

Professional Indemnity Insurance Policy PRO2014V1

Issued to Health Sector clients of VMIA

For the period 30 June 2014 to 30 June 2015

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Professional Indemnity Insurance Policy

THIS POLICY incorporates the Schedule, Conditions, Exceptions, Definitions, Memoranda and Endorsements (if any) and any other terms herein contained which are to be read together and any word or expression to which a specific meaning has been given in any part of this Policy shall bear this meaning wherever it may appear unless such meaning is inapplicable to the context in which such word or expression appears.

Period of cover

This Contract (“the Policy”) covers claims first made against the **INSURED**, INSURED PERSONS and NAMED ORGANISATIONS (including persons and entities deemed to be such by this Policy) or any of them after 4.00 pm Local Standard Time 30 June 2014 but before 4.00 pm Local Standard Time 30 June 2015 or such later date as may be agreed between VMIA and the **INSURED** (“Period of Insurance”).

Insuring Clause

1.1 VMIA will, subject to the following limitations, terms, conditions and endorsements:

- 1.1.1 indemnify the **Insured** against any **Claim** which may be made against the **Insured** and notified to VMIA during the **Period of Insurance** for actual or alleged breach of professional duty in the provision of **Health Services** by reason of any act, error or omission committed or allegedly committed by or on behalf of the **Insured**, and
- 1.1.2 in addition, pay the costs and expenses incurred with the written consent of VMIA in the defence, settlement or investigation of any such **Claim**.
- 1.1.3 for Personal Injury or Property Damage by reason of act, error or omission committed or alleged to have been committed after the Retroactive Date (if one is specified in the Schedule) but prior to 4.00PM AEST on 30 June 2010, and

If, during the **Period of Insurance**, the Insured shall become aware of any circumstances which might subsequently give rise to a **Claim** under this Policy and elect, during the **Period of Insurance**, to give written notice of such circumstances to VMIA, then any such **Claim** which might subsequently arise out of such circumstances will be deemed to have been made during the **Period of Insurance**.

1.2 The liability of VMIA will not exceed in the aggregate for any one **Claim** under this Policy the **Limit of Indemnity**, inclusive of the costs and expenses incurred in the defence, settlement or investigation of any **Claim**.

All **Claims** made against the **Insured** shall, unless they arise from acts, errors or omissions that are different and totally unrelated, be regarded as one aggregated **Claim** and VMIA's total liability under this Policy for the aggregated **Claim** will not exceed the **Limit of Indemnity**, inclusive of the costs and expenses incurred in the defence, settlement or investigation of any such aggregated **Claim**.

- 1.3 If a payment in excess of the **Limit of Indemnity** has to be made to dispose of a **Claim**, VMIA's liability (in respect of indemnity provided by Insuring Clause 1.1.2) for such costs and expenses incurred with its consent shall be such proportion as the **Limit of Indemnity** bears to the amount paid to dispose of the **Claim**.
- 1.4 In respect of each **Claim** the amount of the **Excess** shall be borne by the **Insured** at their own risk and VMIA will only be liable to indemnify the **Insured** in excess of that amount. Notwithstanding the provisions of the insuring clause 1.1.1, should any **Claim** involve more than one act, error or omission which does not occur contemporaneously then the **Excess** shall apply to each such act, error or omission separately.
- 1.5 VMIA will be entitled to take over and conduct, in the name of the Insured, the defence or settlement of any **Claim**.
- 1.6 The **Insured** will, when instructed by VMIA, pay promptly (or within the terms of any proposed settlement) any **Excess** amount payable by them under this Policy. Any failure or refusal by the **Insured** to make such payment will entitle VMIA to deduct such amount from any amount required to settle any claim, judgement, order or any other payment to be made by VMIA under this Policy.
- 1.7 The **Insured** will not be required to contest any legal proceedings unless a Queen's Counsel or Senior Counsel (to be mutually agreed upon by the Insured and VMIA) advises that such proceedings should be contested.
- 1.8 In the event that VMIA elects to settle any **Claim**, VMIA may discharge its total liability under this Policy by paying the then available **Limit of Indemnity** to the **Insured**.
- 1.9 In the event that the **Insured** wishes to continue to contest any claim which, in the opinion of VMIA should be settled, then, with the consent of VMIA the **Insured** may so elect, provided that VMIA's liability in respect of any such **Claim** shall not exceed the amount for which, but for such election, the **Claim** could have been settled, together with costs and expenses payable in accordance with this Policy and incurred up to the date of such election.
- 1.10 VMIA may, if it believes that any **Claim** will not exceed the **Excess**, instruct the **Insured** to conduct the defence of the **Claim**, keeping VMIA advised of developments as they occur. In these circumstances, VMIA will reimburse the **Insured** for all reasonable defence costs in the event that any payment made to dispose of the **Claim** by way of damages exceeds the **Excess**.
- 1.11 This policy will protect innocent individuals and/or entities comprising the **Insured** in that VMIA will not void the Policy because of the failure of a person guilty of dishonesty of any description to disclose such dishonesty on any declarations, statements or attachments provided to VMIA.

