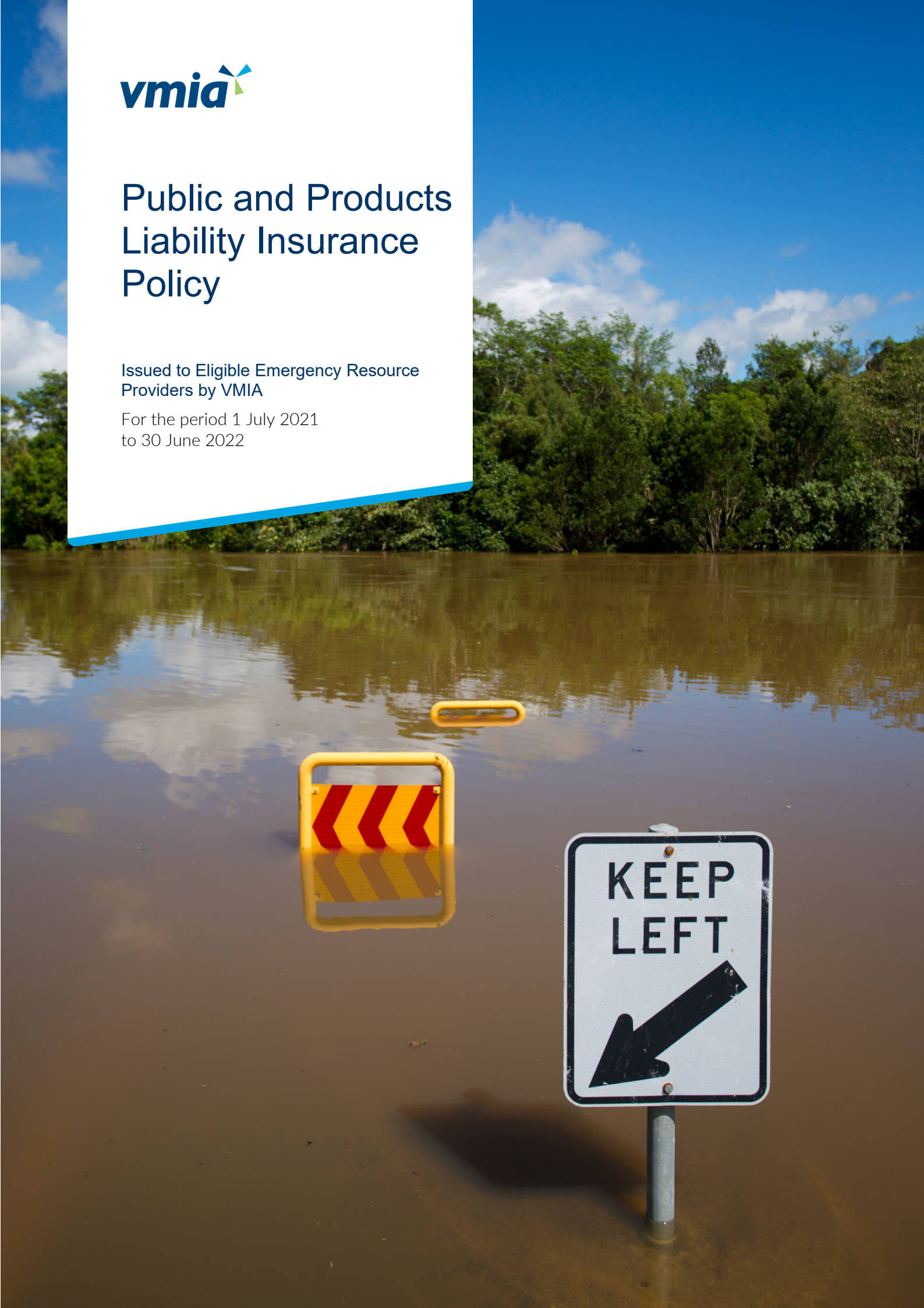




Public and Products Liability Insurance Policy

Issued to Eligible Emergency Resource
Providers by VMIA

For the period 1 July 2021
to 30 June 2022



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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.

