

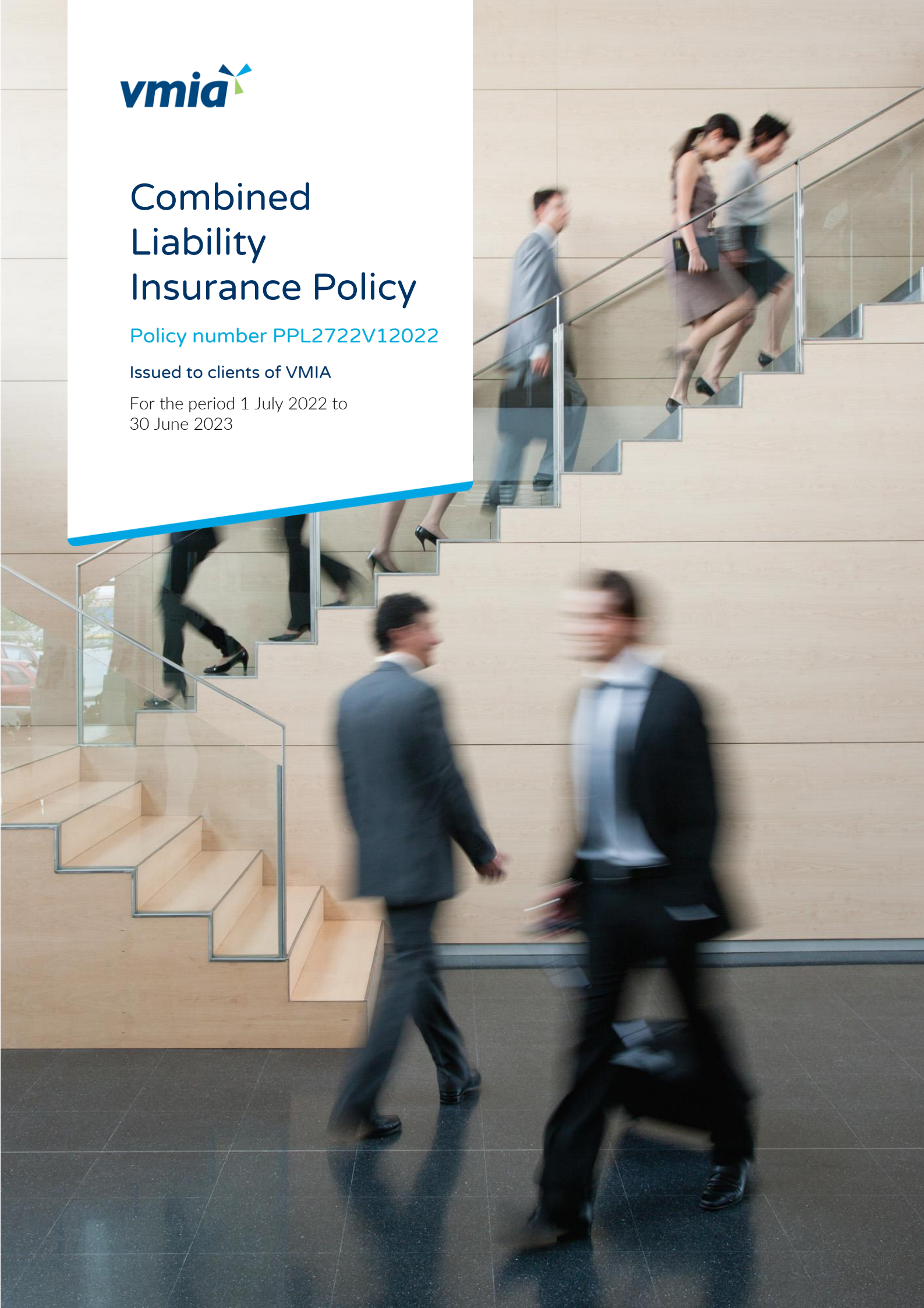


Combined Liability Insurance Policy

Policy number PPL2722V12022

Issued to clients of VMIA

For the period 1 July 2022 to
30 June 2023



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**VMIA is the Victorian
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and risk adviser**

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1. Combined Liability

1.1 What is covered

1.1.1 Public and products liability

VMIA will pay the **Insured** all amounts which it is legally liable to pay which represent **Compensation** and **Defence Costs** arising out of **Personal Injury** and/or **Damage** occurring during the **Policy Period** and caused by an **Occurrence** in connection with the **Insured's Business** or the **Insured Products**.

1.1.2 Professional liability

VMIA will pay on behalf of the **Insured**, **Economic Loss** and **Defence Costs** arising from any **Professional Services Claim** first made and notified during the **Policy Period** for performing or failure to perform **Professional Services**.

1.1.3 Formal Investigation and Representation Expenses

VMIA will pay to or on behalf of the **Insured**, claims first made and notified during the **Policy Period** for all reasonable **Representation Expenses** incurred by the **Insured** in respect of any **Formal Investigation**.

1.2 Extensions

Insuring clauses 1.1.1 – 1.1.3

The following Extensions are applicable to clauses 1.1.1 – 1.1.3:

1.2.1 Advancement of Defence Costs and Representation Expenses

VMIA will advance **Defence Costs** and **Representation Expenses** to the **Insured** within 30 days upon receipt of an invoice.

In respect of the liability to pay **Defence Costs** and **Representation Expenses**, VMIA will only pay **Defence Costs** and **Representation Expenses** subject to the following:

- (a) VMIA is only obliged to pay **Defence Costs** and the **Representation Expenses** up to the applicable **Limit of Liability**; and
- (b) **Defence Costs** paid under clause 1.1.1 will be payable in addition to the **Limit of Liability**, except any judgment, award, or settlement made in the United States of America or Canada.

1.2.2 Asbestos liability

VMIA will pay the **Insured** for all amounts:

- (a) involving handling, removal, stripping out, demolition, storage, transportation or disposal of asbestos and/or any asbestos containing materials, in accordance with any Asbestos Management Plan and/or Guidance Notes applicable to the **Insured**, occurring during the **Policy Period** and caused by an **Occurrence** in connection with the **Insured's Business** or the **Insured Products**;
- (b) occurring after 30 June 2004; but
- (c) only in respect of a claim first made against the **Insured** during the **Policy Period**.

