Contracts Act. For the purpose of this clause, payment of penalty interest pursuant to section 57 of the Insurance Contracts Act is not considered to be a penalty or penalty provision.

6.4. Order of Payments

6.4.1 Where at any time VMIA is obliged to make payment under this **Policy** to or on behalf of **Officers** and to or on behalf of **Named Insured** and the **Limit of Liability** is insufficient to enable VMIA to make all of the payments in full as to 100 cents in the dollar, VMIA must make payments to or on behalf of the **Officers** in priority to the payments to and on behalf of **Named Insured** so that any shortfall shall be borne by the **Named Insured**.

6.5. Dispute resolution procedure

6.5.1 For the purposes of clauses 5.3 and 5.4, disputes shall be resolved by the opinion of a Queen's Counsel or Senior Counsel to be agreed between the parties, the cost of which will be paid for by VMIA. If agreement cannot be reached, the Queen's Counsel or Senior Counsel is to be appointed by the Chair of the Victorian Bar Council. Any opinion for the purposes of clauses 5.3 and 5.4 must state whether any proposed settlement is appropriate in all the circumstances and must take proper account of the interests of the **Officer** or of the **Named Insured**.

6.6. Reinstatement of limit

- 6.6.1 Subject to clauses 6.6.1.3 and 6.6.1.4, in the event of the whole or any portion of the **Limit of Liability** being exhausted by a **Claim** or other indemnity provided under this **Policy**, the amount so exhausted shall be reinstated to the same amount, provided always:
- 6.6.1.1 the reinstatement does not apply to:
- a. Any existing **Claim**
 - b. **Claims** arising from known **Facts**
 - c. any existing **Claim** or indemnity provided or could have been provided if the **Officer** or **Named Insured** had or should have notified VMIA, under section 2 of the **Policy**
- 6.6.1.2 if the **Officer** or **Named Insured** has other insurance, then the reinstatement will not apply until the other insurance has been exhausted.
- 6.6.1.3 The reinstatement shall only apply from the time that the **Named Insured** and/or **Officer** confirms in writing to VMIA to provide the reinstatement. No extra premium will be charged by VMIA for the reinstatement pursuant to clause 6.6.1
- 6.6.1.4 The **Number of Reinstatements** pursuant to clause 6.6.1 any one **Period of Insurance** shall be limited to the **Number of Reinstatements** stated in the Schedule.

7. Definitions

Claim, without limitation of clause 1.1.3, means:

- a. any written demand or civil, criminal, administrative, regulatory or arbitration proceeding or any mediation, conciliation or other alternative dispute resolution process seeking compensation, damages or other legal remedy (including extradition or disqualification) for an alleged **Wrongful Act**, including any appeal therefrom by the **Insured** or any other party; or
- b. any **Investigation** (including any civil, criminal, administrative or regulatory proceeding against the **Officer** by or on behalf of an **Official Body** conducting an **Investigation** and any appeal therefrom by any party) whether or not a **Wrongful Act** has been alleged; or
- c. any matter involving the incurring by or on behalf of an **Officer** of costs and expenses described in clauses 2.8, 2.9 and 2.10.

Control of a Named Insured includes the direct or indirect power to directly or indirectly:

- a. direct the management or policies of the **Named Insured**;
- b. control the membership of the board of directors or board of management of the **Named Insured**; or
- c. control the membership of the **Named Insured**, whether or not the power has statutory, legal or equitable force or is based on statutory, legal or equitable rights, and whether or not it arises by means of trusts, deeds, arrangements, understandings, practices, the ownership of any interest in shares or stock or otherwise.

Deductible means the deductible stated in the Schedule, and is the first part of a **Claim**, **Professional Fees**, or legal costs or other costs or expenses that shall not be covered by the **Policy** and shall remain to the **Officer's** or the **Named Insured's** account.

Department means a department or an office that is a 'Department' pursuant to section 3 of the VMIA Act.

Employee means any person who is or has been (or who alleges that but for the **Employment Practices Violation** would have been) employed by the **Named Insured** under a contract of service and includes such persons employed on a part time, seasonal or temporary basis. **Employee** does not include a person contracting his or her labour to the **Named Insured** unless on a permanent and full time basis.

Employment Practices Violation means actual or alleged conduct of the following kind against an **Employee** by the **Named Insured**, or by another **Employee** in the course of that other **Employee's** employment with the **Named Insured**:

- a. unlawful discrimination, wrongful demotion, wrongful discipline or failure or refusal to promote;
- b. actual or constructive termination of the contract of service in breach of the law;
- c. denial of natural justice in connection with failing to employ or promote, decision to demote, discipline, terminate or failure to comply with any actual or alleged breach of any oral or written employment contract;
- d. misrepresentation or defamation;
- e. the infliction of emotional distress;
- f. wrongful retaliatory or vindictive conduct;
- g. wrongful damage to deprivation of career opportunity;
- h. harassment (sexual or otherwise);
- i. failure or refusal to hire a potential employee; or
- j. invasion or breach of the right of privacy.