Insuring Clause

Victorian Managed Insurance Authority (VMIA) agrees to indemnify the **Insured** for all amounts in excess of the Deductible which the **Insured** shall become legally liable to pay as compensation in respect of **Personal Injury** and/or **Property Damage** happening during a **Supply Period** and during the Period of Insurance within the **Territorial Limits** and caused by an **Occurrence** in connection with an **Eligible Emergency**.

Limit of Liability

VMIA's liability in respect of all compensation for **Personal Injury** and/or **Property Damage** under this policy arising out of any one **Occurrence** is limited to the amount specified in the Schedule as the Limit of Liability, including Supplementary Payments.

Supplementary Payments

With respect to the indemnity afforded by this Policy VMIA will:

- a. defend in the **Insured's** name and on the **Insured's** behalf any suit against the **Insured** alleging such **Personal Injury** and/or **Property Damage** and seeking damages on account thereof, even if such suit is groundless, false or fraudulent; and VMIA may make such investigation, negotiation and settlement of any claim or suit as it deems expedient; but VMIA shall not be obliged to pay any claim or judgment or to defend any suit after the applicable limit of VMIA's liability has been exhausted by payment of judgments or settlements;
- b. pay all expenses incurred by VMIA, all costs taxed against the **Insured** in any such suit and all interest accruing after entry of judgment until VMIA has paid, tendered or deposited in court that part of such judgment which does not exceed the limit of VMIA's liability thereon;
- c. reimburse the **Insured** for all reasonable expenses, other than loss of earnings, incurred with the consent of VMIA;
- d. pay expenses incurred by the **Insured** for the rendering of first aid to others at the time of any **Occurrence** of **Personal Injury**.
- e. pay all legal costs incurred by the **Insured** with the consent of VMIA for representation of the **Insured** at:
 - i. any Coroner's Inquest or Inquiry
 - ii. any proceedings in any Court in connection with liability **Insured** against by this Policy.

Provided that the amounts thus incurred shall not increase VMIA's Limit of Liability which applies to all amounts paid or payable under this Policy.

Definitions

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

Aircraft means any craft or object designed to travel through air or space.

Bushfire means fire, the initial effect of which is destruction of or damage to natural vegetation (which term shall include trees).

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.

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:
 - i. 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
 - ii. a volunteer emergency worker as defined in s.4 of the Emergency Management Act 1986.

Equipment means plant, (including scaffolding, temporary structures and portable buildings), machinery and equipment.

Insured means an **Eligible Emergency Resource Provider** and its directors, officers and employees.

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 **Insured**, including packaging or containers, in the course of the Business and after it has ceased to be in the possession or under the control of the **Insured**, and any other thing the **Insured** is "deemed" to have manufactured.

Medical Persons means medical practitioners, medical nurses, dentists and first aid attendants.

Occurrence means an event, including continuous or repeated exposure to substantially the same general conditions, which results in **Personal Injury** and/or **Property Damage** neither expected nor intended from the standpoint of the **Insured**. All Occurrences of a series consequent on or attributable to one source or original cause shall be deemed one **Occurrence**.

In respect of claims in regard to disease, one event shall mean a series of individual **Insured** losses attributable to the same disease. The disease shall be defined by the World Health Organisation (WHO). However, where there is no such definition, it shall be as defined by a competent Local Health Authority. All individual **Insured** losses shall be aggregated into one single loss and the date of **Occurrence** for such losses shall be the date of the first **Insured** loss. However, no aggregation shall include losses that occur later than 6 months from the expiry of the policy. One event is deemed to end when no new loss occurs for more than 30 days from the last individual **Insured** loss.

Personal Injury means

1. bodily injury, death, sickness, disease, disability, shock, fright, mental anguish and/or mental injury including loss of services resulting therefrom;
2. wrongful entry or wrongful eviction or other invasion of privacy;
3. 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.