In respect of this clause 1.2.2 the following conditions apply:

- (d) should the **Insured** notify VMIA during the **Policy Period** of any fact or circumstance which VMIA accepts may give rise to claims then acceptance of such notification means that VMIA will deal with such claims as if the claims had first been made against the **Insured** during the **Policy Period**;
- (e) VMIA will not indemnify the **Insured** pursuant to this Extension where the **Insured** was aware of the fact or circumstance, which gave rise to the claim, before the commencement of the **Policy Period**;
- (f) in respect of any liability which arises from any requirement to clean up or remove asbestos and/or asbestos containing materials from any building and/or structure:

- (i) such liability arises solely in consequence of a sudden specific and identifiable fire, explosion, impact or collapse; and
- (ii) the building and/or structure that is subject to the clean up or removal is not owned, leased or hired by or under the hire purchase or on loan to the **Insured**;
- (g) **VMIA** will not indemnify the **Insured** for any liability in respect of the diminution in the value of property or loss of or potential loss of rental income or any other consequential losses (including business interruption) howsoever arising;
- (h) **VMIA's** total liability in respect of any one **Policy Period** for **Compensation** and **Defence Costs** will not exceed the amount specified as the **Sub-Limit of Liability** stated in the **Policy Schedule**;
- (i) all conditions and recommendations set out in the Asbestos Management Plan and Guidance Notes issued by the **Insured** must be followed by the **Insured** and/or contractors; and
- (j) the **Insured** and/or contractors must comply with all relevant legislation, guidelines and codes of practice relating to any work involving asbestos and/or any asbestos containing material.

1.2.3 Coverage for committees of management

VMIA will pay the **Insured** for committees of management appointed under or deemed to have been appointed under the *Crown Lands (Reserves) Act 1978* (VIC) or the *Forest Act 1958* (VIC) as amended, but only to the extent that they are acting in their capacity as a committee of management.

Coverage does not apply to:

- (a) any liability in connection with responsibilities which would ordinarily be considered to be Municipal Council responsibilities and not responsibilities of a committee of management;
- (b) any liability for which the committee of management has valid and enforceable public and product liability or similar insurance covering the committee of management in its capacity as a committee of management; or
- (c) if, by law or by agreement, the committee of management is required to maintain its own separate public and product liability or similar insurance.

Under this clause 1.2.3, **VMIA** will also pay **Defence Costs** in accordance with clause 1.1.1.

Cover does not extend to lessees, hirers or licensees of Crown land.

1.2.4 Historical claims – Professional Services

VMIA will pay the **Insured** any amount payable at law in respect of a **Professional Services Claim** made during the **Policy Period** arising from a **Personal Injury** to a third party which was committed after the Retroactive Date (if one is specified in the Schedule) but prior to 4.00 pm AEST on 30 June 2010 under clause 1.1.2 of the Policy.

1.2.5 Medical and surgical expenses

VMIA will pay the **Insured** all expenses incurred by the **Insured** for medical and surgical relief and occupational health and other medical and therapeutic services (unless prohibited by law) to others at the time of any injury to which clause 1.1.1 will apply. **VMIA** will not meet any medical and surgical expenses relating to the provision of **Healthcare**.

1.2.6 Post judgment interest

VMIA will pay post judgment interest on any portion of any judgment entered until **VMIA** has paid, tendered or deposited into court such part of the judgment, but only up to the **Limit of Liability**.

1.2.7 Premiums on appeal bonds

VMIA will pay all premiums on appeal bonds and security for costs required by the **Insured** in any legal proceedings, and pay premiums on bonds to release attachments in any proceeding or an amount not in excess of the **Limit of Liability**.

1.2.8 Temporary repairs costs

VMIA will pay the **Insured** all expenses incurred by the **Insured** for temporary repairs, shoring up of protection of property of others that have been damaged as a result of an **Occurrence** in connection with the **Insured's Business** and **Insured Products**.

Insuring clauses 1.1.2 – 1.1.3

In addition to the Extensions 1.2.1 – 1.2.8 above, the following Extensions are applicable to clauses 1.1.2 – 1.1.3:

1.2.9 Dishonest, criminal or malicious conduct

VMIA will pay the **Insured Economic Loss** and **Defence Costs** on account of any **Professional Services Claim** which would otherwise be excluded by Exclusion 2.6, provided that the **Insured** has not condoned or committed the dishonest, fraudulent, criminal or malicious act by any employee, fellow director or fellow officer after the **Retroactive Date**.

1.2.10 Liability for dishonesty – third party property

VMIA will pay the **Insured** for any loss of money or any other property sustained during the **Policy Period** for which the **Insured** is legally liable to third parties and is in consequence of a dishonest, fraudulent, criminal or malicious act or omission. VMIA will pay up to the amount specified as the **Sub-Limit of Liability** stated in the **Policy Schedule**.

All costs incurred by the **Insured** to substantiate its loss are to be borne by the **Insured**. The **Deductible** will apply to each and every individual act of dishonesty or fraudulent, criminal or malicious act or omission.

1.2.11 Loss of Documents

VMIA will pay the **Insured** for:

- (a) legal liability which it may incur to third parties on account of any **Professional Services Claim** due to the loss of or loss of use or destruction of **Document(s)** which have been, whilst entrusted to or in the custody of the **Insured** or in transit and in the conduct of the **Insured's Business**, within the territorial limits of Commonwealth of Australia, Papua New Guinea or New Zealand; and
- (b) all reasonable costs, charges and expenses incurred by the **Insured** in replacing and/or restoring such **Documents**;

provided always that:

- (c) the **Insured** will submit as part of any proof of loss, all bills and accounts with respect to the lost or damaged **Documents**;
- (d) VMIA will not be liable for any loss brought about by wear or tear or any other gradually operating causes, moth or vermin; and
- (e) the amount of VMIA's liability is limited to the amount specified as the **Sub-Limit of Liability** stated in the **Policy Schedule**.