Exclusions

- 2.1 This Policy will not indemnify the Insured against any **Claim**:
- 2.1.1 in respect of liability imposed upon the **Insured** pursuant to any contract if such liability would not have been imposed upon the **Insured** in the absence of any such contract;; or
 - 2.1.2 arising directly or indirectly out of any act, error or omission committed within the territorial limits of the United States of America, its Territories or Protectorates; or
 - 2.1.3 action for damages brought against the **Insured** in a court of law of the United States of America, its Territories or Protectorates, nor in respect of the enforcement of judgements, orders or awards obtained in, or pursuant to, the laws of the United States of America, its Territories or Protectorates; or
 - 2.1.4 for which the **Insured** are or would be entitled to any indemnity under any other insurance required by law to be in effect or any other insurance, statutory fund or fidelity fund of any description subject always to the provisions of the Insurance Contracts Act 1984 (Commonwealth); or
 - 2.1.5 made against them prior to the commencement of the **Period of Insurance** nor in respect of any claim or circumstance notified under any previous policy, nor in respect of any claim or circumstance which might give rise to a **Claim** which was known to the Insured at 1 July 1998.

(This exclusion relates to the act, error or omission from which the claim or circumstance known to the Insured arises, irrespective of how, or whether, that claim or circumstance is declared to VMIA); or
 - 2.1.6 for loss, damage or liability directly or indirectly occasioned by or:
 - a) 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 or destruction of or damage to property by or under the order of any government or public or local authority; or
 - b) caused by or arising from or in consequence of or contributed to by nuclear weapons materials, or arising from or in consequence of or contributed to by ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. Combustion shall include any self-sustaining process of nuclear fission; or
 - 2.1.7 made against them which relates to any duty or obligation assumed by the **Insured** which is not assumed in the normal conduct of the **Insured's** profession as stated; or
 - 2.1.8 to the extent to which that **Claim** includes any amount of **GST** in respect of which the party making the **Claim** is entitled to receive an **Input Tax Credit** or **Adjustment**; or
 - 2.1.9 for fines, penalties, punitive damages or exemplary damages of any description.

- 2.2 The Policy will not indemnify any person who commits or condones any dishonest, fraudulent, criminal or malicious act.
- 2.3 In respect of any **Claims** made against the **Insured** for loss of documents, this Policy will not provide indemnity for any loss brought about by wear and tear or other gradually operating causes.
- 2.4 In respect of a payment for costs, costs and expenses or defence costs that is required to be made underinsuring clause 1, such payment will not include any amount of **GST** in respect of which the party making the claim is entitled to receive an **Input Tax Credit** or **Adjustment**.
- 2.5 This Policy will not indemnify the Insured against any **Claim** for **Personal Injury** or **Property Damage** by reason of act, error or omission committed or alleged to have been committed on or after 4.00PM AEST on 30 June 2010.

