



Public and Products Liability Insurance Policy

(Policy number CSOE-PL-2020)

Issued to Community Service Organisation
(Education) clients of VMIA

For the period 1 July 2020
to 30 June 2021



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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 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 Public and Products Liability 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: CSOE-PL-2020

Named Insured: State Government of Victoria (Department of Education & Training) funded Community Service Organisations including Kindergartens and Learn Local 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

Business: All authorised activities of the Named Insured originating within Victoria (irrespective of the funding source)

Limit of Liability: Public Liability - \$20,000,000 any one Occurrence
Products Liability - \$20,000,000 any one Occurrence and in the annual aggregate any one Period of Insurance

Excess: Nil

Nominated State: Victoria, Australia

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 Insured's interstate operations

For and on behalf of

Victorian Managed Insurance Authority



Peter Thompson
Acting Chief Insurance Officer

Dated: 1 July 2020

2. Insuring Clause

Subject to the limitations (including the Limits of Liability), terms and conditions, exclusions and warranties incorporated herein VMIA agrees as follows:

- a. To indemnify the **Insured** against all sums which the **Insured** shall become legally liable to pay by way of damages (which includes amounts owing or liability incurred in respect of or arising out of a claim for recovery or contribution made pursuant to legislation concerning the operation of any statutory compensation scheme) by reason of or arising out of **Personal Injury, Property Damage or Advertising Liability** happening during the **Period of Insurance** and arising out of an **Occurrence** in connection with the **Business**.
- b. In addition, but subject to the applicable **Limit of Liability** unless otherwise specified, VMIA will:
 - i. defend at its own cost, in the **Insured's** name and on the **Insured's** behalf, any suit against the **Insured** alleging such **Personal Injury or Property Damage or Advertising Liability** and seeking damages on account thereof even if such suit is groundless, false or fraudulent, but VMIA shall not be obligated to pay any claim or judgement or to defend any suit after the applicable **Limit of Liability** has been exhausted by payment of judgements or settlements;
 - ii. pay all expenses incurred by the **Insured**, all charges, costs or expenses recoverable from or awarded against the **Insured** in any such suit and all interest on the entire amount of any judgement therein which accrues after entry of the judgement and before VMIA has paid or tendered or deposited in court that part of the judgement which does not exceed the applicable **Limit of Liability**;
 - iii. pay premiums on appeal bonds and/or security for costs required in any such suits and pay premiums on bonds to release attachments in any such suit for an amount not in excess of the applicable **Limit of Liability**, but VMIA shall have no obligation to apply for or furnish any such bonds and/or security for costs;
 - iv. pay all charges, costs or expenses (including actual **Loss** of earnings and costs incurred in the investigation, defence or settlement of any claim or suit) reasonably incurred by the **Insured** either at VMIA's request or with VMIA's prior consent (not to be unreasonably withheld);
 - v. pay all legal costs incurred by the **Insured** with the consent of VMIA (not to be unreasonably withheld) for representation of the **Insured** at any Coroner's inquest, any proceedings in any Court, Tribunal or Commission, Royal Commission or Government inquiry in connection with liability **Insured** by this **Policy**; or
 - vi. pay expenses incurred by the **Insured** for first aid rendered to others arising out of any **Occurrence**.

The amounts incurred under paragraphs (iv), (v) and (vi) above are payable by VMIA in addition to the applicable **Limit of Liability** of this **Policy**.

In jurisdictions where VMIA may be prevented by law or otherwise from carrying out this provision, VMIA shall pay any expense incurred with its written consent for others to carry out such actions and payments on its behalf.

3. Costs and Expenses

VMIA shall pay, on the **Insured's** behalf in addition to the **Limit of Liability**, the costs and expenses incurred by or on behalf of VMIA, and the costs and expenses incurred by the **Insured** with VMIA's prior written consent, in the defence or settlement of any claim.

If a payment greater than the **Limit of Liability** has to be made to dispose of a claim made against the **Insured**, VMIA's liability in respect of such costs and expenses shall be such proportion of the total costs and expenses incurred as the amount payable by VMIA under this **Policy** bears to the payment made to dispose of the claim. Where VMIA has paid or incurred costs and expenses in excess of such proportionate liability the **Insured** shall upon demand from VMIA pay to VMIA the amount of those additional costs and expenses. Alternatively, VMIA may set off such additional costs and expenses against any amount payable by VMIA to the **Insured** or on behalf of the **Insured** to the claimant or any other party in respect of the same 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:

Advertising Liability means:

- a. libel or slander;
- b. infringement of copyright, title or slogan;
- c. unfair competition, piracy or idea misappropriation under an implied contract, The Australian Consumer Law, Fair Trading Act or similar legislation; or
- d. invasion of privacy,

committed or alleged to have been committed during the **Period of Insurance** in any advertising, publicity article, broadcast or telecast and arising out of any advertising activities conducted by or on behalf of the **Insured**, in the course of advertising the **Named Insured's Products**, goods or services.