1.2.12 Mitigation costs

VMIA will pay the direct and reasonable costs and expenses incurred by the **Insured**, with VMIA's prior consent in taking action to mitigate or correct any **Economic Loss** that otherwise would be the subject of a **Professional Services Claims**

VMIA will only be liable to pay under this Extension in the event that, if not mitigated or corrected would result in **Economic Loss** to a third party and a **Professional Services Claim**.

VMIA will pay up to the amount specified as the **Sub-Limit of Liability** stated in the **Policy Schedule**.

1.2.13 Professional Liability - Construction Activities

VMIA will pay the **Insured Economic Loss** and **Defence Costs** on account of any **Professional Services Claim** that arises solely and directly from any advice, design or specification prepared by the **Insured** in the conduct of the **Professional Services** and duties of the **Insured's Business** and in connection with the **Insured's** construction activities which would otherwise be excluded by Exclusion 2.4, provided always that the **Professional Services** are performed by a **Properly Qualified Person** or under the direct supervision and control of a **Properly Qualified Person**.

Coverage does not apply to:

- a) the manufacture, construction, maintenance, installation, assembly, processing, sale, supply or distribution of goods or products by for or on behalf of the **Insured**; or
- b) workmanship in manufacture, fabrication, construction, erection, installation, assembly, alteration, maintenance, servicing, remediation, repair, demolition or disassembly (including any materials, parts or equipment furnished in connection therewith) by for or on behalf of the **Insured**; or
- c) performance or supervision of any workmanship (where such supervision would normally be undertaken by a **Qualified Person**) of construction, manufacture, assembly, installation, erection, maintenance or physical alteration of buildings, goods, products or property by for or on behalf of the **Insured**; or
- d) occupational health and safety or industrial relations matters which would normally be performed or supervised by a **Qualified Person**; or
- e) environmental protection matters which would normally be performed or supervised by a **Qualified Person**.

For the purposes of this extension,

- i. **Properly Qualified Person** means any properly qualified and registered architect, engineer, surveyor or quantity surveyor with the appropriate professional body or any skilful qualified professional person having an established discipline appropriate to the **Professional Services** being performed or supervised.
- ii. **Qualified Person** means any building contractor, site supervisor, site manager, superintendent or foreman.

VMIA will pay up to the amount specified as the **Sub-Limit of Liability** stated in the **Policy Schedule**.

2. Exclusions

Exclusions applicable to all insuring clauses.

VMIA will not cover the **Insured** for **Compensation, Economic Loss, Defence Costs, Formal Investigations and Representation Expenses** or any other amount insured directly or indirectly caused by, arising out of or in any way connected with:

2.1 Aircraft and Watercraft

The ownership, maintenance use or operation by the **Insured** of any **Aircraft** or **Watercraft** exceeding 15 metres in length while on, in or under the water, but this Exclusion will not apply with respect to:

- (a) inflatable balloons used for advertising purposes, nor to inflatable balloons designed for the purpose of carrying persons;
- (b) **Remotely Piloted Aircraft** operations which are compliant with Civil Aviation Safety Authority regulations; or
- (c) **Watercraft** not owned or operated by the **Insured**.

2.2 Asbestos

- (a) asbestos or any materials containing asbestos;
- (b) the mining, processing and transportation, distribution and storage of asbestos;
- (c) the manufacture of asbestos products or processing material containing asbestos;
- (d) any process of removal, decontamination, treatment or control of asbestos provided that this Exclusion will only apply to liability arising in consequence of inhalation of asbestos fibre or damage to or loss of use of property due to the presence of asbestos; or
- (e) liability directly or indirectly caused by or alleged to be caused by or contributed to in whole or in part by or arising from the existence of or exposure to asbestos and/or any materials containing asbestos, other than as specifically provided under Extension 1.2.2 of this **Policy**.

2.3 Breach of any local or foreign laws

Liability for which insurance is required to be effected with a local or domestic insurer in any country outside the Commonwealth of Australia due to the application of any laws of such country.

This Exclusion does not apply to the extent that **VMIA's** provision of indemnity under this **Policy** does not breach any local or foreign laws.

2.4 Construction activities

Earthworks or construction activities of any kind (including the construction, erection, demolition whether partial or complete, alteration, addition or renovation of buildings, earthworks or structures) by or on behalf of the **Insured** where the total contract or estimated value of all earthworks and construction activities forming part of one project or a series of related projects exceeds \$500,000, other than as specifically provided under Extension 1.2.13 of this **Policy**.

2.5 Contractual liability

- (a) any liability assumed under any contract, agreement, guarantee or warranty; or
- (b) any liability arising out of any intentional, deliberate or wilful breach of contract by the **Insured**.

This Exclusion 2.5 (a) will not apply to;

- (i) liability that would have attached to the **Insured** in the absence of such contract, agreement, guarantee or warranty; or
- (ii) liability assumed as per the definition of **Insured** clause (k), but only to the extent of the terms of that indemnity granted under contract or agreement.

2.6 Dishonesty

- (a) dishonest, fraudulent act or any wilful violation or breach of law by an **Insured** or any person the **Insured** is legally responsible; or
- (b) any **Insured** who has gained any personal profit, remuneration or advantage to which such **Insured** is not legally entitled.

2.7 Employment liability

- (a) any liability in respect of which the **Insured** is or would be entitled to indemnity under any fund, scheme, policy of insurance or self-insurance pursuant to or required by any legislation relating to worker's compensation whether or not such insurance has been effected;
- (b) liability imposed by the provision of any industrial award, agreement, or determination or any contract of employment or prospective employment of any person or persons by the **Insured**; or
- (c) liability imposed by workers' compensation law provide however that this Exclusion will not apply with respect to the liability of other assumed by the **Insured** under a written contract.

2.8 Fines and penalties

Fines, penalties, liquidated damages, punitive damages, exemplary damages, aggravated damages or multiple compensatory damages.

2.9 Insured's property

Damage to property owned by the **Insured**.

2.10 Insured Products

Damage to the **Insured Products** or any part of the **Insured Products**, if such **Damage** is caused by any defect therein or the harmful nature or unsuitability thereof, but this Exclusion shall not apply to **Personal Injury** or resultant **Damage** to property.

