



Medical Indemnity Insurance Policy

(Policy number CSO-MI-2020)

Issued to Community Service Organisation
clients of VMIA

For the period 1 July 2020
to 30 June 2021



Contents

About this Insurance Policy	3
1. Schedule	4
2. Insuring Clause.....	5
3. Costs and Expenses	7
4. Limits.....	8
5. Definitions	9
6. Conditions.....	10
7. Exclusions	13
Privacy Statement.....	15

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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 community based organisations receiving funding from the Victorian Government. In addition to providing funding to the **Named Insured**, the Victorian Government has undertaken to arrange Medical Indemnity 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.

1. Schedule

Policy Number: CSO-MI-2020

Named Insured: State Government of Victoria funded Community Service Organisations

Organisation: As declared on the Certificate of Currency

Period of Insurance: From: 01 July 2020 at 12:00:01am Australian Eastern Standard Time
To: 30 June 2021 at 11:59.59pm Australian Eastern Standard Time

The Business: All authorised activities of Community Service Organisations originating within Victoria (irrespective of how the activities may be funded)

Limit of Liability: \$20,000,000 any one claim and in the aggregate any one Period of Insurance per organisation, subject to non-accumulation (refer to Condition 6.22)

Excess: Nil

Retroactive Date: 1 January 1992, excluding known claims and circumstances

Territorial Limit(S): Anywhere in Australia but only in respect of activities connected with **The Business** of the **Named Insured** in Victoria and not in respect of the **Named Insured's** interstate operations unless otherwise agreed by VMIA.

For and on behalf of

Victorian Managed Insurance Authority



Peter Thompson
Acting Chief Insurance Officer

Dated: 01 July 2020

2. Insuring Clause

Subject to the limitations (including the Limit of Liability), terms and conditions, exclusions and warranties incorporated herein the Victorian Managed Insurance Authority (VMIA) agrees as follows:

a. to indemnify the **Named Insured** against all sums which the **Named Insured** shall become legally liable to pay as a result of any **Claim** or **Claims** first made against the **Named Insured** and which are notified to VMIA during the **Period of Insurance** for breach of professional duty arising out of the negligent provision of **Health care services** and resulting in bodily injury or mental injury or death. Where the one act, error or omission results in more than one **Claim** against the **Named Insured** which is the subject of indemnity under this clause, all such **Claims** shall jointly constitute one **Claim** under this clause; and

b. In addition:

i. Coronial matters

VMIA will pay the reasonable costs, charges and expenses of legal representation, incurred with VMIA's prior written consent, for any Coronial matter in relation to which the **Named Insured** is legally compelled to provide evidence, which directly relates to matters, facts or circumstances directly arising from a **Claim**, or to matters, facts or circumstances which are likely in the opinion of VMIA to give rise to a **Claim**;

ii. Good Samaritan acts

VMIA will indemnify any medically qualified **Insured** in respect of legal liability arising from the rendering of emergency first aid assistance to persons during the course of travel between the **Insured's** premises and place of residence or vice versa and provided the services without charging a fee or expecting payment of any kind;

iii. Students

VMIA will indemnify any student medical practitioner appointed to the **Insured** by a university or college of advanced education or a TAFE college;

iv. Continuous cover

Notwithstanding Exclusion 7.7, where the **Insured**:

a. first became aware of facts or circumstances as described in Condition 6.6 prior to the **Period of Insurance**;

and

b. had not notified VMIA or any previous insurer of such facts or circumstances prior to the **Period of Insurance**,

then:

I. in the absence of fraudulent non-compliance with the **Insured's** duty of disclosure or fraudulent misrepresentation by the **Insured** in a respect of such facts or circumstances; and

II. provided the **Insured** has been continuously **Insured** under a medical indemnity policy issued by VMIA between the time when the **Insured** first became aware of such facts or circumstances and the time during the **Period of Insurance** when the **Insured** first notified such facts or circumstances to VMIA;

VMIA will accept notification of such facts or circumstances, or any **Claim** arising from such facts or circumstances, during the **Period of Insurance**.