Employment Practices Violation Sub-limit means the Employment Practices Violation Sub-limit stated in the Schedule.

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Executive Officer means, in respect of the **Named Insured** or another **Organisation**, a person:

- a. who makes or participates in making decisions that affect the whole or a substantial part of the business or operations of the **Named Insured** or other **Organisation**; or
- b. who has the capacity to affect significantly the financial standing of the **Named Insured** or other **Organisation**; or
- c. where the **Named Insured** or other **Organisation** is a corporation under the Corporations Act 2001 (Cth), in accordance with whose instructions or wishes the directors or **Executive Officers** of the **Named Insured** or other **Organisation** are accustomed to act.

Facts means facts, acts, omissions or circumstances that the **Officer** becomes aware of that will or may give rise to a **Claim** under this **Policy**.

Financial Impairment in relation to a **Named Insured** that is a body corporate means the happening of any of the events prescribed in regulation 7.5.02 of the Corporations Regulations 2001 (Cth).

Fines and penalties Sub-limit means the Fines and penalties Sub-limit stated in the Schedule

Insured means the **Officer** and the **Named Insured**.

Investigation means any hearing, examination, investigation or inquiry or administrative or regulatory proceeding (including, without limitation, a professional disciplinary proceeding) conducted by an **Official Body** in respect of which:

- a. an **Officer** becomes legally compelled to attend or to provide documents or other information in his or her capacity as an **Officer** of the **Named Insured**; or
- b. an **Officer** has reasonable grounds to believe that the **Officer's** conduct in his or her capacity as an **Officer** of the **Named Insured** is being or is to be considered by the hearing, examination, investigation, inquiry or proceeding.

Limit of Liability means the Limit of Liability stated in the Schedule.

Number of Reinstatements means the Number of Reinstatements stated in the Schedule

Officer means a person who:

- a. is a director or member of the board of management of the **Named Insured**; or
- b. is a secretary, **Executive Officer** or other person concerned in, or who takes part in, the management of the **Named Insured**; or
- c. where the **Named Insured** is a **Statutory Authority** that does not have a board of management – is a member of the authority; or
- d. where the **Named Insured** is a cemetery trust established pursuant to the Cemeteries and Crematoria Act 2003 (Vic) – is a member of the cemetery trust; or
- e. where the **Named Insured** is a rural health service – is an **Executive Officer** of the rural health service; or
- f. is an **Employee** of the **Named Insured**, but only in respect of **Claims** involving an alleged **Employment Practices Violation** by the **Employee**; or
- g. is an **Outside Director**; or
- h. for the purposes of clause 2.7 – is the spouse or domestic partner of a person who is an **Officer** under paragraphs (a), (b), (c), (d) or (e) of this definition; or
- i. was a person referred to in paragraphs (a), (b), (c), (d) or (e) of this definition prior to the commencement of this **Policy** and who is not such a person at the commencement of this **Policy**, but only in respect of **Facts**, acts, omissions or circumstances that occurred whilst that person occupied any of the positions referred to in those paragraphs.

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Official Body means any regulator, government, governmental body, governmental or administrative agency, self-regulatory body, professional body, authority, royal commission, commission of inquiry, parliamentary committee, Coroner's Court or any other person or body having legal authority to conduct an **Investigation**.

Organisation means any body, company, association, trust, authority or entity.

Outside Director means a person referred to in paragraphs (a), (b), (c), (d) or (e) of the definition of **Officer** who serves as a director or **Executive Officer** of an **Organisation** that is not within the ambit of paragraphs (a) to (c) of the definition of **Named Insured** at the request of or with the authorisation (whether explicit or tacit) of any **State Company, Department, Participating Body** or **Organisation** or **Subsidiary** referred to in paragraphs (a) to (c) of the definition of **Named Insured**.

Participating Body means any of the following:

- a. a 'Participating Body' as defined in section 3 of the VMIA Act;
- b. a Department of the Parliament of Victoria declared by the relevant Minister (in compliance with section 4(2) of the VMIA Act) by notice published in the Government Gazette of Victoria pursuant to section 4(1) of the VMIA Act to be a **Participating Body** for the purposes of the VMIA Act;
- c. a Statutory Authority, other than a Statutory Authority referred to in paragraph (b) of the definition of 'Participating Body' in section 3 of the VMIA Act, declared by the relevant Minister by notice published in the Government Gazette of Victoria pursuant to section 4(1) of the VMIA Act (following compliance with section 4A(3) of the VMIA Act);
- d. a body corporate, other than a body corporate referred to in paragraph (c) of the definition of 'Participating Body' in section 3A of the VMIA Act, in which the State of Victoria has a controlling interest as defined in section 3A of the VMIA Act, declared by the relevant Minister by notice published in the Government Gazette of Victoria pursuant to section 4(1) of the VMIA Act (following compliance with section 4A(3) of the VMIA Act) to be a Participating Body for the purposes of the VMIA Act.

Period of Insurance means the Period of Insurance as specified in the Schedule and/or Certificate of Currency, however if a funded organisation afforded coverage under the **Policy** ceases to maintain eligibility for such coverage through the State Government of Victoria, then coverage will automatically cease at 4pm thirty (30) days from the date of such ineligibility as advised by the relevant State Government of Victoria Department.