2.11 Known circumstances and claims

- (a) any fact or circumstance notified under any previous policy, if such fact or circumstances has been accepted under any policy or coverage section of which this **Policy** is a renewal or replacement; or
- (b) any demand, suit or proceeding pending or judgment entered against the **Insured** prior to the commencement of the **Policy Period**.

This Exclusion applies only to the cover provided under clause 1.1.2

2.12 Performance

Loss of use of tangible property, which has not been physically injured, destroyed or damaged, resulting from:

- (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 **Insured 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 resulting from the sudden and accidental physical **Damage** or destruction of the **Insured Products** or work performed by or on behalf of the **Insured** after the **Insured Products** or work have been put to its intended use by any person or organisation other than the **Insured**.

2.13 Pollutants

- (a) the discharge, dispersal, release, seepage, migration or escape of **Pollutants** into or upon land, the atmosphere or any water course or body of water;
- (b) the cost of testing, monitoring, treating, detoxifying, removing, neutralising or cleaning up **Pollutants**; or
- (c) the cost of preventing the escape of **Pollutants**,

This Exclusion will not apply if such discharge, dispersal, release, seepage, migration or escape is caused by a sudden, identifiable, unintended and unexpected event, which takes place in its entirety at a specific time and place, and in respect of **Occurrences** outside of the United States of America, Canada and their respective protectorates and territories.

2.14 Provision of Healthcare

The rendering of or failure to render **Healthcare** by a **Health Practitioner**.

This Exclusion does not apply to:

- (a) the rendering of or failure to render **Healthcare** by a **Health Practitioner** or first aid attendants, employed by the **Insured** to provide first aid on the **Insured's** premises, other than where the **Insured's Business** is a hospital, community health centre, nursing home, ambulance or other business where the **Insured's** primary occupation involves provision of **Healthcare**;
- (b) the supply of **Insured Products** to entities or individuals outside the Victorian public health sector; and
- (c) actual or alleged breach of professional duty in provision of **Healthcare** by reason of any act, error or omission committed or allegedly committed by or on behalf of the **Insured**.

2.15 Rail

The operation of, or any **Occurrence** involving, trains and/or trams.

2.16 USA/Canada exclusion

- (a) **Professional Services Claims** made or commenced within the jurisdiction of a court of law or other tribunal with the power to make an enforceable order;
- (b) **Professional Services Claims** arising out of, based upon, or attributable to, a civil liability resulting from the conduct of the **Insured's Business**; or
- (c) **Professional Services Claims** arising out of the enforcement of any judgment, order or award in respect of any action brought within the jurisdiction of a court of law or other tribunal with the power to make an enforceable order,

in the United States of America, Canada and any of their respective protectorates or territories.

2.17 Vehicles

The ownership, possession or use of any **Vehicle**:

- (a) which is required by law to be registered; and
- (b) in respect of which insurance is required by virtue of any legislation.

2.18 War and terrorism

Loss, Personal Injury or Property Damage caused, occasioned, arising or resulting directly or indirectly by or from:

- (a) war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, or requisition or destruction of or **Damage** to property by or under the order of any government or public or local authority, except where covered by clauses applicable elsewhere in this **Policy**; and
- (b) any **Act of Terrorism** in excess of the amount of cover specified as the **Sub-Limit of Liability** stated in the **Policy Schedule**.

3. Conditions

3.1 Conditions applicable to insuring clauses 1.1.1 – 1.1.3

The following Conditions are applicable to clauses 1.1.1 – 1.1.3:

3.1.1 Applicable law

Any dispute concerning this **Policy** shall be determined in accordance with the law of Australia and its States and Territories. The parties to this **Policy** agree to submit to the competent jurisdiction of Victoria.

3.1.2 Fraudulent claim

If any claim for **Compensation** or **Professional Services Claim** or **Representation Expenses** claim under this **Policy** is in any respect fraudulent or if any fraudulent means or devices are used by the **Insured** or anyone acting on behalf of the **Insured** to obtain any benefit under this **Policy**, **VMIA** will deny indemnity in respect of such claims.

3.1.3 Other insurance

The **Insured** must give written notice to **VMIA** to any other insurance or insurances effected covering any **Occurrence**, or claim for **Compensation** or **Professional Services Claim** or **Representation Expenses** claim.

If the **Insured** is entitled to cover under any other insurance policy, **VMIA** will not be liable to pay or contribute under this **Policy** more than the rateable proportion of any compensation, costs, and expenses.

3.1.4 Subrogation

In the event of payment of a claim for **Compensation**, a **Professional Services Claim** or a **Representation Expenses** claim under this **Policy**, **VMIA** will be subrogated to all of the **Insured's** rights of recovery against any person or organisation. The **Insured** agrees to execute and deliver all appropriate papers and instruments and allow **VMIA** to undertake necessary steps or what is reasonably required to:

- (a) enforce any rights and remedies;
- (b) obtain relief or indemnity from other parties; and
- (c) recover against any amount paid by **VMIA** to the **Insured** in settlement of the **Insured's** claim.

If **VMIA** makes a successful recovery against a third party, **VMIA** is entitled to the following monies:

- (d) amount paid by **VMIA** to the **Insured** in respect of claim for **Compensation**, a **Professional Services Claim** and **Formal Investigation** and **Representation Expenses** under this **Policy**; and
- (e) amount paid by **VMIA** for administrative and legal costs incurred in connection with the recovery.

If there is an amount in excess of clause 3.1.4(d) and 3.1.4(e), the **Insured** is entitled to that recovered excess amount.

3.1.5 Waiver of subrogation rights

VMIA waives all rights of subrogation against all parties comprising the **Insured** and others who have contractually bound the **Insured** to waive rights of recovery.

VMIA also waives all rights of subrogation against any **Insured** or their employee except in respect of liability arising from or contributed to by any dishonest, criminal or fraudulent act or omission, gaining of any profit or to which one is not legally entitled.

3.1.6 Worldwide territory and jurisdiction

Coverage under this **Policy** shall extend anywhere in the world unless to the extent that trade or economic sanction or other laws or regulations prohibit **VMIA** from providing the insurance.