The indemnity provided will be on the terms of this Policy, save that the applicable limit of liability will be as it was at the date when the **Insured** first became aware of the facts or circumstances (except that the applicable limit of liability will not exceed that of this Policy at the date when the facts or circumstances were first notified to VMIA);

v. Consultants, sub-contractors and agents

VMIA will indemnify the **Insured** in respect of a **Claim** or **Claims** made against the **Insured** for any breach of professional duty arising out of any negligence whilst providing **Health care services** whether by way of act, error or omission committed or alleged to have been committed on the part of any consultant, sub-contractor or agent for whose acts, errors or omissions the **Insured** is legally liable, provided that no indemnity shall be afforded to any such consultant, sub-contractor or agent; and

vi. Reinstatement of Limit of Liability

In the event of notification of any **Claim** made against the **Insured** or of any circumstances which indicates the possibility of a **Claim** arising, this Policy shall be deemed to be reinstated for such amount, if any, as may ultimately be paid by VMIA in respect of such **Claims**, so as to remain in force during the **Period of Insurance** the Limit of Liability as stated in the Schedule, provided always that the aggregate of the amount so reinstated shall not exceed an amount equal to the said Limit of Liability.

3. Costs and Expenses

VMIA shall pay, on the **Insured's** behalf in addition to the Limit of Liability, the reasonable costs and expenses (less any **GST** that forms part of that amount and for which the **Insured** is entitled to claim an **Input Tax Credit** or **Adjustment**) incurred at the discretion of and with the prior written consent of VMIA:

- a. in the investigation, defence or settlement of any such **Claim**, or
- b. in the investigation into matters, facts or circumstances which are likely in the opinion of VMIA to give rise to a **Claim**,

provided that if a payment in excess of the amount of indemnity available under this Policy has to be made to finalise a **Claim**, the liability of VMIA for such costs and expenses incurred with its consent shall be such proportion thereof as the amount of indemnity available under this Policy bears to the amount paid to finalise the **Claim**.

4. Limits

VMIA's Limit of Liability is as stated in the Schedule.

5. Definitions

Wherever used in this Policy, the following terms shall be deemed to have the meaning defined below unless the contrary is stated:

Claim means claim for compensation made against the **Insured** in relation to a **Health care incident**.

Clinical trials and health and medical research means participation in trials or research projects, that have been approved by a properly constituted Human Research Ethics Committee in accordance with National Health and Medical Research Council guidelines and where such trial and/or health and medical research has been conducted in accordance with any conditions or approvals made by such Human Research Ethics Committee.

Health care incident means an act, omission or circumstance that occurs during the course of, or in connection with, the provision of **Health care services**.

Health care services means any care, treatment, counselling, advice, service or goods provided in respect of the physical or mental health of a patient or person, including **Clinical trials and health and medical research** activities unless otherwise excluded by this policy. For the purposes of this definition the **Health care services** can be provided in person, via telephone, videoconference, facsimilie, email or other electronic format.

Insured means the **Named Insured** unless the contrary is stated and:

- a. the licensee or person, members of the partnership, company, corporation or institution named as the **Named Insured** in the Schedule; and
- b. any person who is or becomes or ceases to be during the **Period of Insurance** a principal, partner, director, employee, voluntary worker, social worker, advisory board member, committee member or work experience student of the **Named Insured**

but in each case only in relation to liability arising from their provision of **Health care services** on behalf of the **Insured**. **Named Insured** means the community service organisation specified in the schedule as the Organisation and includes any **Subsidiary Associations** of the **Named Insured** existing prior to or at the inception of this Policy.

Occurrence means an event, including continuous or repeated exposure to substantially the same general conditions. All events of a series consequent on or attributable to one source or original cause shall be deemed to be one **Occurrence**.

Period of Insurance means the period 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.

Retroactive Date means the date specified in the Schedule (if any).

Subsidiary Association means associations or other organisations in respect of which the **Named Insured**:

- a. controls the composition of the Board; or
- b. controls more than half of the voting power.

