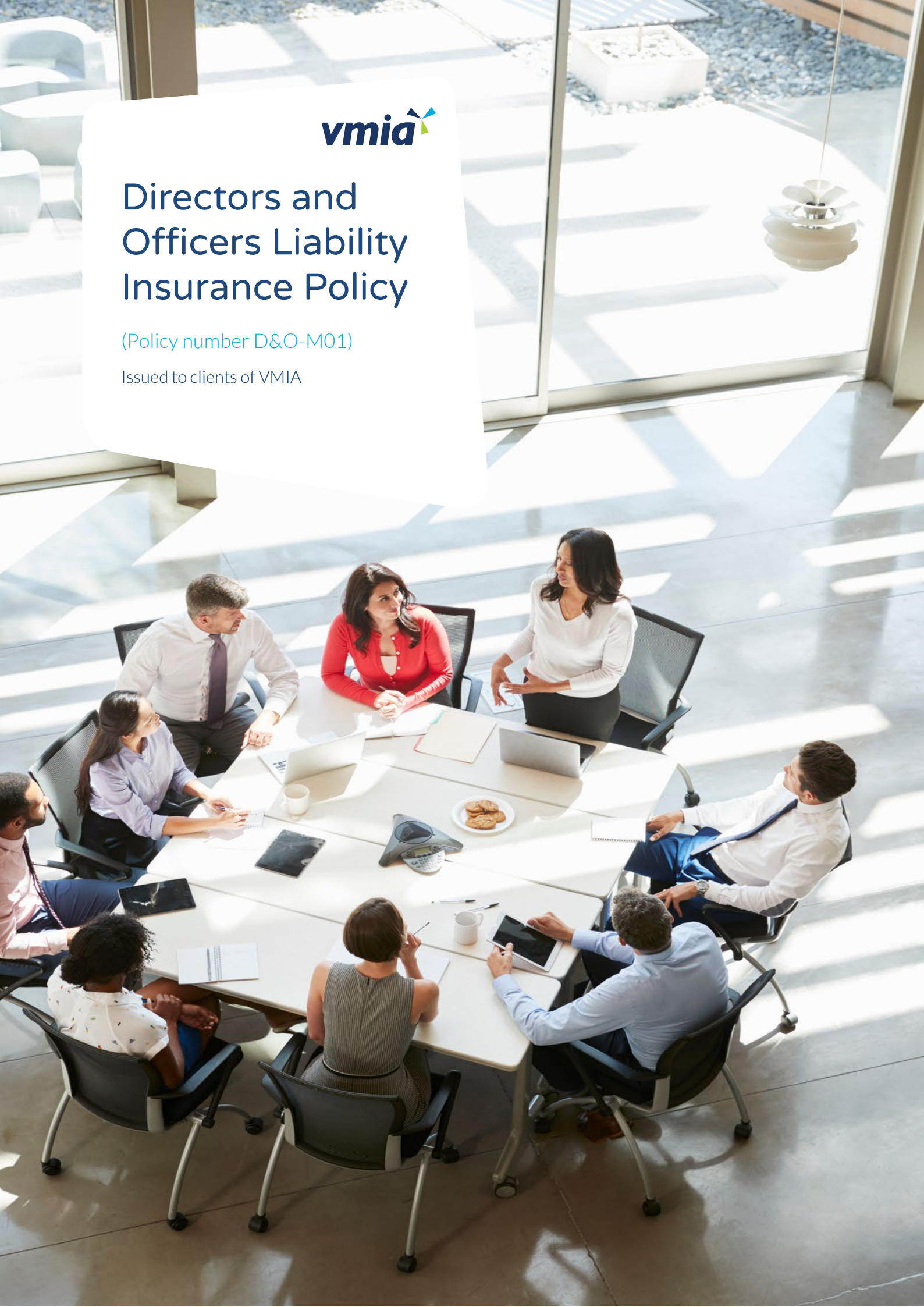




Directors and Officers Liability Insurance Policy

(Policy number D&O-M01)

Issued to clients of VMIA



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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 and present. We acknowledge the important contribution that Aboriginal and Torres Strait Islander peoples make in creating a thriving Victoria.

1. Directors and Officers Liability

1.1 What is covered

1.1.0 Insured Officer liability

VMIA will pay to or on behalf of an **Insured Officer** all **Loss** arising from any **Directors and Officers Claim** alleging a **Wrongful Act**, first made against the **Insured Officer** during the **Policy Period**, except where the **Insured Officer** has been indemnified by the **Insured Public Body**.

1.1.1 Insured Public Body reimbursement

VMIA will pay to or on behalf of an **Insured Public Body** all **Loss** arising from any **Directors and Officers Claim** first made against an **Insured Officer** during the **Policy Period** and where the **Insured Public Body** has indemnified or agreed to indemnify such **Loss**.

1.1.2 Employment Practices liability

VMIA will pay to or on behalf of an **Insured Public Body** all **Loss** and **Defence Costs** arising from an **Employment Practices Liability Claim** brought by or on behalf of an **Employee** against an **Insured Officer** or an **Insured Public Body** during the **Policy Period**.

1.1.3 Legal Representation Expenses

VMIA will pay:

- (a) to or on behalf of the **Insured Officer** all **Legal Representation Expenses** in respect of an **Investigation**, except where the **Insured Public Body** has indemnified or agreed to indemnify such **Legal Representation Expenses**;
- (b) to or on behalf of the **Insured Public Body** all **Legal Representation Expenses** in respect of an **Investigation** where the **Insured Public Body** has indemnified or agreed to indemnify such **Legal Representation Expenses**; and
- (c) to or on behalf of the **Insured Person** all reasonable **Subpoena Costs**.