3.2 Conditions applicable to clause 1.1.1 only

In addition to the Conditions in clause 3.1 the following Conditions are applicable to clause 1.1.1:

3.2.1 Application of the Deductible

- (a) the **Insured** shall be liable to pay the amount of the **Deductible** in respect of each **Occurrence**. If a series of claims are made arising out of the one **Occurrence** then only one **Deductible** shall apply;
- (b) should more than one **Deductible** apply under this **Policy** for any claim for **Compensation**, (or series of claims for **Compensation** arising out of continuous or repeated exposure to substantially the same general conditions) such **Deductibles** shall not be aggregated and only the highest single level of **Deductible** shall apply;
- (c) the **Deductible** is inclusive of **Defence Costs** covered by this **Policy**;
- (d) where insuring clauses 1.1.1 and 1.1.2 are both engaged, such **Deductibles** shall not be aggregated and only the highest single level of **Deductible** shall apply;
- (e) when determining the application of the **Deductible** with respect to liability arising out of **Bushfire**, it is agreed that:
 - (i) all related or unrelated **Bushfire** incidents which occur during any period of 168 consecutive hours shall be considered as one **Occurrence**;
 - (ii) the **Insured** may nominate the date and time from which any such period of consecutive hours commences and, if losses occur over periods of greater duration than the above periods, the **Insured** may divide those losses into two or more **Occurrences**, provided that no two periods overlap and provided further that no period commences earlier than the date and time of the happening of the first recorded individual loss. Each period of 168 hours will be deemed to have:
 - (A) commenced at a date and time nominated by the **Insured**, the nomination will take place subsequent to the expiration of such period; and
 - (B) expired 168 hours after the commencement of the period nominated by the **Insured**;
 - (iii) should a period of 168 hours expire while a **Bushfire** incident or series of **Bushfire** incidents is continuing, then:
 - (A) a new period of 168 hours will be deemed to have commenced immediately upon expiration of the prior period; and
 - (B) such new period will constitute the commencement of a separate **Occurrence**.

3.2.2 Bushfire extending beyond the Policy Period

- (a) where any **Bushfire** incident or series of **Bushfire** incidents is nominated to commence prior to expiry or cancellation of this **Policy**, then, **VMIA** will be liable for the whole period of 168 consecutive hours, notwithstanding that this **Policy** may expire or be cancelled during the nominated period of 168 consecutive hours;
- (b) this **Policy** shall not apply to liability for any **Bushfire** commencing prior to the **Policy Period**;
- (c) this Condition applies to all **Bushfires**, whether continuous or sporadic in their nature and whether such **Bushfires** were due to the same climatic or other conditions; and
- (d) nothing contained in this Condition shall operate to increase the **Limit of Liability**.

3.2.3 Cross liability

Each of the parties comprising the **Insured** is a separate legal entity and the word **Insured** applies to each party as if a separate policy had been issued to each of the said parties but nothing contained in this clause will operate to increase **VMIA's** liability under this **Policy**.

3.2.4 Defence and settlement

- (a) in respect of any claim for **Compensation** under this **Policy**, **VMIA** has the duty to defend, or take over the conduct in the name of the **Insured**, any legal proceedings against the **Insured** seeking **Compensation** and to bring any cross claim in the name of the **Insured**.
- (b) **VMIA** will not be responsible to pay any claim or judgment or defend any suit after the **Limits of Liability** under this **Policy** has been exhausted;

- (c) **Defence Costs** and Extensions 1.2.5, 1.2.6, 1.2.7 and 1.2.8 payable under clause 1.1.1 of this **Policy** are to be payable in addition to the **Limit of Liability**;
- (d) if a payment exceeding the **Limit of Liability** has to be made to dispose of a claim for **Compensation** under clause 1.1.1 of this **Policy**, **VMIA's** liability for **Defence Costs** is limited to the proportion that **VMIA's** liability to pay **Compensation** under this **Policy** bears to that payment;
- (e) with respect to any claims for **Compensation** being made against the **Insured** in any court or legally constituted body in the United States of America or Canada or their respective protectorates and territories (or any order made anywhere to enforce such judgment, award or settlement either whole or in part), the **Limit of Liability** is inclusive of the **Defence Costs**;
- (f) if the costs of the claim for **Compensation** are not likely to exceed the **Deductible** **VMIA** may elect not to defend the legal proceedings. In such circumstances **VMIA** will reimburse the **Insured** for all reasonable **Defence Costs** if any payment properly and reasonably made exceeds such **Deductible**; and
- (g) the **Insured** must at all times co-operate with **VMIA** and comply with the terms and conditions of this **Policy** and assist where necessary in enforcing any right of contribution or indemnity from any third party, corporation or organisation.

3.2.5 Insured's duty in the event of an Occurrence

- (a) in the event of an **Occurrence** (or if an **Occurrence** appears reasonably likely to take place) the **Insured** will immediately, at its own expense, take all reasonable and responsible steps to prevent or minimise **Personal Injury** and/or **Damage**;
- (b) the **Insured** must give notice to **VMIA** as soon as practicable of an **Occurrence** involving **Personal Injury** and/or **Damage** which is likely to involve this **Policy** or to exceed an amount equal to or greater than 50% of the applicable **Deductible**, and must as soon as practicable forward to **VMIA** all information relevant to the **Occurrence** held by the **Insured**;
- (c) the **Insured** shall use its best endeavours to keep **VMIA** informed of all material developments likely to affect the costs of any claim or undertakes, insofar as is reasonably possible, to co-operate with **VMIA** and its representatives in the conduct and settlement of such claim and in the estimating of claim reserves;
- (d) the **Insured** must not, without **VMIA's** prior written consent, make any admission, offer, promise or payment in connection with any **Occurrence**; and
- (e) the **Insured** shall use its best endeavours to preserve all property, appliance and plant and all other things which may assist in the investigation or defence of a claim or in the exercise of rights of subrogation and so far as may be reasonably practicable no alteration or repair is to be effected without the consent of **VMIA** until **VMIA** has had an opportunity of inspection.