Territorial Limit means the limit specified in the Schedule.

The Business means the business of the **Named Insured** including the provision of canteen, social, sports, welfare organisation, or first aid services.

6. Conditions

6.1. Cancellation

VMIA may cancel this Policy at any time if directed to do so by the Victorian Government.

6.2. Headings

Headings have been included for ease of reference. The terms and conditions of this Policy are not to be construed or interpreted by reference to such headings.

6.3. Interpretation

Any word or expression to which a specific definition or meaning has been attributed in any part of this Policy shall bear that definition or meaning wherever it may appear, unless the contrary is stated.

6.4. Proper law of the policy

This Policy shall be governed by the laws of the Commonwealth of Australia. Each party agrees to submit to the jurisdiction of any court of competent jurisdiction within the Commonwealth of Australia and to comply with all requirements necessary to give such court jurisdiction. All matters arising hereunder shall be determined in accordance with the law and the practice of such courts.

6.5. Making a claim

If during the **Period of Insurance**, the **Insured** suffers any loss or damage or if an event occurs which is likely to result in the **Insured** making a claim under this Policy, the **Insured** must at its own expense:

- a. as soon as practicable give to VMIA in writing full details of any actual or suspected loss or damage;
- b. provide VMIA with all information, evidence and documentation which VMIA may reasonably require;
- c. take all reasonable precautions to prevent, avoid or minimise further loss or damage; and
- d. immediately inform the police if the **Insured** knows or suspects that a criminal offence has been committed, subject to any Condition contained herein to the contrary.

6.6. Notification of claims made

- a. Upon the making of a **Claim** against the **Insured**, or the making of any allegation or the discovery of any circumstances which indicates the possibility of a **Claim** arising, the **Insured** shall notify VMIA in writing immediately and shall provide to VMIA whatever information relating to the **Claim** or possible **Claim** as VMIA may reasonably require.
- b. If during the **Period of Insurance**, the **Insured** becomes aware of any circumstance which may subsequently give rise to a **Claim** against the **Insured** and during the **Period of Insurance** gives written notice to VMIA of such circumstance, any **Claim** which may subsequently be made against the **Insured** arising out of that circumstance shall be deemed for the purposes of this Policy to have been made during the **Period of Insurance**.
- c. More than one **Claim** involving the same act, error or omission shall be deemed to constitute a single **Claim** and such single **Claim** is deemed to have been made against the **Insured** on the first to occur of:
 - i. the date the first **Claim** involving such act or omission was made against the **Insured**;
 - ii. the date when the **Insured** first became aware of any intention to hold any **Insured** responsible for the results of an act or omission; or
 - iii. the date the **Insured** first became aware of any circumstances which might subsequently give rise to a **Claim**.
- d. Where the one act, error or omission results in more than one **Claim** against the **Insured** which is the subject of indemnity hereunder, all such **Claims** shall jointly constitute one **Claim** under this Policy.

6.7. Other insurance

Upon giving any notification of a **Claim** under this Policy, the **Insured** must inform VMIA of any other insurance or indemnity pursuant to which the **Insured** is entitled to any benefit in respect of that **Claim**.

6.8. Insured's co-operation

The **Insured** must not make any admission, offer, settlement, promise or payment in respect of any **Claim** which may be the subject of indemnity under this Policy or incur any costs or expenses in connection therewith without the prior written consent of VMIA. VMIA, if it so desires, is entitled to take over and conduct, in the name of the **Insured**, the investigation, defence or settlement of any such **Claim** or to prosecute in the name of the **Insured** for its own benefit any **Claim** for indemnity or damages or otherwise against any third party, for which purpose the **Insured** at its own expense shall assist and co-operate with VMIA and provide VMIA with such information (including signed statements) as VMIA may reasonably require.

6.9. Contesting Claims

In the event that VMIA and the **Insured** do not agree to a settlement of a **Claim** recommended by VMIA and the **Insured** elects to contest or continue any legal proceedings in connection with the **Claim**, VMIA is only liable to indemnify the **Insured** for any amount up to and including the amount for which the **Claim** could have been settled or including the costs and expenses incurred with VMIA's consent up and until the time of the failure to agree.