Conditions

- 3.1 The **Insured** will not admit liability for or settle any **Claim** or incur any costs or expenses in connection with any **Claim** without the written consent of VMIA.
- 3.2 The **Insured** will, as a condition precedent to their right to be indemnified under this Policy, give to the VMIA immediate notice in writing of any **Claim** whether oral or in writing and will, on request, give to VMIA any information it may reasonably require to investigate the matter notified.
- 3.3 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.
- 3.4 In respect of **Claims** made against the **Insured** for loss of money or negotiable instruments (including shares), bearer bonds or coupons, bank or currency notes arising out of or contributed to by the dishonest, fraudulent, criminal or malicious conduct of the Insured's employees, fellow partners, co-directors or co-controlling officers, no liability will attach to VMIA unless the Insured notifies the Police and a criminal action successfully concluded by conviction is registered against the person(s) responsible for any loss.
- 3.5 Notwithstanding Exclusion 2.1.5, in the absence of fraudulent nondisclosure and subject to sub-clauses 3.5.2 and 3.5.3 below, where:
- 3.5.1 a **Claim** is made against the **Insured** by reason of an act, error or omission by or on behalf of the Insured which occurred prior to the **Period of Insurance**; and
- 3.5.2 VMIA was the **Insured's** professional indemnity insurer at the time when the Insured first became aware of the circumstance which subsequently gave rise to the **Claim** ("Circumstances"); and
- 3.5.3 VMIA continued without interruption as the **Insured's** professional indemnity insurer from the time when the Insured first became aware of the Circumstances up until such time as the **Claim** is made against the **Insured** and notified to VMIA.
- VMIA agrees to indemnify the **Insured** against the **Claim** subject to and on the terms and conditions of this Policy.
- 3.6 VMIA reserves the right to reduce its liability in respect of the **Claim** by the amount which fairly represents the extent to which VMIA's interests are prejudiced as a result of the late notification.
- 3.7 Where sub-clauses 3.5.2 and 3.5.3 apply, VMIA agrees that it will not deny indemnity for the **Claim** as a consequence of any non-disclosure on the part of the **Insured** with respect to the **Claim**.

Definitions

- 4.1 **'Adjustment', 'GST' and 'Input Tax Credit'** have the meanings given in the *A New Tax System (Goods and Services Tax) Act 1999* and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax.
- 4.2 **Claim or Claims** means
- 4.2.1 any writ, statement of claim, summons, application or other originating legal or arbitral process, cross claim, counter-claim or third or similar party notice issued against or served on the **Insured**; or
- 4.2.2 the receipt by the **Insured** of any written or verbal notice of demand for compensation made against the **Insured**.
- 4.3 **Clinical trials and health and medical research** means participation in trials or research projects, that have been approved by a properly constituted Human Research Ethics Committee in accordance with National Health and Medical Research Council guidelines and where such trial and/or health and medical research has been conducted in accordance with any conditions or approvals made by such Human Research Ethic Committee
- 4.4 **Insured** shall mean and include:
- a) the Named Organisations specified in the Schedule to this Policy and their predecessors in business;
 - b) any examining body attached to any of the entities to which 4.4 (a) refers;
 - c) any officially recognised auxiliary, association, foundation, trust or fund-raising committee that is attached to, represents or has represented any of the entities to which 4.4 (a) refers in connection with charitable and fund-raising activities carried out for the benefit of the entity;
 - d) person associated with any of the entities to which 4.4 (c) refers in connection with any of the activities to which 4.4 (c) refers
 - e) any cemetery trust established pursuant to the Cemeteries Act 1958;
 - f) any employee of any of the entities to which 4.4 (a) refers, whether or not the employment is current when a claim is made under this Policy;
 - g) any person who, during the **Period of Insurance**, becomes a principal, director, controlling officer, executive, employee, committee member or board of management member of an entity to which 4.4 (a) refers, whether or not the employment or appointment of the person is current when a claim is made under this Policy, and
 - h) any cemetery trustee or employee of any cemetery trust established under the Cemeteries Act 1958.

However, an individual is only an **Insured** for the purposes of this Policy in respect of work carried out for and on behalf of an entity to which 4.4 (a) refers and in respect of the conduct by the individual of his or her profession.

4.4.1 The expression "employee" shall include contractors (whether incorporated or otherwise) employed to provide professional services provided that such contractors earn more than 90% of their annual total income from fees received from the business insured by the Policy.

The above definitions do not include any legally qualified medical practitioner or any provider of paramedical or ancillary services in circumstances where such a person is entitled to render and retain in full a fee for services to a person or entity other than the **Insured** unless specifically noted in the **Insured's** Medical Indemnity Insurance Contract.