Failure to give notice of any **Occurrence** which at the time of its happening did not appear to involve this **Policy**, but which at a later date would appear to give rise to any claim or liability hereunder, shall not prejudice the **Insured's** right to indemnity under this **Policy**.

3.2.6 Limit of Liability

VMIA's liability in respect of all claims for **Compensation** for **Personal Injury** and/or **Damage** under clause 1.1.1 of this **Policy** arising out of any one **Occurrence** is limited to the amount specified in the **Policy Schedule** as the **Limit of Liability** for clause 1.1.1.

All claims for **Compensation** for **Personal Injury** and/or **Damage** arising out of continuous or repeated exposure to substantially the same general condition and/or consequent upon or attributable to one source or same originating cause will be considered to arise out of one **Occurrence**.

3.2.7 Sub-Limits of Liability

VMIA's liability in respect of all claims for **Compensation** under clause 1.1.1 are limited to the amount specified as the applicable **Sub-Limit of Liability** stated in the **Policy Schedule**.

3.3 Conditions applicable to clause 1.1.2 only

In addition to the Conditions in clause 3.1 the following Conditions are applicable to clause 1.1.2:

3.3.1 Application of the Deductible

- (a) the **Insured** shall be liable to pay the amount of the **Deductible** in respect of each **Professional Services Claim**;
- (b) all related claims shall be treated as a single **Professional Services Claim** first made on the date the earliest of such claims were made; and
- (c) should more than one **Deductible** apply under this **Policy** for any claim for **Economic Loss**, (or series of claims for **Economic Loss** arising out of continuous or repeated exposure to substantially the same general conditions) such **Deductibles** shall not be aggregated and only the highest single level of **Deductible** shall apply; and
- (d) where insuring clauses 1.1.1 and 1.1.2 are both engaged, such **Deductibles** shall not be aggregated and only the highest single level of **Deductible** shall apply.

3.3.2 Automatic reinstatement

Upon notification to **VMIA** during the **Policy Period** of any **Professional Services Claim** made against the **Insured** or of circumstances which are likely to give rise to a **Professional Services Claim**, this **Policy** shall be deemed to be reinstated for such amount, if any, as may be ultimately paid by **VMIA** in respect of such **Professional Services Claim**, so as to remain in force during the **Policy Period** for the **Limit of Liability** for clause 1.1.2 stated in the **Policy Schedule**, provided always that the aggregate of the amounts so reinstated shall not exceed an amount equal to such original **Limit of Liability** for clause 1.1.2.

3.3.3 Defence, settlement and co-operation

- (a) it shall be the duty of **VMIA** to defend or take over the conduct in the name of the **Insured**, or settle any **Professional Services Claim**;
- (b) **Defence Costs** payable under clause 1.1.2 of this **Policy** are part of, and not in addition to, the **Limit of Liability** as set out in the **Policy Schedule**;
- (c) the **Insured** must not, without **VMIA's** written consent, admit liability for or settle any **Professional Services Claim** or incur any costs or expenses in connection therewith;
- (d) the **Insured** must as a condition precedent to their right to be indemnified under this **Policy** give **VMIA** immediate notice in writing of any **Professional Services Claim** made against the **Insured**, whether such **Professional Services Claim** be oral or in writing and will, upon request, give to **VMIA** such information it may reasonably require to investigate the matter notified;
- (e) if the costs of the **Professional Services Claim** are not likely to exceed the **Deductible** **VMIA** may elect not to defend the legal proceedings. In such circumstances **VMIA** will reimburse the **Insured** for all reasonable **Defence Costs** if any payment properly and reasonably made exceeds such **Deductible**; and
- (f) subject to clause 3.1.5 **VMIA** will be entitled to **Professional Services Claim** indemnity or contribution at any time in the name of the **Insured** from any party against whom the **Insured** may have such rights.

3.3.4 Limit of Liability

VMIA's liability in respect of all **Professional Services Claims** for **Economic Loss** under clause 1.1.2 of this **Policy** is limited to the amount specified in the **Policy Schedule**.

3.3.5 Non-imputation and severability

With respect to the Exclusions in clause 2 of this **Policy**, in order to determine if coverage is available:

- (a) no statements made, or information or knowledge possessed by an **Insured** will be imputed to any other **Insured**;
- (b) acts or omissions of an **Insured** will not prejudice the rights of any other **Insured** under the **Policy**; and
- (c) only the statements, information, knowledge, acts and omissions of any past, present or future CEO, CFO, CRO, Executive Management, (or a person operating in an equivalent capacity) of the **Insured** named in the **Policy Schedule** will be imputed to any insured corporate entity.

However, this clause will only apply if the **Insured** who might otherwise be prejudiced as a result of the acts or omissions of another **Insured** had no actual prior knowledge of those acts or omissions and, as soon as reasonably practicable after becoming aware of them, notified them in writing to **VMIA**.

3.3.6 Reporting and notice

The **Insured** shall give to **VMIA** such information and co-operation as it may reasonable require including but not limited to the description of the **Professional Services Claim** or circumstances, the nature of the alleged or potential **Economic Loss**, the names of the actual or potential claims and the manner in which the **Insured** first became aware of the **Professional Services Claim**.

3.4 Conditions applicable to clause 1.1.3 only

In addition to the Conditions in clause 3.1 the following Conditions are applicable to clause 1.1.3:

3.4.1 Application of the Deductible

VMIA's liability on account of each claim for **Representation Expenses** shall be payable in excess of the applicable **Deductible**.

For the purposes of Condition 3.4.1 **Deductible** shall mean the **Insured's** Professional Liability Deductible.

3.4.2 Co-operation and information required

- (a) The **Insured** must as a condition precedent to their right to be indemnified under clause 1.1.3, give **VMIA** immediate notice of the **Formal Investigation**, and will upon request, give **VMIA** such information as may be reasonably required to substantiate the **Representation Expenses**: and
- (b) all related claims shall be treated as a single claim for **Representation Expenses** first made on the date the earliest of such claims were made; and
- (c) should more than one **Deductible** apply under this **Policy** for any claim for **Representation Expenses**, (or series of claims for **Representation Expenses** arising out of continuous or repeated exposure to substantially the same general conditions) such **Deductibles** shall not be aggregated and only the highest single level of **Deductible** shall apply; and
- (d) where insuring clauses 1.1.1, 1.1.2 and 1.1.3 are engaged, such **Deductibles** shall not be aggregated and only the highest single level of **Deductible** shall apply.