1.2 Extensions

VMIA will provide a range of additional extensions of cover subject to the policy terms, conditions, exclusions and limitations set out in the **Policy**.

1.2.1 Advancement of Defence Costs

VMIA will advance **Defence Costs** to the **Insured Officer** or **Insured Public Body** within a reasonable time upon receipt of an invoice.

1.2.2 Continuous cover

If the **Insured Officer** or **Insured Public Body** could have notified of any claim or circumstance which might give rise to a claim under any prior policy of which this **Policy** is a renewal or replacement issued by VMIA, VMIA will accept such notification of claim or circumstance under the current policy provided it was the issuer of the prior policy.

1.2.3 Coverage for eligible emergency resource providers

An **Eligible Emergency Resource Provider** is considered an **Insured** to the extent that they agree to a **Supply Period** with the **Control Agency**.

Under this clause 1.2.3, VMIA will indemnify the **Insured** in accordance with insuring clauses 1.1.1, 1.1.2, 1.1.3 and 1.1.4.

For the purposes of this extension,

- i. **Control Agency** means the named insured to this policy to the extent they have been appointed or deemed as appointed under the Emergency Management Act 1986.
- ii. **Eligible Emergency** means an emergency as defined in the Emergency Management Act 1986 and 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.

- iii. **Emergency Service Resource Provider** means:
- a. the Commonwealth of Australia and any State of the Commonwealth of Australia, including any agency or instrumentality thereof having an emergency response function; or
 - b. 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 the Emergency Management Act 1986.
- iv. **Equipment** means plant, (including scaffolding, temporary structures and portable buildings), machinery and equipment.
- v. **Occurrence** means an event including continuous or repeated exposure to substantially the same general conditions which is neither expected nor intended from the standpoint of the **Insured Officer** and/or **Insured Public Body**. All events of a series consequent on or attributable to one source or original cause are deemed one **Occurrence**.
- vi. **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.

It is the responsibility of the **Control Agency** to pay any **Deductible** in relation to this extension. VMIA will pay up to the amount specified as the **Sub-Limit of Liability** stated in the **Policy Schedule** and subject to the specified **Deductible**.

1.2.4 Custody

VMIA will pay reasonable professional fees, costs and expenses incurred by an **Insured Officer** arising from that **Insured Officer's** custody or restriction of physical freedom by government, police, law enforcement agency or other government, legal or judicial agency.

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

1.2.5 Deportation

VMIA will pay reasonable legal and professional fees, costs and expenses incurred by an **Insured Officer** arising from that **Insured Officer's** deportation on revocation of previously valid immigration status.

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

1.2.6 Emergency Cost

VMIA will pay reasonable and necessary **Emergency Costs** incurred by an **Insured Officer** where it is not possible for the **Insured Officer** to obtain written consent from VMIA as a result of an **Emergency**.

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

1.2.7 Environmental Proceeding

VMIA will pay to or on behalf of an **Insured Officer**, all **Loss** and **Defence Costs** arising from an **Environmental Proceeding**.

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

1.2.8 Extradition Proceedings

VMIA will pay reasonable professional fees, costs and expenses incurred by an **Insured Officer** arising from any **Extradition Proceedings**.

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

1.2.9 Fines and penalties

Unless prohibited by law, VMIA will pay civil fines or penalties imposed by law upon the **Insured Officer** as a result of a **Directors and Officers Claim**.

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

1.2.10 Guarantee or bond

VMIA will pay the cost of procuring a guarantee or bond (other than any collateral) for an amount required by a court in connection with a **Directors and Officers Claim** indemnified under clause 1 of this **Policy**.

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

1.2.11 Insured Officer asset protection

(a) VMIA will pay the **Insured Officer** for reasonable legal costs and expenses incurred by or on behalf of the **Insured Officer** in relation to any action or proceedings seeking the revocation of a disqualification of the **Insured Officer** from:

- (i) acting as an **Insured Officer** or an **Executive Officer** of an **Insured Public Body**; or
- (ii) acting as an **Executive Officer** of another organisation, where that disqualification arose from a **Directors and Officers Claim** that is indemnified under clause 1.1.1 of this **Policy**.

(b) VMIA will also pay the **Insured** for reasonable **Defence Costs** incurred by or on behalf of the **Insured Officer** in defending or resisting any **Directors and Officers Claim** involving proceedings seeking an order for the freezing of assets or bank accounts, creation of a caveat or a charge over assets or property, confiscation of assets or property, or suspending or limiting access to assets or property of the **Insured Officer**, or in relation to any action or proceedings by the **Insured Officer** seeking the revocation of such an order.

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

1.2.12 Internal Investigation Costs

VMIA will pay **Internal Investigation Costs** incurred by an **Insured Officer** or **Insured Public Body** in respect of an **Internal Investigation**.

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

1.2.13 Occupational health and safety

VMIA will pay **Defence Costs** and **Legal Representation Expenses** of an **Insured Officer** arising from any claim or **Investigation** involving any actual or alleged **Occupational Health and Safety Incident**.

1.2.14 Outside Director

VMIA will pay **Defence Costs** and **Legal Representation Expenses** incurred by an **Outside Director** in their role as an **Outside Director** where such **Outside Director** is not otherwise entitled to an indemnity under any other policy of insurance arranged by the outside **Organisation** either because such a policy was not in force at the relevant time or such a policy fails to respond for any reason whatsoever including the outside **Organisation's** insolvency or exhaustion of the policy limits.

Provided always that:

- (a) such indemnity will not extend to any of the other directors, officers or employees of the outside **Organisation**;
- (b) no indemnity whatsoever is available to the outside **Organisation** under this **Policy**; and

- (c) indemnity under this Extension shall be noncumulative with any other insurance issued by VMIA.

