



Directors & Officers Liability and Company Reimbursement Insurance Policy

Issued to Eligible Emergency Resource Providers by VMIA

For the period 1 July 2022 to 30 June 2023



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Insuring Clauses

Subject to terms, conditions, exclusions and limits of this Policy, the Victorian Managed Insurance Authority (VMIA):

a) Directors & Officers Liability

Will indemnify **Insured Persons** in respect of **Loss** arising out of a **Claim** first made against the **Insured Person** during the Period of Insurance stated in the Schedule in respect of a **Wrongful Act** provided that there is no indemnity under this Insuring Clause A to the extent that an **Insured Person** has been indemnified or is entitled to be indemnified by an **Insured**.

b) Company Reimbursement

Will indemnify an **Insured** in respect of payments which the **Insured** makes in respect of **Loss** arising from the **Claim** first made against the **Insured Person** during the Period of Insurance and in respect of which the **Insured Person** would have been entitled to indemnity under Insuring Clause A above but for the payment by the **Insured**.

Definitions

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

Claim means:

1. any written or oral demand against an **Insured Person** alleging an entitlement to damages or compensation; and
2. formal administrative, criminal or regulatory charges which an **Insured Person** is required to defend or to which an **Insured Person** has a valid defence.

Control Agency

means an organisation which:

1. is listed in Table 9 “Response control agencies” of the State Emergency Management Plan, and
2. pays a premium to VMIA for the EmRePSS.

Defence Costs means legal costs reasonably incurred by an **Insured Person** with VMIA’s written consent in the defence or settlement of any **Claim**. If VMIA is of the opinion or at any time forms the opinion that an **Insured Person’s** defence of a **Claim** is likely to be unsuccessful for any reason, VMIA may, in its absolute discretion, refuse to consent to or withdraw its consent to the **Insured Person** incurring legal costs in the defence of any **Claim**. Where VMIA withdraws its consent, this Policy does not cover legal costs incurred after VMIA’s consent is withdrawn.

Eligible Emergency means an emergency of a kind referred to in Table 9 “Response control agencies” of the State Emergency Management Plan, the response to which is handled by a **Control Agency**, and which emergency is due to the actual or imminent happening of an **Occurrence** or the manifestation of circumstances which harms or endangers, or threatens to harm or endanger, the safety or health of persons in Victoria or which destroys or damages, or threatens to destroy or damage, property in Victoria or an element of the Victorian environment. For the purpose of this insurance **Eligible Emergency** includes subsequent urgent post event activities where insurance cover is not otherwise available.

Eligible Emergency Resource Provider means:

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

or

 - b. a volunteer emergency worker as defined in s.4 of the Emergency Management act 1986. **Equipment** includes plant, (including scaffolding, temporary structures and portable buildings), machinery and **Equipment**.

Insured means an **Eligible Emergency Resource Provider** which is not a natural person.

Insured Person(s) means a director, officer or employee of an **Insured**.

Loss means any amount an **Insured Person** is legally liable to pay in respect of a **Wrongful Act**, including costs awarded against an **Insured Person** and **Defence Costs**.

Personal Injury means:

1. bodily injury, death, sickness, disease, disability, shock, fright, mental anguish and/or mental injury including **Loss** of services resulting there from;
2. wrongful entry or wrongful eviction or other invasion of privacy; and
3. assault and battery.

Property Damage means:

1. physical **Loss** or destruction of or damage to tangible property including the **Loss** of use thereof at any time resulting there from; and
2. **Loss** of use of tangible property which has not been physically lost destroyed or damaged.

Retroactive Date means the retroactive date stated in the Schedule

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

Wrongful Act means any act, error or omission committed by an **Insured Person** in their capacity as a director, officer or employee of an **Insured** which act, error or omission is committed during a **Supply Period** and in connection with an **Insured** providing services, labour or **Equipment**, at the request of a **Control Agency**, for the purpose of responding to an **Eligible Emergency**.

