

MDA National

V.5

Combined Financial Services Guide,  
Product Disclosure Statement and  
Policy Wording.  
Professional Indemnity Insurance Policy

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## Introduction

This brochure is divided into four sections.

Section 1 is our financial services guide. It contains information about who we are and the financial services that we provide.

Section 2 is the product disclosure statement. It contains information about the Professional Indemnity Insurance Policy.

Section 3 is the policy wording.

It is important that you read all of these documents carefully before deciding whether to acquire the Professional Indemnity Insurance Policy.

Section 4 contains an extract of the Insurance Regulation Order issued under the *Health Care Liability Act [2001]* for the attention of NSW medical practitioners.

## Financial Services Guide

### Section 1 - Financial Services Guide

This Financial Services Guide (FSG) provides you with information about MDA National Insurance Pty Ltd (MDA National Insurance) to help you decide whether to use the financial services we provide.

It also explains:

- how MDA National Insurance, our staff and other parties are remunerated in relation to those services;
- other documents you may receive in relation to the provision of our financial products and services;
- how we safeguard your personal information; and
- details of our internal and external complaints handling procedures should you need them.

#### Who are we?

MDA National Insurance Pty Ltd (ABN 56 058 271 417) is a general insurer authorised by the Australian Prudential Regulation Authority. We hold an Australian Financial Services Licence Number 238073 and are authorised to advise and deal in general insurance products. We are a wholly owned subsidiary of the Medical Defence Association of Western Australia (Incorporated), ARBN 055 801 771, trading as MDA National.

#### Who do we act for?

MDA National Insurance acts on its own behalf as an insurer. We do not act on your behalf.

#### What financial services and products do we offer?

Our insurance products are available only to members of MDA National, with limited exceptions.

We currently offer the following medical indemnity insurance products:

- Professional Indemnity Insurance Policy
- Run-off Professional Indemnity Insurance Policy
- Practice Indemnity Policy
- Student Indemnity Policy
- Run-off under the Run-off Cover Indemnity Scheme

MDA National Insurance does not provide financial services and products from related or non-related product providers.

## How can you do business with us?

You can obtain the financial services we offer through trained employees of MDA National Insurance.

They can help you to apply for our products and may also give you general financial product advice in relation to these products. When giving general financial product advice our employees will not take into account your personal objectives, financial situation and needs. We may give personal financial product advice in limited situations.

You can give us instructions by telephone, in writing, in person or by email. In some cases, however, before we provide our products we may require written confirmation and the return of specific documents and completed forms.

## How are we remunerated for the services we provide?

We charge a premium for our financial products.

If you choose to finance the cost of our product through Alliance Finance Corporation Limited we may be paid a referral fee of 1% of the amount financed by you.

The Commonwealth Government pays us an administration fee to reimburse the costs of administering the Premium Support Scheme (PSS), the UMP Support Payment Scheme (UMP SP) and the Run-off Cover Scheme (ROCS). These fees may be based on the number of policy holders and/or members and are not based on any premium amount. No fee paid to us relating to the PSS or UMP SP is deducted out of premiums or any monies paid by policy holders.

## How are our employees remunerated for services provided?

The employees of MDA National Insurance who provide our services to you do not receive specific payments or commissions for giving that service. These employees receive salaries.

## When and how do we pay other parties?

If you acquire our financial products through an approved broker, we will pay that broker a commission of up to 10% of the total premium and subscription paid by you. We receive the total premium paid by you and pay commissions in a separate transaction back to the broker.

## Other documents you might receive

### Statement of Advice

If we provide you with personal financial product advice (rather than general financial product advice), you may in limited circumstances be entitled to receive a Statement of Advice (SOA). Personal financial product advice will take into account one or more of your objectives, your financial situation and your needs.

The SOA will contain the advice, the basis on which it is given and information about fees, commissions and any associations with product issuers or other parties that may have influenced the advice.

### How do we safeguard your personal information?

At MDA National Insurance, the privacy of your personal information is important to us. We collect your personal information to ensure that we are able to provide you with appropriate products and services. We collect, handle, store and disclose personal and sensitive information in order to:

- decide whether to issue a policy;
- determine the terms and conditions of the policy;
- analyse data;
- handle claims;
- meet our legal obligations;
- administer Government Schemes; and
- provide our products to you and improve the delivery of our products and services.

MDA National Insurance has adopted the National Privacy Principles set out in the Privacy Act as required by law and as part of our commitment to client service and the protection of client confidentiality. For further details of our Privacy Policy please visit our website at [www.mdanational.com.au](http://www.mdanational.com.au) or contact us for a copy.

### Marketing information

We are committed to providing you with access to leading products and services. From time to time we may provide you with information on other MDA National Insurance products or services that may be of interest to you. We may also disclose your personal information on a confidential basis to our related entities and to the MDA National Group so that they can also offer you products and services. If you do not wish to receive this information please contact Member Services on 1800 011 255, indicate your decision in the appropriate area of your application or renewal form or write to us at the addresses set out on the back of this document.

## What to do if you want to make a complaint

MDA National Insurance is committed to dealing openly with all of our clients and we will endeavour to resolve any complaint quickly, efficiently and fairly.