1.2.15 Pre-Investigation costs

VMIA will pay, reasonable legal fees, costs and expenses of an **Insured Officer** (but not including the remuneration of an **Insured Officer**, the cost of their time or any other costs or overheads of any **Insured Public Body**) incurred directly with respect to any **Pre-Investigation**.

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

1.2.16 Prosecution costs

VMIA will pay reasonable legal fees, costs and expenses incurred by an **Insured Officer** to bring legal proceedings to overturn, discharge, revoke or stay any judicial order made against an **Insured Officer** arising from **Directors and Officers Claim** under this **Policy**.

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

1.2.17 Public Media Expenses

VMIA will pay the **Insured Officer** and the **Insured Public Body** for reasonable **Public Media Expenses** incurred by or on behalf of the **Insured Officer**:

- (a) in connection with any **Directors and Officers Claim** involving proceedings to extradite the **Insured Officer**; or
- (b) to mitigate any adverse effect on the **Insured Officer's** reputation following a successful final exoneration or defence of any **Directors and Officers Claim**.

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

1.2.18 Raids

VMIA will pay to or on behalf of the **Insured Officer** or reimburse the **Insured Public Body** to the extent that it has indemnified the **Insured Officer** against reasonable legal and professional fees, costs and expenses including (including reasonable travel, accommodation and meal expenses) incurred by or on behalf of the **Insured Officer** with VMIA's prior written consent (which consent shall not be unreasonably withheld or delayed) in responding to a **Raid**.

1.2.19 Run off and retired Insured Officer's cover

In the event that

- (a) this **Policy** is not renewed or replaced with any other directors and officers or management liability policy; or
- (b) the **Insured Public Body** or that part of the **Insured Public Body** where the **Insured Officer** performs their functions:
 - (i) ceases to exist; or
 - (ii) due to a merger with or acquisition by another organisation, ceases to be the same entity,

a run off period of 7 years shall be available for any **Directors and Officers Claim** arising out of the **Wrongful Acts** of the **Insured Officer** which took place prior to the cessation of this **Policy** or the **Insured Public Body** ceases to exist.

VMIA will extend this cover to any **Insured Officer** who retired prior to the end of the **Policy Period**.

Run off cover under this Extension shall operate in excess of any other applicable insurance available to the **Insured Officers** and the **Insured Officers** must seek to recover first from the other relevant insurance policies.

1.2.20 Separate legal representation

Where one or more **Insured Officers** are entitled to legal representation under this **Policy**, and such representation by the same lawyers will cause a material conflict of interest, then the **Insured Officers** shall be entitled to separate legal representation to the extent required to resolve the conflict of interest.

1.2.21 Spouses, estate and legal representatives

VMIA will pay for any **Directors and Officers Claim** brought against:

- (a) the spouse or domestic partner of the **Insured Officer**; or
- (b) the estate or legal representative of the **Insured Officer** if they are deceased, mentally incapacitated, bankrupt or otherwise not able to manage their own affairs, to the extent that the **Directors and Officers Claim** is in respect of an act or omission of the **Insured Officer** and if it had been brought against the **Insured Officer**, it would have been indemnified under this **Policy**.

VMIA will indemnify the spouse or domestic partner of the **Insured Officer** for a claim seeking to enforce a damages award made against marital property, property jointly held by the **Insured Officer** and the spouse or domestic partner, or property transferred from the **Insured Officer** to the spouse or domestic partner to the extent that the **Directors and Officers Claim** is in respect of a **Wrongful Act** committed by the **Insured Officer** and would have been indemnified under this **Policy**.

2. Exclusions

VMIA will not cover the **Insured Officer** or **Insured Public Body** for **Loss, Defence Costs, Legal Representation Expenses** or any other amount insured directly or indirectly caused by, arising out of or in any way connected with:

2.1 Fines and Penalties

Any fines and penalties imposed by law upon the **Insured Public Body**, however this Exclusion will not apply to any civil fines and penalties imposed by law upon an **Insured Officer**.

This Exclusion only applies to the fine and/or penalty itself and will not apply to any reasonable **Defence Costs** to represent the **Insured Public Body** and/or an **Insured Officer** for penalty hearing or representation activities of the like.

2.2 Fraud and dishonest acts and personal profit

- (a) any deliberately dishonest or deliberately fraudulent act or omission of the **Insured Officer** or an intentional breach of the law by the **Insured Officer**;
- (b) any personal profit or advantage gained by the **Insured Officer** to which such **Insured Officer** was not legally entitled including improperly benefitting from any securities transactions such as insider trading; and
- (c) any conduct or contravention by an **Insured Officer** with respect to which a prohibition in section 199B of the *Corporations Act 2001* (Cth) as amended applies.

This Exclusion only applies where such conduct has been established to have occurred through a formal written admission (that has not been withdrawn) or a **Final Adjudication**.

2.3 Foreign jurisdiction

Any **Directors and Officers Claim** maintained in a **Foreign Jurisdiction** or to which the law of a **Foreign Jurisdiction** is applied.

This Exclusion will not apply if VMIA is permitted by applicable local and foreign law to provide cover under this **Policy** and the provision of such cover is not in breach of any sanctions, laws or regulations.

2.4 Industrial actions

Any claim based upon, arising out of, or attributable to:

- (a) any collective industrial or labour relations including but not limited to: strikes; lock-outs; demarcation disputes; negotiating awards or enterprise agreements; collective redundancies; obligations to consult representatives and employees in relation to redundancies; or
- (b) any breach of and/or seeking declarative relief of an employee bargaining agreement.

This Exclusion will not apply to an **Employment Practices Liability Claim** arising from an enterprise bargaining agreement which is expressly incorporated into an **Employee's** written employment contract.