- 4.5 **Limit of Indemnity** means the amount referred to in the Schedule and includes the costs of investigating, defending and settling the claim.
- 4.6 **Period of Insurance** means the period from the inception of this Policy until its termination.
- 4.7 **Excess** means the amount referred to in the Schedule and includes the costs of investigating, defending and settling the claim.
- 4.8 **Health Services** means any care, treatment, advice, service or goods, including **clinical trials and health and medical research** activities provided in respect of the physical or mental health of a patient or person or any work done to support the management of the provision of such care, treatment, advice, service or goods.
- 4.9 **Performance Review** means the process by which a health professional's performance is reviewed for the purposes of the Named Organisation assessing a health professional's performance in their employment including, but not limited to, identifying and providing feedback about where performance is satisfactory and about where there may be areas of improvement and that prior to the commencement of the process it is not anticipated by the Named Organisation that the process might lead to there being significant adverse impact on the health professional's ongoing employment by way of termination, suspension or reduction in remuneration, or of the health professional's appointment to the Named Organisation.
- 4.10 **Credentialing** means the formal process used to verify the qualifications and experience, professional standing and other relevant professional attributes of the health professional for the purposes of forming a view about that health professional's competence, performance and professional capability to provide safe and quality health care services and their suitability to be employed by, or granted admitting rights to, the Named Organisation and that prior to the commencement of the process a reasonable organisation in the position of the Named Organisation would not have reasonably anticipated that the process might lead to there being a significant adverse impact on the health professional's employment by way of termination, suspension or reduction in the remuneration or refusal of, or curtailment of, the health professional's admitting rights to the Named Organisation.
- 4.11 **Peer Review** means the process by which a health professional's performance is reviewed for the purposes of the Named Organisation assessing the health professional's competence to deliver safe **Health Services** and to a standard expected by the Named Organisation and depending upon the outcome of the process, might result in the termination, suspension or alteration of the terms of the health professional's employment with, or appointment to, the Named Organisation.

4.12 **Personal Injury**

- (a) bodily injury, death, sickness, disease, disability, shock, fright, mental anguish and/or mental injury including loss of services resulting therefrom;
- (b) false arrest, false imprisonment, wrongful detention, malicious prosecution or humiliation.

4.13 **Property Damage**

- (a) 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
- (b) 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.

Extensions

5.1 Libel and Slander

VMIA agrees to indemnify the **Insured** against any **Claim** or **Claims** which may be made against the **Insured** (and which are notified to the Insurer during the **Period of Insurance**) for libel and slander committed, or alleged to have been committed, by the **Insured** in the conduct of the profession of **Health Services**.

5.2 Loss of Documents

If during the **Period of Insurance** the **Insured** shall discover, and within seven days after the date of discovery, give written notice thereof to VMIA that any document(s) which in the conduct of the profession of **Health Services** is/are entrusted to the **Insured**, have within the territorial limits of the Commonwealth of Australia, Papua New Guinea or New Zealand, been destroyed or damaged or lost or mislaid and, after diligent search cannot be found, VMIA shall indemnify the **Insured** for:

- (a) legal liability which it may incur to third parties (less any amount of **GST** in respect of which the party making the claim is entitled to receive an **Input Tax Credit** or **Adjustment**) in consequence of such documents having been destroyed, damaged, lost or mislaid; and
- (b) all costs, charges and expenses (less any amount of **GST** in respect of which the party making the claim is entitled to receive an **Input Tax Credit** or **Adjustment**) reasonably incurred by the **Insured** in replacing and/or restoring such documents.

Provided always that;

- (i) the amount of any claim for costs, charges and expenses referred to above shall be supported by proper and adequate records and accounts;
- (ii) VMIA shall not be liable for any loss brought about by wear or tear or any other gradually operating causes;
- (iii) the limit of indemnity under this Policy shall not be increased by reason of this Extension.

5.3 Trade Practices Act and Fair Trading Legislation

VMIA agrees to indemnify the **Insured** against any **Claim** or **Claims** which may be made against the **Insured** (and which are notified to VMIA during the **Period of Insurance**) for financial loss caused directly by a breach of Professional duty in the conduct of the profession of **Health Services Insured** (which is neither deliberate nor fraudulent, and which occurs after the Retroactive Date if one is specified in the Schedule) which is misleading or deceptive conduct at law, or under the *Corporations Act 2001 (Cth)*, *Australian Securities and Investment Act 2010 (Cth)*, and *Competition of Consumer Act 2010 (Cth)* **Insured** or the equivalent sections of the Fair Trading Act enacted by the States and Territories of Australia, except in respect of any part of any such **Claim** or **Claims**:

- (i) made pursuant to the penal or criminal provisions of those Acts; or
- (ii) that represents an amount of **GST** in respect of which the party making the claim is entitled to receive an **Input Tax Credit** or **Adjustment**.