6.10. Assisting recovery

If any payment is made under this Policy in respect of a **Claim** and VMIA is thereupon subrogated to the **Insured's** rights of recovery in relation thereto, the **Insured** must assist and co-operate with VMIA and execute such documents and provide VMIA with such information (including signed statements) as VMIA may reasonably require in the exercise of such rights of recovery.

6.11. Change in circumstances

If during the **Period of Insurance**, **The Business** or activities of the **Named Insured** change or if circumstances arise that materially alter or affect the risks covered by this Policy, the **Named Insured** shall give immediate notification of the change to VMIA.

6.12. Territorial Limit

This Policy is subject to the **Territorial Limit** stated in the policy schedule unless otherwise agreed by VMIA.

6.13. Inspection and audit

VMIA is permitted but not obligated to inspect the **Insured's** property and operations at any time. Neither 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. VMIA may examine and audit the **Insured's** books and records at any time during the **Period of Insurance** and extensions thereof and within three years after the final termination of this Policy, as far as they relate to the subject matter of this Policy.

6.14. Prevention of damage

In the event of an **Occurrence**, the **Insured** shall promptly take, at the **Insured's** own expense, all reasonable steps to prevent other **Claims** from arising out of the same or similar conditions and such expense shall not be recoverable under this Policy.

6.15. Bankruptcy and insolvency

In the event of the bankruptcy or insolvency of the **Named Insured** or any entity comprising the **Named Insured**, VMIA shall not be relieved thereby of the payment of any **Claims** hereunder because of such bankruptcy or insolvency.

6.16. Takeovers

In the event of the takeover or merger of the **Named Insured** by or with any other organisation the indemnity provided hereunder is amended to apply only to **Claims** arising out of any **Occurrence** taking place prior to the date of such takeover or merger unless the VMIA agrees otherwise in writing.

6.17. Waiver of subrogation

- a. VMIA waives all rights of subrogation under this Policy against any corporation or corporations, the majority of whose capital stock is owned or controlled by the **Named Insured**, or against any corporation, firm or individual who owns or controls the majority of the capital stock of the **Named Insured**, or any corporation, firm or individual, to which or to whom protection is afforded under this Policy. However, if such corporation, firm or individual is protected from such loss by any other policy of indemnity or insurance, the right of subrogation is not waived to the extent and up to the amount of such other policy.
- b. VMIA also waives any rights of subrogation under this Policy against any **Insured** unless the **Claim** is brought about by or contributed to by the dishonest, fraudulent, criminal or malicious act or omission of any such **Insured**.

6.18. Records of professional services

The **Insured** shall at all times maintain accurate descriptive records of all professional services, which records shall be available for inspection and use by VMIA or their representatives insofar as they pertain to any **Claim** under this Policy.

6.19. Medical practitioners insurance

The **Insured** must use its best endeavours to ensure that all consultants and doctors providing **Health care services** for or using the facilities of the **Insured** shall maintain, throughout the currency of this Policy, their own insurance against liability for breach of professional duty.

6.20. Fraudulent claims

If the **Insured** makes any **Claim** knowing the same to be false or fraudulent as regards the amount or otherwise, VMIA may void all **Claims** made by the **Insured**.

6.21. Discovery period

In the event this Policy is not renewed, there shall be a discovery period of 120 days starting immediately after the expiry of the Policy for the reporting of **Claims** or incidents that may give rise to **Claims** under the Policy. During this discovery period, written notice may be given to VMIA of a **Claim**, first made during such period or the **Period of Insurance** for a circumstance giving rise to a **Claim** occurring prior to the expiry of the **Period of Insurance**.

6.22. Non accumulation

If the **Insured** makes a **Claim** under this Policy, it is agreed that the **Claim** must not be made by the **Insured** under any other insurance policy offered by the VMIA (notwithstanding the fact that such policy may also respond to the **Claim**), unless the **Insured** first withdraws the **Claim** under this Policy in writing.