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

Employee means any person who was or may hereafter be under a contract of service with the **Named Insured** or who was or is or may hereafter be a paid or unpaid volunteer helper and includes persons whose positions terminate during the **Period of Insurance**.

Insured means:

- a. the **Named Insured**;
- b.
 - i. any corporation, company, organisation or entity including subsidiaries thereof (now or hereafter constituted) controlled by the **Named Insured**; and
 - ii. any other company or entity coming under the **Named Insured's** control or in which it assumes participative management except as specifically excluded by this **Policy**, whose place of incorporation is the State of Victoria, unless otherwise agreed by VMIA;
- c. any Minister, public servant, director, executive officer, committee member, **Employee**, partner or shareholders of the **Insured** or of a company designated in paragraph (b) above only while acting within the scope of their duties in such capacity;
- d. any organisation, person, principal or lessor in respect of the liability of such organisation or person arising out of an obligation or the performance by the **Insured** or by a corporation designated in paragraph (b) above under any contract or agreement whether expressed or implied to the extent required by such contract or agreement;
- e. any officer, member, **Employee** or voluntary helper of the **Insured's** canteen, social, sports or welfare organisations, or first aid, fire or ambulance service in respect of claims arising from duties connected thereto;
- f. the Department of Education and Training (DET) in respect of liabilities arising out of actions of the **Named Insured** and arising in connection with the **Business**. Notwithstanding the above and other references to the **Insured** in this **Policy** it is agreed that it is not the intention of the parties that DET be covered or entitled to seek indemnity under this **Policy** for anything other than its contingent liability arising out of the actions of the **Named Insured** in connection with the activities of their business;

- g. contracted persons receiving payment for providing educational, informational or training services or activities that are approved by the committee of management of the **Named Insured** but only when providing these services or training on behalf of the **Named Insured**;
- h. any work experience participants;
- i. any **Patron** of the **Named Insured**, but only whilst that **Patron** is engaging in voluntary activities on behalf of the **Named Insured**.

Limit of Liability means the **Limit of Liability** specified in the Schedule.

Loss means:

- a. legal liability to pay damages or judgements or, with the written consent of VMIA, settlements;
- b. all charges, expenses and legal costs incurred by VMIA or by the **Insured** with the prior written consent of VMIA in the settlement or defence of claims for compensation in respect of which the **Insured** is entitled to indemnity under the **Policy** or if sustained would be so entitled and all charges, expenses and legal costs recoverable from the **Insured** by claimants in connection with such claims.

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**.

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

Nominated State means the State specified in the schedule.

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**.

With regards to **Advertising Liability**, all liability arising out of the same injurious material or act regardless of the number or kind of media used, the frequency or repetition thereof and number of claimants shall be deemed to be one **Occurrence**.

Patron means a person that acts as an ambassador for the organisation supporting and championing it in its endeavours as an organisation.

Period of Insurance means the period specified in the Schedule and/or Certificate of Currency as Period of Insurance.

Personal Injury means:

- a. bodily injury, death, sickness, disease, disability, shock, fright, mental anguish, mental injury and sexual harassment including **Loss** of services resulting therefrom;
 - b. wrongful arrest, wrongful imprisonment, wrongful detention, malicious prosecution or humiliation;
 - c. racial, religious, sexual, age or disability discrimination (unless insurance is prohibited by law) not committed by or at the direction of the **Insured** but only with respect to liability other than fines and penalties imposed by law;
 - d. wrongful entry or wrongful eviction or invasion of privacy;
 - e. the publication of a libel or other defamatory or disparaging material or the utterance of a slander;
 - f. assault and battery not committed by or at the direction of the **Insured** unless committed for the purposes of preventing or eliminating danger to persons or property; and
 - g. infringement of patent, copyright, trademark, service mark, trade name, title or slogan, piracy or unfair competition or idea misappropriation,
- which occurs during the **Period of Insurance**.

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

Property Damage means:

- a. **Loss** of, physical injury to or destruction of tangible property which occurs during the **Period of Insurance** including the **Loss** of use thereof at any time resulting therefrom; or
- b. **Loss** of use of tangible property which has not been physically injured or destroyed, provided such **Loss** of use arises out of an **Occurrence** during the **Period of Insurance**.

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.

Vehicle means any type of machine on wheels or on caterpillar tracks made or intended to be propelled other than by manual or animal power.

6. Conditions

6.1. Cancellation

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

If a **Named Insured** 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.