Exclusions

1. VMIA is not liable to provide any indemnity under the Policy in respect of **Loss** arising from any of the following:
 - a. the discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water unless the discharge, dispersal, release or escape is sudden and accidental or occurred at the direction of a **Control Agency**.
 - b. breach of a professional duty.
 - c. **Personal Injury** or **Property Damage**.
 - d. conduct of an **Insured Person** which is found by judgment or other final determination to be criminally negligent, fraudulent, dishonest or malicious or to amount to a wilful breach of any law.
 - e. an **Insured Person** having gained any profit, benefit or advantage to which he or she was not legally entitled.
 - f. wrongful dismissal, sexual harassment, discrimination of any kind, denial of natural justice, breach of contract, false imprisonment or any breach of laws relating to occupational health or safety.
 - g. any breach of a fiduciary duty or a duty owed as a trustee or administrator.

2. VMIA is not liable under this Policy in respect of:
 - a. A **Claim** that would otherwise be covered under sections 1 or 2 of this Policy in connection with, arising from or based upon any acts, errors or omissions or a **Wrongful Act** which occurred prior to the Retroactive Date if one is stated in the Schedule.
 - b. a **Claim** made against an **Insured Person** by the **Insured** of which the named person is a director, officer or employee.
 - c. a **Claim** arising from ionising radiations or contaminations by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel.
 - d. any fine, penalty or punitive or exemplary damages.
 - e. any **Claim** in respect of which an **Insured Person** has been indemnified or is entitled to be indemnified by VMIA under any other policy issued by VMIA.
 - f. any **Claim** made by another **Insured Person** of the **Insured** of which the **Insured Person** is a director, officer or employee unless such **Claim** is made in the sole capacity as a shareholder.
 - g. a **Claim** brought against an **Insured Person** in the Courts of any Country other than the Commonwealth of Australia.
 - h. **Loss** directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities, (whether war be declared or not) civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition.
 - i. **Loss** directly or indirectly caused by, resulting from or in connection with any Act of Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the **Loss**.

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

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

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

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

Conditions

1. VMIA is not liable for any applicable Deductible stated in the Schedule. Further, the liability of VMIA under this Policy shall not exceed, any Limit of Indemnity or Liability stated in the Schedule.
2. No **Insured Person** or **Insured** shall admit liability for or settle any **Claim** or incur any cost or expense in connection with any **Claim** without the written consent of VMIA which shall be entitled, in its absolute discretion, to conduct the defence of or settle any **Claim** provided that VMIA may, if it believes that **Loss** arising out of a **Claim** will not exceed the Deductible stated in the Schedule, instruct an Insured Person or **Insured** to conduct the defence for such a **Claim**, whereupon VMIA will, subject to the terms and conditions of this Policy, including any Limit of Liability, reimburse the **Insured Person** or **Insured** for **Loss** which exceeds the Deductible.
3. As a condition precedent of their right to be indemnified under this Policy, **Insured Persons** and **Insureds** must give to VMIA immediate notice in writing of any **Claim** made against the **Insured Person** or of any circumstances which may give rise to a **Claim** and shall, upon request, give to VMIA such information they shall reasonably require.
4. If during the currency of this Policy an **Insured Person** or **Insured** shall become aware of any circumstances which may subsequently give rise to a **Claim** for **Loss** by reason of any **Wrongful Act** and shall, during the currency of this Policy, give written notice to VMIA of such circumstances, then any **Claim** which may subsequently be made against an **Insured Person** arising out of those circumstances shall be deemed to have been first made during the Period of Insurance.
5. In the event that this Policy is terminated or not renewed, the coverage granted by this Policy shall be extended for 6 years from the date of its termination or expiration but only in respect of a **Claim** arising from circumstances occurring subsequent to the **Retroactive Date**, during a **Supply Period** and prior to the said date of termination or expiration.

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.