7. Exclusions

This Policy does not cover any liability for or arising directly or indirectly from:

7.1. Radioactivity

- a. atomic energy risks, being operations employing the process of nuclear fission or fusion or handling radio-active material which operations include but are not limited to:
 - i. the use of nuclear reactors such as atomic piles, particle accelerators or generators or similar devices;
 - ii. the use, handling or transportation of radio-active materials; or
- b. the use, handling or transportation of any weapon of war or explosive device employing nuclear fission or fusion; or
- c. ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel.

These exclusions however shall not apply to insurance of occupational risks arising from radio-isotopes, radium or radium compounds when used away from the place where such are made or produced and when used exclusively incidental to ordinary industrial, educational, medical or research pursuits;

7.2. War

any consequence of war, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurping power or martial law;

7.3. Fines

finer, penalties, punitive or exemplary damages, taxes, levies, imposts or duties; however this exclusion shall not apply to:

- a. punitive, aggravated or exemplary damages except in respect of exemplary damages awarded within the Commonwealth of Australia for libel, slander or Advertising Liability; or
- b. costs and expenses incurred in the successful defence of any legal action which includes but is not limited to a claim for fines, penalties, punitive or exemplary damages, taxes, levies, imposts or duties on the understanding that the advance of defence costs by VMIA during the course of proceedings shall not preclude VMIA from claiming repayment of those costs in the event of the defence being unsuccessful;

7.4. Dishonesty

any dishonest, fraudulent, malicious or illegal act or omission of the **Insured**, except to the extent provided by any extensions, and provided that the **Insured** will be entitled to indemnity in respect of :

- a. Legal costs incurred in successfully defending proceedings brought in respect of such dishonesty, fraud or malicious conduct on the understanding that the advance of defence costs by VMIA during the course of proceedings shall not preclude VMIA from claiming repayment of these costs in the event of the defence being unsuccessful; or
- b. Loss where the final judgement or other adjudication of the court hearing proceedings against any **Insured** determines that he/she is legally liable in respect of a wrongful act on some cause of action which is not dependent on the existence of a dishonest, fraudulent or malicious purpose or intent that he/she was guilty of dishonesty, fraud or malicious conduct in relation to the wrongful act in question.

For the purpose of this exclusion, no fact pertaining to or knowledge possessed by any **Insured** shall be imputed to any other **Insured**;

7.5. Subrogation agreements

any **Claim** for loss or damage in respect of which the **Insured** has at any time by deed or agreement forgone, excluded or limited a right of recovery or contractual liability;

7.6. Jurisdiction

any matter where action or damages is not brought in a court of law within Australia and subject to Australia law, or where action is so brought but to enforce a foreign judgement whether by way of reciprocal agreement or otherwise;

7.7. Retroactive Date

any act, error, or omission committed or alleged to have been committed prior to the **Retroactive Date**;

7.8. Surgical, operative or invasive medical procedures

the performance of any surgical, operative or invasive medical procedures that involve cutting or puncturing the skin of a person or inserting instruments into the body of a person;

7.9. Intoxicants and drugs

any services rendered by any person or by a service provider who is under the influence of intoxicants or drugs or any failure to render services competently or at all because of such influence if such service or failure to render service was with the knowledge or connivance of a director, partner, administrator, supervisor or manager of the **Insured**;

7.10. AIDS

any condition directly or indirectly caused by or associated with Human Immunodeficiency Virus (HIV) or Lymphadenopathy Associated Virus (AV) 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, where damages including costs and expenses exceed \$500,000 any one **Claim** and in the aggregate in any one **Period of Insurance**.

7.11. Injury or death of an employee

Injury to or death of an employee of the **Insured** arising out of or in the course of the employee's employment with the **Insured** or any **Claim** made against the **Insured** by any injured person or the dependent of any injured person under the provisions of any workers' compensation law or any other obligations for which the **Insured** may be held liable under any workers' compensation law.

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.