Policy means this policy document, including the Schedule and all endorsements to this policy.

Pollution Liability Claim means any **Claim** and/or **Professional fees** or other costs that may be covered under sections 1 and 2 of this **Policy** arising directly or indirectly from the discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere, or any water course or body of waters unless the discharge, dispersal, release or escape is sudden and accidental.

Pollution Liability Sub-limit means the Pollution Liability Sub-limit stated in the Schedule.

Professional Fees means any reasonable legal, accounting and other professional fees (including expert witness fees), incurred with VMIA's prior written consent (which shall not be unreasonably delayed or withheld) by or on behalf of an **Officer** in the **Investigation**, defence, settlement or appeal of any **Claim** (whether civil or criminal) against the **Officer**, or otherwise indemnified by this **Policy**. **Professional Fees** also includes travel and other costs that are reasonable and necessary in the **Investigation**, defence, settlement or appeal of any **Claim** against the **Officer**. **Professional Fees** does not include salary and wages of the **Officer** or any **Named Insured** personnel. For the purposes of this definition, **Claim** shall include an alleged **Employment Practices Violation**.

Protection of Freedom Sub-limit means the Protection of Freedom Sub-limit stated in the Schedule

Protection of Assets Sub-limit means the Protection of Assets Sub-limit stated in the Schedule

Named Insured means:

- a. the **Named Insured** or **Organisation** specified in the Schedule as the Policyholder;

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- b. all Subsidiaries of the Policyholder referred to in paragraph (a);
- c. any **Organisation** that becomes a **Subsidiary** of the Policyholder referred to in paragraph (a), regardless of whether or not VMIA is given notice of the new **Subsidiary**; and
- d. any **Organisation** that an **Officer** serves as an **Outside Director**.

Public Media Expenses Sub-limit means the Public Media Expenses Sub-limit stated in the Schedule

Raid means the exercising, with or without warning, by a statutory, regulatory or other governmental body of a power or purported power by way of search warrant, court order or otherwise, to enter premises occupied by the **Named Insured** or **Officer** ("the premises") for the purpose of inspecting, examining, investigating, seizing, copying or otherwise gaining access to property at the premises.

Retroactive Date means the retroactive date stated in the Schedule

State Company means a company that is a 'State Company' pursuant to section 25 of the VMIA Act.

Statutory Authority means a Statutory Authority and includes a State body within the meaning of the State Owned Enterprises Act 1992 (Vic).

Sub-limits means any of the Sub-limits stated in the Schedule and includes (but not limited to) the Fines and penalties Sub-limit, the Protection of Freedom Sub-limit, the Protection of Assets Sub-limit, the Public Media Expenses Sub-limit, the Pollution Liability Sub-limit and the Employment Practices Violation Sub-limit.

Subsidiary means any entity that is directly or indirectly controlled by the **Named Insured** named in the Schedule through ownership or control of more than 50% of the issued voting shares or capital of the entity and including any entity whose financial accounts are incorporated in those of the **Named Insured** named in the Schedule by virtue of accounting standard AASB 1024 or equivalent standard.

Trigger Event in relation to a **Named Insured** means:

- a. a change in control of the **Named Insured**;
- b. the **Named Insured** consolidates with or is merged with, as applicable, any other **State Company, Statutory Authority, Department, Participating Body** or **Organisation**; or
- c. the business or substantially all of the business of the **Named Insured** is transferred to or amalgamated with the business of any other **State Company, Statutory Authority, Department, Participating Body** or **Organisation**.

Wrongful Act means:

- a. any actual, or alleged or attempted breach of duty (including an **Employment Practices Violation**), breach of trust, neglect, error, misstatement misrepresentation, misleading statement, omission, breach of warranty of authority, breach of statute or instrument made under or pursuant to statute, breach of contract, libel or slander, infringement of intellectual property rights, contravention of any directive, standard, declaration, direction, policy statement, guidance notice or similar instrument issued by any competent government or regulatory body or other act done by any **Officer** in his or her capacity as such; or
- b. any liability asserted against an **Officer** in his or her capacity as such.

Privacy Statement

We are committed to protecting any personal information we collect, handle, store or disclose about you through our services. We will manage all personal information in accordance with the *Victorian Managed Insurance Authority Act 1996 (Act)*, the *Privacy and Data Protection Act 2014* and the *Health Records Act 2001*.

Collection and use of Personal Information

Personal information means information or an opinion that is recorded in any form, and whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

We collect and record personal information through our client data collection processes which include our website, online forms and surveys. Some examples of when we may collect your personal information are when you:

- send us an email;
- use our online services, such as completing a form or survey electronically;
- register to attend training and events; and
- access our secure client portal on our website.

Personal information we collect can only be used for the purpose of performing functions under our Act and in accordance with all applicable laws and regulations.

Access and Correction

Please contact our Information Privacy Officer at privacy@vmia.vic.gov.au if you:

- want to access 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.