Property Damage means:

1. physical loss or destruction of or damage to tangible property which occurs during the Period of Insurance, including the loss of use thereof at any time resulting therefrom; or
2. loss of use of tangible property which has not been physically lost, destroyed or damaged provided such loss of use is caused by an **Occurrence** during the Period of Insurance.

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.

Territorial Limits means anywhere in the State of Victoria or elsewhere in Australia but only while travelling to or from an **Eligible Emergency** happening in the State of Victoria.

Vehicle means any type of machine on wheels or on self-laid tracks made or intended to be propelled by other than manual or animal power and any trailer or other attachment made or intended to be drawn by any such machine.

Watercraft means any vessel craft or thing made or intended to float on or in or travel on or through water.

Exclusions

VMIA shall not be liable for claims in respect of:

- a. **Personal Injury** sustained by any employee or any deemed employee of the **Insured** arising out of and in the course of employment in the **Insured's** business under contract of service, apprenticeship or deeming provision of any legislation:
 - i. to the extent the **Insured** is liable under any Workers' Compensation Statute or Regulation and for which the relevant Workers Compensation 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 **Insured** is injured in non-working hours whilst in or on property owned, occupied or used by the **Insured** this shall not be deemed to be an event arising out of employment by the **Insured**, but only to the extent to which it does not form a claim under the **Insured's** Workers Compensation or Employers Indemnity Policy.

Provided that this exception (a)(i) shall not apply:

1. to any person whilst undertaking voluntary work for the **Insured**;
or
 2. with respect to liability of others assumed by the **Insured** under a written contract.
 - ii. relating to Employment Practices. For the purpose of this exclusion (a)(ii), "Employment Practices" shall mean any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, sexual harassment or discrimination in respect of employment by the **Insured**.
- b. damage to property owned by the **Insured**;
 - c. damage to the **Insured's Products** if such damage is caused by any defect therein or the harmful nature or unsuitability thereof but this Exclusion shall be restricted to the defective or harmful or unsuitable part of the **Insured's** product and shall not apply to any resultant damage caused to the remainder of such product.
 - d.
 - i. the cost of making any refund on the price paid for any of the **Insured's Products**;
 - ii. the cost of or damages claimed in relation to the withdrawal, recall, inspection, repair, replacement or loss of use of the **Insured's Products** if such products are withdrawn from the market or from use because of any known or suspected defect or deficiency therein;
 - iii. the cost of performing, completing, correcting or improving any work undertaken by the **Insured**;
 - e. **Personal Injury** and/or **Property Damage** arising out of the ownership, possession or use by the **Insured** of any **Vehicle** in respect of which at the time of the **Occurrence** giving rise to any claim, insurance would have been provided by virtue of any Act or Ordinance relating to the use of any motor **Vehicle**:

Notwithstanding this Exclusion the Policy will provide indemnity for **Personal Injury** and/or **Property Damage**:

- i. Caused by or arising from the delivery or collection of goods to or from any **Vehicle** where such **Personal Injury** or **Property Damage** occurs beyond the limits of any carriageway or thoroughfare;
- ii. Arising out of the loading or unloading of or the delivery or collection of goods from any **Vehicle** used in work undertaken by or on behalf of the **Insured** but not in the physical or legal control of The **Insured**;
- iii. Arising out of the use of any **Vehicle** as a tool of trade;
- iv. Arising from the use of any **Vehicle** (other than registered **Vehicles** owned or used by or on behalf of the **Insured**) in the physical or legal control of the **Insured** where such occurs in a car park owned or operated by the **Insured**;
- v. Arising from any **Vehicles** requiring registration and/or compulsory liability Insurance but only to the extent that such indemnity is not provided under any statutory compulsory liability insurance. Insurance is further provided where there has been an accidental or erroneous failure to maintain registration or statutory compulsory liability insurance.
- vi. Arising from damage to any bridge, weighbridge, road or anything beneath caused by the weight of any **Vehicle** or trailer or of the load carried thereon.