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 law of the **Nominated State**. Each party agrees to submit to the jurisdiction of any court of competent jurisdiction within the **Nominated State** 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. 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. Co-operation

- a. 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.
- b. The **Insured** shall give VMIA such information and co-operation 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** as specified in the 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 **Personal Injury, Property Damage or Advertising Liability** from arising out of the same or similar conditions and such expense shall not be recoverable under this **Policy**.

6.15. Non-Imputation

- a. This **Policy**, including any amendment, renewal or variation or endorsement to it, shall be construed as if each person entitled to claim on it, whether a party to the **Policy** or not, had made a proposal, application or request for the **Policy**, amendment, renewal, variation or endorsement in respect of their interest only. Further, any information or knowledge possessed by a person entitled to claim on this **Policy**, whether possessed before or after the **Policy** was entered into shall not be imputed to any other such person. VMIA will not seek any relief whatsoever (including cancellation of the **Policy**) for non-disclosure and /or misrepresentation against a person entitled to claim under this **Policy** unless VMIA would have been entitled to that relief had the person claiming been the only person covered by this **Policy**.
- b. Any written application for coverage shall be construed to be a separate application for coverage by each of the **Insured**. With respect to the declarations and statements contained in such written application for coverage, no statement in the application or knowledge possessed by any **Insured** shall be imputed to any other **Insured** for the purpose of determining the availability of coverage with respect to claims made against the **Insured**.

6.16. Cross-Liability

Neither the inclusion of more than one **Insured** under this **Policy** nor any act, omission, breach or default by an **Insured** shall in any way affect the rights of any other **Insured**, it being intended that this **Policy** should be construed as if a separate contract of insurance had been entered by each **Insured**, but not so as to increase VMIA's **Limit of Liability**.

6.17. Bankruptcy and Insolvency

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

6.18. Takeovers

In the event of the takeover or merger of the **Named Insured** by or with any other organisation, or if the **Named Insured** stops receiving funding from the Victorian Government, the indemnity provided hereunder is amended to apply only to claims arising out of any indemnifiable events under this **Policy** taking place prior to the date of such takeover, merger or cessation of funding unless VMIA agrees otherwise in writing.

6.19. 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**.

6.20. Statutory compliance

The **Insured** shall comply with all statutory requirements concerning the inspection of passenger lifts and steam pressure apparatus.

6.21. Records of service

The **Named 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**.

6.22. 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**.

6.23. Non accumulation

If the **Insured** makes a claim under this **Policy**, it is agreed that the claim also must not be made by the **Insured** under any other insurance **Policy** offered by 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; or
 - 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 or 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. Pollution

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 legionella bacteria;

7.4. Asbestos

- a. mining, processing, transporting, distribution and/or storage of asbestos;
- b. manufacture of asbestos products or processing of materials containing asbestos; or

- c. any process of decontamination, treatment, removal or control of asbestos but this clause (c) applies only to those claims arising in consequence of inhalation of asbestos fibre or damage to or **Loss** of use of property due to the presence of asbestos;

7.5. Employers' liability

Personal Injury sustained by any **Employee** or any deemed **Employee** of the **Named Insured** arising out of and in the course of employment in the **Business** under contract of service, apprenticeship or deeming provision of any legislation to the extent the **Insured** is liable under any Work Cover Statute or Regulation and for which the relevant Work Cover or Employers' Indemnity **Policy** will respond to any claim. In the event that an **Employee**, deemed **Employee** or any person in the service of the **Named Insured** is injured in non-working hours whilst in or on property owned, occupied or used by the **Named Insured** this shall not be deemed to be an event arising out of employment by the **Named Insured**, but only to the extent to which it does not form a claim under the **Named Insured's** Work Cover or Employers' Indemnity Policy;

7.6. Property Damage

- a. property owned by the **Insured**;
- b. property in the physical or legal control of the **Insured** other than:
 - i. **Vehicles** (not belonging to or used by or on behalf of the **Insured**) in the physical or legal control of the **Insured** where such **Property Damage** occurs whilst any such **Vehicle** is in a car park owned or operated by the **Insured**; or
 - ii. **Property Damaged** by the negligence of the **Insured**.
- c. Cover under this paragraph (b) does not apply if the **Insured**, as part of the **Business**, is a car park owner/operator for reward. Payment of a charge by a tenant to the **Insured** for **Vehicle** parking space is deemed not to be reward for the purposes of this exclusion; or
- d. the **Named Insured's Products** if such damage is caused by any defect therein or the harmful nature or unsuitability thereof;