2.5 Personal

Any **Loss** arising out of:

- (a) bodily injury, death, sickness, disease, disability, shock, fright, mental anguish or mental injury; or
- (b) **Damage** to property.

This Exclusion will not apply to:

- (a) **Defence Costs** or **Legal Representation Expenses**; and
- (b) emotional distress resulting from an **Employment Practices Liability Claim**.

2.6 Professional liability

Any **Loss** arising from the **Insured Officer's** or the **Insured Public Body's** failure to provide **Professional Services** to a third party.

2.7 Pollutants

Any **Loss** attributable to:

- (a) the discharge, dispersal, release, seepage, migration or escape of **Pollutants**;
- (b) the cost of testing, monitoring, treating, detoxifying, removing, neutralising or cleaning up **Pollutants**; and
- (c) the cost of preventing the escape of **Pollutants**.

This Exclusion will only apply to the part of any claim that exceeds the **Sub-Limit of Liability** stated in the **Policy Schedule**, and does not apply to **Defence Costs** and **Legal Representation Expenses** that are otherwise payable in accordance with this **Policy**.

2.8 Prior circumstances, claims and notifications

Loss based on, arising from or attributable to an act, omission facts or circumstances:

- (a) that, at the at the time **VMIA** issues this **Policy**, the **Insured Officer** or **Insured Public Body** knows might give rise to a claim;
- (b) which has been notified under a policy in force prior to the **Policy Period** and if the **Policy** would cover such a claim, or would cover but for the exhaustion of limits of liability; and
- (c) the subject of any demand, suit or other proceeding pending, or order, decree or judgment entered against any **Insured Officer** on or prior to the **Retroactive Date** or the **Policy Period**.

2.9 Radioactivity

A claim arising from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. This exclusion does not apply to radioactive materials or waste commonly found in hospitals and other medical or medical research institutions.

3. Conditions

3.1 Allocation

Where a claim for **Loss** arising from a **Directors and Officers Claim** or an **Employment Practices Liability Claim**, or a claim for **Legal Representation Expenses** incurred in respect of an **Investigation** or a claim for any other loss under this **Policy** is covered only in part by this **Policy** because it:

- a) involves both matters which are covered and matters which are not covered under the **Policy**; or
- b) has been incurred by the **Insured Officer** and/or **Insured Public Body** jointly with other parties (including the indemnified parties themselves) who are not covered by this **Policy**.

VMIA and the **Insured Officer** and/or **Insured Public Body** will take reasonable steps to agree the **Loss**, **Legal Representation Expenses** or other covered loss that represents a fair and equitable allocation between amounts covered by the **Policy** and amounts not covered by the **Policy** based on the relative legal and financial exposures of the parties to covered and uncovered matters.

If **VMIA** and the **Insured Officer** and/or **Insured Public Body** cannot agree on such an allocation, then the dispute shall be determined in accordance with cl. 3.8 of the **Policy**. In doing so, the King's Counsel or Senior Counsel appointed under cl. 3.8 of the **Policy** shall determine the fair and proper allocation based on the relative legal and financial exposures of the parties to covered and uncovered matters. Such determination will be made by the King's Counsel or Senior Counsel as an expert and not an arbitrator. The decision will be binding on **VMIA** and the **Insured Officer** and/or **Insured Public Body**.

While **VMIA's** allocation remains in dispute, **VMIA** shall advance the **Loss** (including **Defence Costs**), **Legal Representation Expenses** or other covered loss it reasonably believes to be covered under the **Policy** until a different allocation is agreed or determined.

Such different allocation may be applied retrospectively to amounts incurred prior to agreement or determination.

3.2 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.

3.3 Application of the deductible

Only one **Deductible** will be applicable to all claims covered by this **Policy** arising out of the same related or repeated series of acts or omissions.

3.4 Application of Insurance Contracts Act 1984 (Cth)

- (a) this **Policy** is to be construed as if it were a contract of insurance to which the *Insurance Contracts Act 1984* (Cth) as amended applies, although where a provision of the *Insurance Contracts Act* is inconsistent with a provision of this **Policy**, the **Policy** will prevail;
- (b) sections 11A, 11AA 11AAA – 11E, 15, 21A, 22, 25, 29, 30, 32, 32A, 37, 38, 39, 40(2), 42, 43, 45, 48AA, 48A 52, 55A, 58, 69, 70, 71, 74, 75, 76, 76A of the *Insurance Contracts Act* do not apply to this **Policy**, and
- (c) penalty provisions of the *Insurance Contracts Act* do not apply to this **Policy**.

3.5 Cancellation, avoidance and rescission

- (a) **VMIA** is entitled to cancel this **Policy** in respect of any **Insured** that has:
 - (i) failed to comply with the duty of disclosure that would apply if this **Policy** were a contract of insurance to which the *Insurance Contracts Act 1984* (Cth) as amended applies;
 - (ii) failed to comply with the duty of utmost good faith that would apply if this **Policy** were a contract of insurance to which the *Insurance Contracts Act 1984* (Cth) as amended applies;
 - (iii) made a material misrepresentation before this **Policy** was issued;
 - (iv) failed to comply with a material provision of this **Policy**; or

- (v) made a fraudulent claim under this **Policy**;
- (b) **VMIA** may exercise any right to cancel cover in respect of an **Insured** under clause 3.4(a) by giving the **Insured Public Body** not less than 21 days prior written notice of cancellation;
- (c) without limitation of clause 3.4(d), the cancellation of this **Policy** in respect of any **Insured** does not affect this **Policy** in respect of any other **Insured**; and
- (d) subject to clause 3.4(a), **VMIA** must not avoid, rescind or otherwise terminate this **Policy** in whole or in part for any reason, other than a termination that is mutually agreed in writing between **VMIA** and the **Insured Public Body**.