vii. Arising from any unregistered **Vehicles**, owned, operated or for which the **Insured** is responsible, other than whilst being used on a public street or road (which is defined as, any land opened or dedicated as a public road under any Act or law, including any bridge, tunnel, culvert, causeway or ford).

f. **Personal Injury** or **Property Damage** caused by or arising out of or in connection with:

The ownership, maintenance, use or operation, loading or unloading by or on behalf of the **Insured** of:

i. any **Watercraft** whilst afloat or any conveyance designed to travel on water supported by air pressure. This Exclusion (f) (i) shall not apply to:

1. **Watercraft** whose length does not exceed 8 meters;
2. Operations by independent contractors for whom the **Insured** is held liable.

ii. Any **Aircraft**.

g.

i. any consequences of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power;

ii. any legal liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from:

1. ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
2. the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
3. nuclear weapons material.

h. liability that has been assumed by the **Insured** under any contract or agreement, except to the extent that such liability would otherwise have attached notwithstanding such contract or agreement; but this exception shall not apply to those written contracts designated in the Schedule nor to liability assumed by the **Insured** under a warranty of the fitness or quality of the **Insured's Products**;

i. any breach of duty owed in a professional capacity, including errors and omissions, by the **Insured** and/or persons for whose breaches of such duty the **Insured** may be legally liable;

but this exception shall not apply to:

the rendering of or failure to render professional medical advice or dental advice by Medical or dental Persons employed by the **Insured** to provide first aid on the **Insured's** premises provided that such premises do not include a hospital, community health centre, nursing home, Ambulance or other premises where the **Insured's** primary occupation involves medical or dental treatment.

j.

i. any liability for **Personal Injury** and/or **Property Damage** directly or indirectly arising out of the discharge, dispersal, release or escape of Pollutants into or upon land, the atmosphere or any water course or body of water;

ii. the cost of removing, nullifying or cleaning up Pollutants;

Provided that this exception shall not apply if such discharge, dispersal, release or escape is caused by a sudden, identifiable, unintended and unexpected event which takes place in its entirety at a specific time and place.

Provided further, however, that in respect of the United States of America/ Canadian jurisdiction, this Policy will not cover any liability for:

1. **Personal Injury** or Bodily Injury, or loss of, damage to or loss of use of property directly or indirectly caused by seepage, pollution or contamination
2. the cost of removing, nullifying or cleaning-up seeping, polluting or contaminating substances
3. fines, penalties, punitive or exemplary damages.

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

- k. liability arising out of the publication of a libel or other defamatory or disparaging material or the utterance of a slander;
- l. **Personal Injury** and/or **Property Damage** caused by or arising out of any of the **Insured's Products** manufactured specifically for and installed in any **Aircraft** or caused by or arising out of products which the **Insured** knew would be so installed where such products are essential to the operation and/or navigation of such **Aircraft**;
- m. liability for **Personal Injury** or **Property Damage** (including loss of use of property) directly caused by or arising from:
 - i. Mining, processing, transportation, distribution and/or storage of asbestos,
 - ii. Manufacture of asbestos products or processing material containing asbestos,
 - iii. Any process of removal, decontamination, treatment or control of asbestos;
- n. **Personal Injury** and **Property Damage** arising from the operation of trains and trams within the State of Victoria (which includes passenger liability outside the State of Victoria);
- o. liability for punitive and exemplary damages;
- p. loss of use of tangible property which has not been physically injured or destroyed caused by:
 - i. a delay in or lack of performance by or on behalf of the **Insured** of any contract or agreement, or
 - ii. the failure of the **Insured's Products** to meet the level of performance, quality, fitness or durability 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 **Insured's Products** or work performed by or on behalf of the **Insured** after such products or work have been put to use by any person or organisation other than an **Insured**;

- q. liability arising from any condition directly or indirectly caused by or associated with Human T-Cell Lymphotropic Virus type 111 (HTLV 111) or Lymphadenopathy Associated Virus (LAV) or the mutants derivatives or variations thereof or in any way related to Acquired Immune Deficiency Syndrome or any syndrome or condition of a similar kind howsoever it may be named.
- r. the medical or dental treatment (or failure to medically or dentally treat) any person, including consultation, advice, examination, transportation and also the nursing thereof. Such treatment refers to both traditional and non-traditional medicine and/or dentistry.
- s. loss, injury, damage, cost or expense of whatsoever nature 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.