5.4 Dishonest Conduct

VMIA agrees to indemnify the **Insured** against any **Claim** or **Claims** (less any amount of **GST** in respect of which the party making the claim is entitled to receive an Input **Tax Credit** or **Adjustment**) which may be made against the **Insured** (and which are notified to the Insurer during the **Period of Insurance**) for breach of professional duty in the conduct of the profession of **Health Services** arising out of or contributed to or by the dishonest, fraudulent, criminal or malicious conduct of employees, fellow directors or fellow officers, however this Policy does not provide indemnity to any person committing or condoning such dishonest, fraudulent, criminal or malicious conduct. The indemnity provided by the Insurer under this Extension excludes claims for loss of money, negotiable instruments, bearer bonds or coupons, stamps and bank or currency notes.

5.5 Performance Reviews, Credentialing and Peer Reviews

- 5.5.1 VMIA agrees to indemnify any professional person(s) who provides professional services to a Named Organisation with respect to the **Performance Review** or **Credentialing** of a health professional employed by or with admitting rights to, the Named Organisation BUT SOLELY in respect of the services rendered to the Named Organisation in connection with such **Performance Review** or **Credentialing** AND ONLY to the extent that the said professional person(s) is not entitled to indemnity under a professional indemnity policy of insurance taken out by or on behalf of the said professional person(s) or under an agreement between the said professional person(s) and another person(s) or organisation.
- 5.5.2 VMIA agrees to indemnify any professional person(s) who provides professional services to the Named Organisation with respect to the **Peer Review** of a health professional employed by, or with admitting rights to, the Named Organisation BUT SOLELY in respect of the services rendered to the Named Organisation in connection with the **Peer Review** AND ONLY to the extent that the said professional is not entitled to indemnity under any professional indemnity policy of insurance taken out by or on behalf of the said professional person(s) or under an agreement between the said professional person(s) or organisation BUT ONLY if:
- 5.5.2 (a) at least twenty one days prior to the **Peer Review** commencing, the VMIA is given written notice by the Named Organisation of its intention to conduct the Peer Review and the identity(ies) of the said professional person(s); and
- 5.5.2 (b) upon reviewing the notice provided in accordance with this clause, the VMIA will respond to the notification and must not unreasonably withhold consent to indemnity.

5.6 Other Extensions

VMIA will indemnify the **Insured**, pursuant and subject always to Insuring Clause and all other limitations, terms, conditions and endorsements of this Policy, against **Claims** made against them for:

- 5.6.1 Civil Penalties, being civil penalties which may be imposed under statute, provided always that such civil penalties are compensatory in nature and are payable to the complainant/plaintiff;
- 5.6.2 Affiliations and Joint Ventures, arising from the **Insured's** participation in any joint venture or affiliation with any other entity, provided always that the act, error or omission from which the Claim arose was committed by the **Insured's** staff;
- 5.6.3 Intellectual Property, for any breach of trust, breach of confidentiality, plagiarism or infringement of copyright, trademark, or registered design or patent.

Privacy Statement

VMIA is committed to protecting your privacy. Any personal information collected, handled, stored or disclosed about you through our services will be managed in accordance with the *Victorian Managed Insurance Act 1996*, *Information Privacy Act 2000* and the *Health Records Act 2001*.

Personal information means information or an opinion that is recorded about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

Collection and use of Personal Information

VMIA will only collect and record personal information via this website if it is provided directly to us and is necessary for us to perform our functions or activities; for example VMIA will need to collect personal information, to send requested information, or to act on feedback provided. In particular, personal information is collected in the following situations:

- when you send us an email
- when you use our online services, such as completing a form electronically
- when you register as a site user
- when you provide feedback by email or by using the feedback form on our website.

Access and Correction

If you:

- want to have access to the 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,

please contact VMIA's Information Privacy Officer on 03 9270 6912.