3.6 Deductible

Where the **Deductible** payable by the **Insured Public Body** is the same or greater than the **Deductible** payable by the **Insured Officer**, and the **Insured Public Body** indemnifies the **Insured Officer**, or is reimbursed by **VMIA**, then only the **Deductible** applicable to the **Insured Public Body** will apply and **VMIA** must account for any **Deductible** paid by or on behalf of the **Insured Officer** (whether it is directly paid, or paid by way of deduction from amounts payable under this **Policy**).

3.7 Defence, settlement and co-operation

- (a) in respect of any claim under this **Policy**, **VMIA** has the right (but is not obliged) to defend any **Directors and Officers Claim, Employment Practices Liability Claim, or Investigation** or legal proceedings against an **Insured**, and may with an **Insured's** consent settle a claim against the **Insured**;
- (b) **Defence Costs** payable under 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 **Directors and Officers Claim, Employment Practices Liability Claim or Investigation** 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 **Directors and Officers Claim, Employment Practices Liability Claim or Investigation** made against the **Insured**, whether such **Directors and Officers Claim, Employment Practices Liability Claim or Investigation** be oral or in writing and will, upon request, give to **VMIA** such information it may reasonably require to investigate the matter notified; and
- (e) subject to the waiver of subrogation clause **VMIA** will be entitled to claim indemnity or contribution at any time in the name of the **Insured** from any party against whom the **Insured** may have such rights;
- (f) if a claim is made against an **Insured Officer** by the **Insured Public Body**, **VMIA** has no duty or obligation to communicate with any other officer or any other public body in relation to that claim;
- (g) If an **Insured** does not consent to a settlement proposed by **VMIA** of a claim against the **Insured**, **VMIA** may only settle the claim in accordance with the dispute resolution procedure at clause 3.7;
- (h) the **Insured** must not, without **VMIA's** written consent, admit liability for or settle any claim under this **Policy** or incur any costs or expenses in connection therewith; and
- (i) the **Insured** must as a condition precedent to their right to be indemnified under this **Policy** give **VMIA** any information or do anything else **VMIA** reasonably requires for the purpose of investigating, defending or settling a claim under this **Policy**.
- (j) Where an **Employment Practices Liability Claim** is brought on behalf of an **Employee** by a third party, **VMIA** will only pay reasonable **Loss** and/or **Defence Costs** to the extent that such a third party is representing the interest of **Employee** for an **Employment Practices Liability claim**.

3.8 Dispute resolution procedure

All disputes between **VMIA** and the **Insured Officer** or **Insured Public Body** shall be resolved by the opinion of a King's Counsel or Senior Counsel to be agreed between the parties, the cost of which will be paid for by **VMIA**. If agreement cannot be reached, the King's Counsel or Senior Counsel is to be appointed by the Chair of the Victorian Bar Council. Any opinion for the purposes of clause 3.5 must state whether any proposed settlement is appropriate in all the circumstances and must take proper account of the interests of the **Insured**.

3.9 Liability only to indemnify excess over other indemnity

VMIA is not liable to indemnify the **Insured Officer** to the extent that the **Insured Public Body** is legally required or permitted to indemnify the **Insured Officer**, and does so.

3.10 Limit of liability

VMIA's liability in respect of all claims under this **Policy** is limited to the amount specified in the **Policy Schedule** as the **Limit of Liability**.

3.11 Non-imputation and severability

- (a) no statement or omission in any proposal form to **VMIA** or other information provided in the proposal, and no knowledge or information possessed by an **Insured** (whether before or after the commencement of this **Policy**), shall be imputed to any other **Insured**;
- (b) in order to determine if coverage is available:
 - (i) no state of mind or knowledge or information possessed by any **Insured** (whether before or after the commencement of this **Policy**) shall be imputed to any other **Insured**; and
 - (ii) no act, statement, representation, conduct, breach (including, without limitation, a breach of this **Policy**), contravention, error or omission of any **Insured** (whether before or after the commencement of this **Policy**) shall be imputed to any other **Insured**;
- (c) where an act, omission, knowledge or information of an **Insured** entitles **VMIA** to refuse or reduce indemnity under this **Policy**, **VMIA** will not refuse or reduce indemnity for any other **Insured** on the basis of the first **Insured's** act, omission, knowledge or information;
- (d) where one or more **Insureds**:
 - (i) breach a duty or obligation owed to **VMIA** (whether the duty or obligation arises under this **Policy**, statute or otherwise and whether or not the breach is fraudulent and whether or not it occurred before or after the inception of this **Policy**); or
 - (ii) engage in any other act, conduct or omission whether or not it is fraudulent and whether engaged in before or after the inception of this **Policy**;

VMIA is permitted to exercise its legal rights against those **Insureds** (not being innocent **Insureds**), having the effect of denying cover in whole or in part, although the exercise of those rights must not affect the cover under this **Policy** for innocent **Insureds**; and

- (e) nothing in clauses 3.10(a) or 3.10(b) is to be construed as increasing the **Limit of Liability**.

3.12 Order of payments

Where at any time **VMIA** is obliged to make payment under this **Policy** to or on behalf of an **Insured** and the **Limit of Liability** is insufficient to enable **VMIA** to make all of the payments in full, **VMIA** must make payments to or on behalf of the **Insured Officers** in priority to the payments to and on behalf of the **Insured Public Body** so that any shortfall shall be borne by the **Insured Public Body**.

3.13 Other insurance

This **Policy** shall always apply excess over any other valid and collectible insurance available to the **Insured Officer** or the **Insured Public Body**.