This exclusion shall also apply to claims arising out of the use of the **Insured's Products** provided to any person in the course of medical or dental treatment or nursing activities.

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 organisations(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.

- t. This policy shall not apply to any liability directly or indirectly caused by or alleged to be caused by or contributed to, in whole or in part, by or arising out of the presence, ingestion, inhalation or absorption of or exposure to silica products, silica fibres, silica dust or silica in any form, or to any obligation of the **Insured** to indemnify any party because of **Personal Injury** or **Property Damage** arising out of the presence, ingestion, inhalation or absorption of or exposure to silica products, silica fibres, silica dust or silica in any form.
- u. Personal Injury and/or Property Damage caused by or arising out of the use of or authorisation of Dieldrin.

Memoranda

Except to the extent that this Policy is hereby modified under the following Memoranda, the terms, Conditions, Exclusion and other provisions of this Policy shall apply.

1. Cross Liability

The inclusion of more than one person or organisation as **Insured** under this Policy shall not in any way affect the rights of any such person or organisation either as respects any claim, demand, suit or judgment made or in favour of any employee of such other **Insured** or otherwise it being the intent of this Policy to protect such person or organisation covered as **Insured** in the same manner as though a separate policy had been issued to each person or organisation.

Nothing contained in this memorandum shall operate to increase VMIA's Limits of Liability as stated herein.

2. Waiver of Subrogation Rights

Notwithstanding anything contained herein to the contrary VMIA waives all rights of subrogation against all parties comprising the **Insured** and others who have contractually bound the **Insured** to waive such rights.

VMIA also waives all rights of subrogation against any employee or member of the **Insured's** family unless the conduct of such persons which gave rise to an **Occurrence** was serious or wilful misconduct.

Conditions

1. Insured's Duties in the event of an Occurrence, Claim Or Suit

- a. In the event of an **Occurrence** (or the likelihood of an **Occurrence**) the **Insured** shall immediately, at its own expense, take all reasonable steps to prevent **Personal Injury** and/or **Property Damage** arising or continuing out of such **Occurrence**.
- b. Whenever the **Insured** has information from which the **Insured** may reasonably conclude that an **Occurrence** covered hereunder involves injuries or damages which, in the event that the **Insured** be held liable, is likely to involve this Policy, notice shall be given by or on behalf of the **Insured** to VMIA or any of its authorised agents as soon as practicable.

Provided, however, that 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(s) or liability hereunder, shall not prejudice such claim(s).

2. Application of Insured's Deductible

For the purpose only of determining the application of the **Insured's** Deductible with respect to liability for **Personal Injury** and/or **Property Damage** arising out of **Bushfire** Liability it is agreed that:

All related or unrelated **Bushfires** which occur during any Period of one hundred and sixty eight (168) hours shall be considered as one **Occurrence**.

3. Fraudulent Claim

If any claim be in any respect fraudulent or if any fraudulent means or devices be used by the **Insured** or anyone acting on behalf of the **Insured** to obtain any benefit under this Policy, VMIA may deny liability in respect of such claim and may cancel this Policy as hereinafter provided.

4. Inspection of Premises

VMIA shall be permitted but not obliged 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.

5. Applicable Law

Should any dispute arise between the **Insured** and VMIA over the application of this Policy, such dispute shall be determined in accordance with the laws of the State of Victoria.

6. Observance of Terms and Conditions

The due observance and fulfilment of these Conditions and the other terms of this Policy by the **Insured**, insofar as the same are capable of being construed as such, are conditions precedent to any liability of VMIA to make any payment under this Policy.

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.