3.4.3 Defence and settlement

- (a) it shall be the duty of **VMIA** to defend, or take over the conduct, in the name of the **Insured**, any **Formal Investigation** against the **Insured**.
- (b) the **Insured** agrees not to settle or convey any settlement or incur any **Representation Expenses** or assume any contractual obligation or admit any liability without **VMIA's** prior written consent. Provided the **Insured** complies with this clause, **VMIA** shall not unreasonably withhold or delay any such consent; and
- (c) if the costs of the **Representation Expenses** are not likely to exceed the **Deductible** **VMIA** may elect not to defend the legal proceedings or investigations. In such circumstances **VMIA** will reimburse the **Insured** for all reasonable **Internal Costs and Expenses** if any payment properly and reasonably made exceeds such **Deductible**

3.4.4 Reporting and notice

The **Insured** shall give to **VMIA** such information and co-operation as it may reasonable require including but not limited to the description of the **Formal Investigation** or circumstances, the nature of the alleged or potential **Economic Loss**, the names of the actual or potential claims and the manner in which the **Insured** first became aware of the **Representation Expenses**.

4. Definitions

4.1 Act of Terrorism

An action, including but not limited to the use of force or violence or threat, where:

- (a) the action is done with the intention of advancing a political, religious, ideological or similar cause; and
- (b) the act is done with the intention of:
 - (i) coercing, or influencing by intimidation, the government of the Commonwealth, State, Territory or foreign country, or of part of a State, Territory or foreign country; or
 - (ii) intimidating the public or a section of the public; and
- (c) (a) and (b) above are subject to the declaration of an Act of Terrorism as defined in the *Terrorism Insurance Act 2003* (Cth) as amended. The exception to this subjectivity is physical loss or damage solely and directly caused by an occurrence of an act of terrorism by:
 - (i) use of nuclear or radiological weapons or materials; or
 - (ii) use or operation, as a means of inflicting harm, of any computer, computer system or computer software program, malicious code, computer virus or process or any other electronic system.

4.2 Aircraft

Any vessel, craft or thing made or intended to fly or move in or through the atmosphere or space.

4.3 Bushfire

A fire originating in or spreading through trees, grassland and/or other natural vegetation, irrespective of origin.

4.4 Business

The Business stated in the **Policy Schedule**.

4.5 Compensation

Any amount paid or payable at law (including but not limited to amounts owing or liability incurred in respect of or arising out of a claim for recovery or contributions made pursuant to any legislation) by the **Insured** in respect of any claim for:

- (a) **Personal Injury**; or
- (b) **Damage**,

provided that **Compensation** is only payable in respect of an **Occurrence** or act, error or omission to which this **Policy** applies.

4.6 Damage

- (a) physical damage to, destruction of or loss of tangible property owned by third parties and any resultant loss of use; or
- (b) loss of use of tangible property owned by third parties which has not been physically damaged, lost or destroyed. Such loss of use will be deemed to have occurred at the time of the physical damage to or physical loss or destruction of the other tangible property that caused the loss of use.

4.7 Deductible

The Deductible is the amount to be first paid by the **Insured** in respect of each claim, as stated in the **Policy Schedule** or this policy wording.

4.8 Defence Costs

Reasonable and necessary fees, costs and expenses (other than regular wages, salaries, fees or commissions payable to any **Insured**, or any other internal expenses of the **Insured**) incurred with the prior written consent of **VMIA** (which will not be unreasonably withheld or delayed) by or on behalf of the **Insured** in the investigation, defence, settlement or appeal of any claim.

For the sake of clarity, **Defence Costs** does not include fees, costs and expenses incurred by the **Insured** with respect to judicial reviews or administrative proceedings which form a part of and are an ordinary function of the **Insured's Business**.

4.9 Document

Any documents whatsoever including computer records and electronic or digitised data but shall not include any currency, cheque, bill of exchange, draft, letter of credit, promissory note, money order or other negotiable instruments.

4.10 Economic Loss

Any amount which the **Insured** becomes legally liable to pay for financial loss arising from a **Professional Services Claim** including reasonable legal costs and expenses.

4.11 Formal Investigation

A formal administrative or formal regulatory inquiry of an **Insured** by a governmental, regulatory, self-regulatory, professional, statutory or official body or institution including a Royal Commission, Commission of Inquiry, or judicial body that is empowered by the law to investigate the **Insured** and which is in consequence of a written notice given:

- (a) to the **Insured** of the intention to conduct such formal administrative or formal regulatory inquiry; or
- (b) by the **Insured** in relation to any matter which the **Insured** believes may be a breach of its legal or regulatory obligation with respect to the conduct of its **Business**.

For the sake of clarity, **Formal Investigation** does not include judicial reviews or administrative proceedings which form a part of and are an ordinary function of the **Insured's** business.

4.12 Healthcare

Any care, treatment, service or goods provided in respect of the physical or mental health of a person, including 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.

4.13 Health Practitioner

An individual who practises a **Healthcare** profession and is registered by a responsible Board pursuant to the *Health Practitioner Regulation National Law Act 2009*.