7.7. Advertising Liability

- a. incurred prior to the inception of this **Policy**;
- b. for statements made at the direction of the **Insured** with the knowledge of the illegality or falsity thereof;
- c. for breach of contract, other than misappropriation of advertising ideas under an implied contract;
- d. for incorrect description of the price of the **Named Insured's Products**, goods or services;
- e. for infringement of trade mark, service mark or trade name on any products, goods or services sold, offered for sale or advertised. This shall not apply to infringement copyright, of titles or slogans;
- f. for failure of the **Named Insured's Products**, goods or services to conform with advertised performance, quality, fitness or durability; or
- g. arising from export of the **Named Insured's Products** to or business visits by directors, executives or **Employees** to the United States of America and Canada;

7.8. Fines

Fines, 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;

7.9. Loss of use

Loss of use of tangible property which has not been physically injured or destroyed caused by:

- a. a delay in or lack of performance by or on behalf of the **Insured** of any contract or agreement; or
- b. the failure of the **Named Insured's Products** to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by the **Insured**,

but this exclusion does not apply to **Loss of use** of other tangible property arising out of the sudden and accidental physical injury to or destruction of the **Named Insured's Products** after such products have been put to use by any person or organisation other than an **Insured**;

7.10. Product recall

- a. the cost of recalling any of the **Named Insured's Products** or making any refund on the price paid for any of the **Named Insured's Products**; or
- b. the cost of replacing any of the **Named Insured's Products** which are not damaged;

7.11. Liability for Vehicles

- a. liability for **Personal Injury** arising out of the use by the **Insured** of any **Vehicles** but only to the extent that such liability has been paid or will be paid either:
 - i. under any legislation or statutory scheme in force in any Australian State or Territory or any statutory scheme operating from time to time anywhere in the world; or
 - ii. under any specific motor **Vehicle** insurance effected by or on behalf of the **Insured** or under any insurance entered into by a person other than the **Insured** and under which insurance the **Insured** is entitled to indemnity,

the intention being that this **Policy** should operate in excess of the above payments, statutory covers and insurances, and when those payments, covers or insurances do not apply. Furthermore, this exclusion does not apply to any claim brought against the **Insured** to recover money or compensation paid or payable under the legislation, statutory covers or insurances referred to above, such claims being covered by this **Policy**;

- b. **Property Damage** arising out of the ownership, maintenance, operation or use by the **Insured** of any **Vehicles** being used in circumstances in respect of which there is required to be in force a **Policy** of compulsory liability insurance, but this exclusion does not apply to:
 - i. **Property Damage** arising out of or in connection with the loading or unloading of **Vehicles**; or
 - ii. the **Insured's** liability arising out of the use by **Employees** or other persons in the course of the **Business** of any **Vehicle** not owned, hired, leased or supplied by the **Insured** and not required to be **Insured** by the **Insured** by virtue of any legislation governing its use, but excluding the **Insured's** liability in respect of damage to any such **Vehicle**; or
- c. liability arising out of the ownership, maintenance, operation or use by the **Insured** of:
 - i. any aircraft or hovercraft; or
 - ii. any watercraft or vessel exceeding 8 metres in length whilst afloat but this exclusion shall not apply in regard to watercraft owned by others and used by the **Insured** for business entertainment or hand propelled or sailing craft in territorial waters;

7.12. Intentional injury or damage

Personal Injury, **Property Damage** or **Advertising Liability** expected or intended from the standpoint of the **Insured**.

This exclusion 7.12 does not apply to **Personal Injury** resulting from the use of reasonable force to protect persons or property.

7.13. Abnormal duty

any contractual or other duty or obligation assumed by the **Insured** which is not assumed in the normal conduct of the **Business** or profession. This exclusion shall not apply to those written contracts designated in the Schedule nor the liability assumed by the **Insured** under a warranty of fitness or quality as regards the **Named Insured's Products**;

7.14. Other insurance

any matter in respect of which the **Insured** is entitled to indemnity under any other insurance required to be effected by or under any law except in respect of any amount beyond that which is payable or would have been payable under such other insurance or fidelity fund had this **Policy** not been effected;

7.15. Prior claims and circumstances

any matter or **Occurrence**:

- a. in respect of which notice has been given to VMIA or any other Insurer under a previous insurance **Policy**, or
- b. disclosed or communicated where requested to VMIA in the proposal and/or declaration or otherwise before the commencement of the **Period of Insurance**, or
- c. of which the **Insured** was or should have been aware before the commencement of the **Period of Insurance** which the **Insured** knew or should have known could give rise to a claim.

This exclusion is independent of and shall not affect VMIA's other rights regarding misrepresentation and non-disclosure;

7.16. 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;

7.17. Defamation

the publication or utterance of a libel or slander:

- a. made prior to the effective date of this **Policy**; or
- b. made at the direction of the **Insured** with knowledge of the falsity thereof;

7.18. Jurisdiction

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

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.