3.14 Presumptive indemnification

If the **Insured Public Body** fails to indemnify an **Insured Officer** due to:

- (a) **Financial Impairment**; or
- (b) refusal of the **Insured Public Body** to indemnify the **Insured Officer**,

and provided the **Insured Public Body** is permitted by or required by law to indemnify the **Insured Officer**, **VMIA** shall indemnify the **Insured Officer**.

3.15 Reinstatement of limit

- (a) subject to clauses 3.14(c) and 3.14(d), in the event of the whole or any portion of the **Limit of Liability** being exhausted by a claim or other indemnity provided under this **Policy**, the amount so exhausted shall be reinstated to the same amount, provided that the reinstatement does not apply to:
 - (i) any existing claim;
 - (ii) claims arising from facts or circumstances which the Insured becomes aware of that will or may give rise to a claim; or
 - (iii) any existing claim or indemnity provided or could have been provided if the Insured had or should have notified **VMIA**, under clause 1.2 of the **Policy**;
- (b) if the **Insured** has other insurance, then the reinstatement will not apply until the other insurance has been exhausted;
- (c) the reinstatement shall only apply from the time that the **Insured** confirms in writing to **VMIA** to provide the reinstatement. No extra premium will be charged by **VMIA** for the reinstatement pursuant to clause 3.14(a); and
- (d) the number of reinstatements pursuant to clause 3.14(a) in any one **Policy Period** shall be limited to the number of reinstatements stated in the **Policy Schedule**.

3.16 Subrogation

In event of payment of a 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; and
- (b) obtain relief or indemnity from other parties,

to recover any amount paid by **VMIA** to the **Insured Officer or Insured Public Body** in settlement of any claim under the policy.

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

- (a) amount paid by **VMIA** to the **Insured** in respect of the loss; and
- (b) amount paid by **VMIA** for administrative and legal costs incurred in connection with the recovery.

If there is an amount in excess of clauses 3.15(a) and 3.15(b) the **Insured** is entitled to that recovered excess amount.

3.17 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.

3.18 Change in control of a public body

If during the **Policy Period** any of the following transactions occur, **VMIA** will automatically indemnify in accordance with this **Policy**:

- (a) the **Insured Public Body** (i) sells all or substantially all of its assets to any other person or entity or (ii) consolidates with another entity such that the **Insured Public Body** is no longer the surviving **Insured Public Body**; or
- (b) any person, or entity directs the management or policies of the **Insured Public Body**; or
- (c) any person, or entity controls the membership of the board of directors or board of management of the **Insured Public Body**; or
- (d) any person or entity controls the membership of the **Insured Public Body**, whether or not they have the right, pursuant to written contract or by-laws, constitution, charter or similar documents of the **Insured Public Body**.

4. Definitions

4.1 Damage

- (a) physical damage to, destruction of or loss of tangible property and any resultant loss of use; or
- (b) loss of use of tangible property which has not been physically damaged, lost or destroyed as long as such loss of use is caused by physical damage of other tangible property. 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.

4.2 Deductible

The Deductible in the amount to be paid by the **Insured**, specified in the **Policy Schedule**.

4.3 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.

4.4 Department

A department or an office that is a 'Department' pursuant to section 3 of the **VMIA Act**.

4.5 Directors and Officers Claim

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

against an **Insured Officer** alleging a **Wrongful Act** by the **Insured Officer**.

4.6 Emergency

An unforeseen event which in the reasonable opinion of the Chief Executive Officer (or equivalent) of the **Insured Public Body**, if left unmanaged has the potential to lead to a significant negative impact on the business of the **Insured Public Body**.

4.7 Emergency Costs

Reasonable legal fees costs and expenses, including disbursements that would be covered under this **Policy** as **Defence Costs**, but have been incurred by an **Insured** without **VMIA's** prior written consent because it could not be reasonably obtained in the circumstances of an **Emergency**.

4.8 Employee

Any natural person who is or has been or would have been employed by the **Insured Public Body** under a contract of service and includes such persons employed on a part time, seasonal or temporary basis. Employee does not include a person contracting his or her labour to the **Insured Public Body** unless on a permanent and full time basis or deemed to be an employee under the Fair Work Act.

4.9 Employment Practices Liability Claim

Means a claim for any actual or alleged wrongful dismissal, unfair dismissal, discipline, dismissal, discharge or termination of employment, denial of natural justice, breach of any oral, written or implied employment contract, misrepresentation, discrimination, harassment, sexual harassment, failure to employ or promote, deprivation of a

career opportunity, demotion, evaluation, invasion of privacy, defamation, misleading and deceptive conduct, bullying or infliction of emotional distress.

4.10 Environmental Condition

- (a) any actual or alleged or threatened **Pollutants**; or
- (b) any direction or request by an **Official Body** to test for, monitor, clean-up, remove, contain, treat, detoxify or neutralise **Pollutants**.

4.11 Environmental Proceeding

Any claim:

- (a) that is for a **Wrongful Act**;
- (b) where the **Wrongful Act** is actually or allegedly misrepresenting or failing to disclose information as governed by any statute, regulation, rule or common law regulating or creating liability for an **Environmental Condition**; or
- (c) which results in a non-indemnifiable loss to any **Insured Officer**,

if and to the extent based upon, arising out of or attributable to an **Environmental Condition**.

4.12 Executive Officer

In respect of the **Insured Public Body** a person:

- (a) who makes or participates in making decisions that affect the whole or a substantial part of the business or operations of the **Insured Public Body** or other **Organisation**; or
- (b) who has the capacity to affect significantly the financial standing of the **Insured Public Body** or other **Organisation**; or
- (c) where the **Insured Public Body** or other **Organisation** is a corporation under the *Corporations Act 2001* (Cth) as amended, in accordance with whose instructions or wishes the directors or **Executive Officers** of the **Insured Public Body** or other **Organisation** are accustomed to act.