4.14 Insured

- (a) the person(s) or entity/ies identified as a Named Insured in the **Policy Schedule**;
- (b) any present or former or future minister, ministerial officers, ministerial advisors, public servant, director, partner, executive, principal, board of management member, officer, employee, volunteer, committee member, shareholder, appointee, student, research fellow or clinical observer of any entity referred to in paragraph 4.14(a) above;
- (c) any person serving in an official capacity of or with any entity referred to in paragraph 4.14(a) above, but only whilst acting within the scope of their duties in such capacities;
- (d) any principal in respect of the liability of such principal arising out of the performance of work or provision of service by any entity designated in paragraph 4.14(a) above under any contract or agreement, to the extent required by such contract or agreement;

- (e) any present or former office bearer or member of any social and/or sporting welfare and/or child care facilities formed with the consent of any entity referred to in paragraph 4.14(a) above, in respect of claims arising from duties connected with activities of any such club;
- (f) any incorporated or unincorporated associations or organisations (now or hereafter constituted) organised by any entity referred to in paragraph 4.14(a) above, for the purpose of providing canteen, social, sports, welfare and/or child care activities or services or first aid, medical, fire or ambulance services and/or educational activities or services for their employees and/or families of their employees;
- (g) any examining body attached to any of the entities referred to in paragraph 4.14(a) above;
- (h) any officially recognised auxiliary, foundation, trust or fund-raising committee that is attached to, represents or has represented any of the entities referred to in paragraph 4.14(a) in connection with charitable and fund-raising activities carried out for the benefit of the entity;
- (i) any cemetery trust established pursuant to the *Cemeteries Act 1958* (VIC) and any cemetery trustee or employee of such cemetery trust;
- (j) at the written request of any entity referred to in paragraph 4.14(a) above, any minister, public servant, director, partner, executive or officer of such entity in respect of private work undertaken by the employees of such entity for such minister, public servant, director, partner, executive or officer; and
- (k) any party who enters into an agreement with any entity referred to in paragraph 4.14(a) above for the purposes of the Insured's Business but only to the extent to which the entity referred to in paragraph 4.14(a) above is required by such agreement to grant such indemnity.

Notwithstanding any other provision in this definition, or any provision to the contrary elsewhere in this **Policy**, this **Policy** does not cover lessees, hirers or licensees of Crown land.

4.15 Insured Products

Any goods or products (after they have ceased to be in the possession or under the control of the **Insured**) manufactured, constructed, erected, installed, repaired, serviced, treated, grown, extracted produced, processed, assembled, imported, sold, supplied or distributed by the **Insured** (including any labelling, packing materials, instructions and directions associated therewith) and any container thereof other than a vehicle associated with such container.

4.16 Internal Costs and Expenses

Those reasonable and necessary legal costs and expenses including additional salaries or wages, incurred by the **Insured** in the course of its **Business**. **Internal Costs and Expenses** will not include regular wages, salaries or fees incurred by the **Insured**.

4.17 Limit of Liability

The amount stated in the **Policy Schedule**.

4.18 Occurrence

An event including continuous or repeated exposure to substantially the same general conditions resulting in **Personal Injury** and/or **Damage**, which is neither expected nor intended from the standpoint of the **Insured** other than clause 4.14(d). All events of a series consequent on or attributable to one source or original cause are deemed one Occurrence.

4.19 Personal Injury

- (a) bodily injury, death, sickness, disease, disability, shock, fright, mental anguish or mental injury including loss of services resulting therefrom;
- (b) the effects of false arrest, false imprisonment, wrongful entry, wrongful eviction, wrongful detention, invasion of privacy, malicious prosecution or humiliation;
- (c) the publication or utterance of libel, slander or defamation, or a publication or utterance in violation of any individual's right to privacy, except:

- i. when the first such publication or utterance is related to any publication or utterance made prior to the commencement of this Policy; or
 - ii. when any such publication or utterance is made in the course of or is related to advertising, broadcasting, telecasting or publishing activities conducted by the Insured or on the Insured's behalf;
- (d) the effects of assault and battery not committed by or at the direction of the Insured unless committed for the purpose of preventing or eliminating danger to persons or property;
- (e) the effects of racial, religious, sex, age, marital status, intellectual or physical impairment or disability discrimination or harassment (unless insurance in relation to this is prevented by law); or
- (f) infringement of patent, copyright, trademark, service mark, trade name, title or slogan, piracy, moral rights or unfair competition or idea misappropriation.

4.20 Policy

This policy wording, the **Policy Schedule** and any other document that **VMIA** tells the **Insured** forms part of the policy describing the insurance contract between the **Insured** and **VMIA**.

4.21 Policy Period

The period of time stated in the **Policy Schedule**.

4.22 Policy Schedule

The Schedule issued with this **Policy** wording.

4.23 Pollutants

Any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapours, soot, fumes, acids, alkalis, chemicals and waste (including material to be recycled, reconditioned or reclaimed).

4.24 Professional Services

Those professional services performed by for or on behalf of the **Insured** in the conduct of the **Insured's Business** which are specified in the **Policy Schedule**.

4.25 Professional Services Claim

- (a) a written demand for monetary damages;
- (b) civil proceeding;
- (c) alternative dispute resolution proceeding including a mediation or arbitration; or
- (d) criminal proceeding,

against an **Insured** for the provision of or failure to provide **Professional Services** by for or on behalf of the **Insured**.

For the sake of clarity, **Professional Services Claim** does not include judicial reviews or administrative proceedings which form a part of and are an ordinary function of the **Insured's Business**.

4.26 Remotely Piloted Aircraft

A Remotely Piloted Aircraft as defined by, and regulated under the *Civil Aviation Legislation Amendment Act 2016* (Cth) as amended.

4.27 Representation Expenses

All reasonable and necessary **Internal Costs and Expenses** incurred with the prior written consent of **VMIA** by or on behalf of the **Insured** for the principle purpose of the **Insured** preparing documents and information for, responding to or attending at any **Formal Investigation** or any other inquiry, coronial inquest or fatal accident inquiry relevant to the indemnity provided under this **Policy**.

For the sake of clarity, **Representation Expenses** does not include fees, costs and expenses incurred with respect to judicial reviews or administrative proceedings which form a part of and are an ordinary function of the **Insured's Business**.

4.28 Retroactive Date

The date stated in the **Policy Schedule**.

4.29 Sub-Limit of Liability

The applicable sub-limit stated in the **Policy Schedule** which applies to the cover or section of the **Policy**.

4.30 Vehicle

Any type of machine on wheels or on caterpillar tracks made or intended to be propelled by other than manual or animal power and any trailer or other attachment, but only whilst attached to such machine, made or intended to be drawn by any such machine.

4.31 VMIA

The Victorian Managed Insurance Authority ABN 39 682 497 841.

4.32 Watercraft

Any vessel or craft or thing made or intended to float on or in or travel on, through or under the water for the purpose of carrying persons or property.

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.