4.13 Extradition Proceedings

A process by which one country apprehends and sends an **Insured Officer** to another country for the purposes of criminal prosecution.

4.14 Final Adjudication

An adjudication by a Court, Administrative, Official Body that is final and non-appealable or non-reviewable.

In relation to an **Insured Public Body** that is a body corporate means the happening of any of the events prescribed in regulation 7.5.02 of the *Corporations Regulations 2001* (Cth) as amended.

4.15 Foreign Jurisdiction

Any jurisdiction, other than the Commonwealth of Australia or any of its territories or possessions.

4.16 Insured Officer

A person who was, now is or becomes:

- (a) is a director or member of the board of management of the **Insured Public Body**; or
- (b) is a secretary, officer, **Executive Officer** or other person concerned in, or who takes part in, the management of the **Insured Public Body**; or
- (c) where the **Insured Public Body** is a **Statutory Authority** that does not have a board of management – is a member of the authority; or
- (d) where the **Insured Public Body** is a cemetery trust established pursuant to the *Cemeteries and Crematoria Act 2003* (VIC) as amended – is a member of the cemetery trust; or

- (e) an **Executive Officer** of an **Insured Public Body**, which is a rural health service; or
- (f) is an **Employee** of the **Insured Public Body**, but only in respect of **Employment Liability Claims**; or
- (g) is an **Outside Director**; or
- (h) is the spouse or domestic partner of a person who is an **Insured Officer** but only in respect of Extension 1.2.21.

4.17 Insured Public Body

- (a) the **State Company, Statutory Authority, Department, Participating Body** or **Organisation** named in the **Policy Schedule** as the **Insured Public Body**;
- (b) all **Subsidiaries** of the **Insured Public Body** referred to in paragraph;
- (c) any **Organisation** that becomes a **Subsidiary** of the **Insured** regardless of whether or not **VMIA** is given notice of the new **Subsidiary**; and
- (d) any **Organisation** that an **Insured Officer** serves as an **Outside Director**.

4.18 Internal Investigation

An internal inquiry or investigation conducted by the **Insured Public Body** in response to a request by a regulator, government body or other **Official Body** to investigate an **Insured Officer** (a) to (e) and (g) as defined in the **Policy** in respect of their conduct whilst in their capacity as an **Insured Officer**.

4.19 Internal Investigation Costs

Those reasonable and necessary costs and expenses incurred by the **Insured Officer** and **Insured Public Body** in the course of responding to an **Internal Investigation** (but not including the remuneration of an **Insured Officer**, the cost of their time or any other costs or overheads of any **Insured Public Body**).

4.20 Investigation

Any hearing, examination, investigation or inquiry or administrative or regulatory proceeding (including, without limitation, a professional disciplinary proceeding) conducted by an **Official Body** in respect of which:

- (a) an **Insured Officer** becomes legally compelled to attend or to provide documents or other information in their capacity as an **Insured Officer** of the **Insured Public Body**;
- (b) an **Insured Officer** is the subject of an on-site raid of an **Insured** for the purposes of obtaining documents or other information in their capacity as an officer of the **Insured Public Body**; or
- (c) an **Insured Officer** has reasonable grounds to believe that the **Insured Officer's** conduct in his or her capacity as an **Insured Officer** of the **Insured Public Body** is being or is to be considered by the hearing, examination, investigation, inquiry or proceeding.

An **Investigation** does not include:

- (a) any investigation or inquiry conducted by the **Insured Public Body** in respect to the official conduct or capacity of an **Insured Officer** of the **Insured Public Body**; or
- (b) any routine, regularly scheduled regulatory supervision, inspection, compliance review examination, product or audit conduct in an **Official Body's** normal review or compliance process.

4.21 Legal Representation Expenses

Reasonable and necessary legal fees, costs and expenses incurred by the **Insured Officer** and **Insured Public Body** (but not including remuneration of any **Insured Officer**, cost of their time or costs or overheads of any **Insured Public Body**) with the prior written consent of **VMIA** (which shall not be unreasonably delayed or withheld) for legal representation in relation to an **Investigation**.

4.22 Limit of Liability

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

4.23 Loss

In respect of all insuring clauses and extensions, the aggregate of all amounts which an **Insured Officer** or an **Insured Public Body** is legally obligated to pay in support of a **Directors and Officers Liability Claim, Employment Practices Liability Claim** and **Investigation**, including but not limited to:

- (a) any statutory awards, damages, the compensatory element of any settlement reached, compensation or interest awarded, judgments entered, including a claimant's legal costs;
- (b) **Defence Costs**;
- (c) aggravated or exemplary damages where permissible and insurable under all applicable laws and regulations;
- (d) **Legal Representation Costs**;
- (e) **Pre-Investigation Costs**;
- (f) **Emergency Costs**;
- (g) **Internal Investigation Costs**; and
- (h) **Civil Fines and Penalties** imposed by Law upon and **Insured officer** as a result of a **Directors and Officers Claims**.

Loss does not include the following:

- (i) allocated amounts for which **VMIA** is not liable to indemnify;
- (j) the multiple portion of any multiplied damages award, other than damages for libel and slander;
- (k) non-monetary relief; or
- (l) salaries, wages, remuneration or employment-related benefits of any **Insured Officer**.

4.24 Occupational Health and Safety Incident

Any actual or alleged breach of an occupational health and safety law or regulation, including a law or regulation dealing with industrial or workplace death or manslaughter.

4.25 Official Body

Any regulator, government, governmental body, governmental or administrative agency, self-regulatory body, disciplinary body, professional body, ombudsman, royal commission, commission of inquiry, parliamentary committee, criminal authority, coroner's court or any other person or body having legal authority to conduct an **Investigation**.

4.26 Organisation

Any body, company, association, trust, authority or entity.

4.27 Outside Director

An **Insured Officer** who serves during the **Policy Period**, at the request of the **Insured Public Body** as a director, officer, trustee (other than a Superannuation Trustee) governor or the equivalent of any **State Company, Statutory Authority, Department, Participating Body** or **Organisation** or **Subsidiary**

4.28 Participating Body

Any of the following:

- (a) a 'Participating Body' as defined in section 3 of the VMIA Act;
- (b) a department of the Parliament of Victoria declared by the relevant Minister (in compliance with section 4(2) of the VMIA Act) by notice published in the Government Gazette of Victoria pursuant to section 4(1) of the VMIA Act to be a for the purposes of the VMIA Act;
- (c) a Statutory Authority, other than a Statutory Authority referred to in paragraph (b) of the definition of 'Participating Body' in section 3 of the VMIA Act, declared by the relevant Minister by notice published in

the Government Gazette of Victoria pursuant to section 4(1) of the VMIA Act (following compliance with section 4A(3) of the VMIA Act);

- (d) a body corporate, other than a body corporate referred to in paragraph (c) of the definition of 'Participating Body' in section 3A of the VMIA Act, in which Victoria has a controlling interest as defined in section 3A of the VMIA Act, declared by the relevant Minister by notice published in the Government Gazette of Victoria pursuant to section 4(1) of the VMIA Act (following compliance with section 4A(3) of the VMIA Act) to be a Participating Body for the purposes of the VMIA Act.

4.29 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**.

4.30 Policy Period

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

4.31 Policy Schedule

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

4.32 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).

4.33 Pre-Investigation

- (a) any **Raid** or on site visit to any **Insured Public Body** by an **Official Body** that involves the production, review, copying, confiscation of records or interviews of any **Insured Officer**; and
- (b) any formal notification by the **Insured** to any **Official Body**, first made during the **Policy Period** where the **Insured** reasonably considers that a material breach of the **Insured's** legal or regulatory duty has occurred or may occur and failure to notify the **Official Body** of a potential breach may give rise to enforcement consequences from such **Official Body**.

4.34 Professional Services

Professional Services means those professional services performed by or on behalf of the **Insured Officer** or **Insured Public Body** for a third party and any other activities specified in the **Policy Schedule**.

4.35 Public Media Expenses

Any expenses paid for services provided by public relations consultants to an **Insured Officer** directly to mitigate the adverse effect or potential adverse effect on an **Insured Officer's** reputation.

4.36 Raid

The exercising, with or without warning, by a statutory, regulatory or other governmental body of a power or purported power by way of search warrant, court order or otherwise, to enter premises occupied by the **Insured Public Body** or **Insured Officer** ("the premises") for the purpose of inspecting, examining, investigating, seizing, copying or otherwise gaining access to property at the premises.

4.37 State Company

A company that is a 'State Company' pursuant to section 25 of the VMIA Act.

4.38 Statutory Authority

A Statutory Authority and includes a State Body within the meaning of the *State Owned Enterprises Act 1992* (VIC) as amended.

4.39 Sub-Limit of Liability

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

4.40 Subpoena

A subpoena or witness summons served on an **Insured Officer** in their capacity as such, as a witness other than as a target of a claim or **Investigation**, seeking:

- (a) the production of information by that **Insured Officer** (whether that information is contained, or alleged to be contained, in documents or any other medium); or
- (b) that **Insured Officer's** attendance to give evidence as a witness.

4.41 Subpoena Costs

Reasonable legal costs and professional charges and expenses which an **Insured Officer** incurs personally, with the prior written consent of **VMIA**, in producing information sought by, or in attending to give evidence sought by a **Subpoena**.

4.42 Subsidiary

Any entity that is directly or indirectly controlled by the **Insured Public Body** through ownership or control of more than 50% of the issued voting shares or capital of the entity and including any entity whose financial accounts are incorporated in those of the **Insured Public Body** by virtue of accounting standard AASB 1024 or equivalent standard.

4.43 VMIA

The Victorian Managed Insurance Authority ABN 39 682 497 841.

4.44 VMIA Act

The *Victorian Managed Insurance Authority Act 1996* (VIC).

4.45 Wrongful Act

- (a) any actual, or alleged or attempted breach of duty, breach of trust, neglect, error, misstatement, misrepresentation, misleading statement, act, omission, defamatory statement, libel or slander, or any other matter claims against an **Insured Officer** by reason of their acting in their capacity as an **Insured Officer**; and
- (b) any actual or alleged wrongful, unfair dismissal, discipline, dismissal, discharge or termination of employment, denial of natural justice, breach of any oral, written or implied employment contract, misrepresentation, discrimination, harassment, sexual harassment, failure to employ or promote, deprivation of a career opportunity, demotion, evaluation, invasion of privacy, defamation, misleading and deceptive conduct, bullying or infliction of emotional distress against an **Insured Officer** by reason of acting in their capacity as an **Insured Officer**.

Privacy Statement

We are committed to protecting any information and data, including personal information and health information we collect, handle, store or disclose about you through our services. We manage all information and data, including personal and health information in accordance with the *Victorian Managed Insurance Authority Act 1996 (Act)*, the *Privacy and Data Protection Act 2014*, the *Health Records Act 2001*, the *Freedom of Information Act 1982*, and our [Privacy Policy](#).

From time to time, in accordance with our legislative and regulatory frameworks and applicable laws, we may be required to disclose information concerning policies or claims to government bodies authorised by Victorian or Commonwealth legislation.

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.