### Internal dispute resolution

In our experience, most issues can be resolved with a quick phone call. If you do have a complaint in relation to our products or services, please contact our Complaints Officer by:

**Phone:** 1800 011 255 (Freecall)  
**Fax:** (08) 9415 1492  
**In writing:** PO Box 1557  
SUBIACO WA 6904  
**Email:** [complaintsofficer@mdanational.com.au](mailto:complaintsofficer@mdanational.com.au)

We will respond to you with a decision within 15 business days. If you are satisfied with our response, the matter will be considered resolved. If you are not satisfied with our response and wish to pursue the matter further you may wish to refer your complaint to the external dispute resolution scheme to which we belong.

### External dispute resolution

If you are not satisfied with the outcome of our internal dispute resolution process, you can refer the dispute to the Insurance Ombudsman Service Limited (IOS). IOS is an independent and impartial national body established to handle enquiries and complaints and to resolve disputes within the general insurance industry. Their service is free to consumers.

IOS will only review complaints if they have first gone through our internal complaints and dispute resolution process. Please note that IOS can consider insurance matters only. IOS are not able to consider matters relating to membership of MDA National.

For more information about IOS and the types of matters they can resolve, visit their website at [www.insuranceombudsman.com.au](http://www.insuranceombudsman.com.au) or contact our Complaints Officer.

You can contact IOS by:

**Phone:** 1300 780 808 (local call fee applies)  
**Email:** [ios@insuranceombudsman.com.au](mailto:ios@insuranceombudsman.com.au)  
**In writing:** PO Box 561, Collins Street West, MELBOURNE VIC 8007

## Further information and updates

This FSG is issued 27 May 2007 and applies to financial services provided on or after that date. Please check our website for updates.



## Product Disclosure Statement

### Your MDA National Insurance Product Disclosure Statement

This Product Disclosure Statement (*PDS*) is designed to help you make an informed decision about acquiring the Professional Indemnity Insurance Policy (*Policy*) underwritten by MDA National Insurance Pty Ltd (*MDA National Insurance*) ABN 56 058 271 417, AFS Licence No. 238073.

With limited exceptions, the policy is only available to members of MDA National. MDA National is a medical defence organisation, owned by its members.

It is important that you carefully read all of the information in this PDS, including the standard policy wording in Section 3, its terms and conditions, the exclusions and the defined terms. If the policy is issued, you should also read the schedule and any endorsements issued to you in conjunction with the policy wording.

Any advice in this document is of a general nature only and does not take into account your particular circumstances.

Information in this PDS may need to be updated from time to time. You can obtain a copy of any updated information by contacting us. If there is a material change to anything which generally affects the policy, we may provide all policy holders with a new or supplementary PDS.

Updates will also be available on our website [www.mdanational.com.au](http://www.mdanational.com.au)

This PDS is issued on 27 May 2007 and applies to policies commencing on or after 1 July 2007.

### Applying for Professional Indemnity Insurance

You must fill out a proposal to apply for this insurance. In the case of renewal you must confirm that you have given us all the information relevant to your risk.

A policy proposal is included in the application pack or is available by calling 1800 011 255 or visiting the download area of our website [www.mdanational.com.au](http://www.mdanational.com.au)

## Your duty of disclosure

Before you enter into a contract of general insurance with us, you have a duty, under the *Insurance Contracts Act* (1984), to disclose to us every matter that you know, or could reasonably be expected to know, that is relevant to our decision whether to accept the risk of insurance and, if so, on what terms. The duty extends up until the time that we issue a policy to you.

You have the same duty to disclose those matters to us before you renew, extend, vary or reinstate the policy.

Your duty however does not require disclosure of something that:

- diminishes the risk to be undertaken by us; or
- is of common knowledge; or
- we know or, in the ordinary course of our business ought to know;

as to which compliance with your duty is waived by us.

If you fail to comply with your duty of disclosure, we may be entitled to reduce our liability under the contract of insurance in respect of a claim or cancel the contract of insurance.

If your non-disclosure is fraudulent, we may also have the option of avoiding the contract of insurance from its beginning.

## About the Professional Indemnity Insurance Policy

The Professional Indemnity Insurance Policy is a contract of insurance. The following is a summary of the insurance only and does not form part of the contract of insurance. You must read the policy wording (Section 3 of this document) which sets out the terms and conditions of this insurance, and make sure that it matches your needs.

The policy insures you, and your estate, in respect of claims of medical negligence (clause 1 of the policy). The policy also provides cover for certain claims arising out of you reporting an incident or medical practitioner to a hospital, area health authority or professional body or participating in an investigation of such an incident (clause 2) and certain claims of medical negligence against a practice entity controlled by you but only when the claim arises directly in connection with the provision of medical services by you (clause 3). The policy also insures legal costs incurred in connection with the defence or settlement of a claim. You must obtain our consent before the costs are incurred.

## What makes up the insurance contract?

The insurance contract is made up of:

- your proposal;
- the policy wording attached to this PDS;
- the policy schedule we issue to you; and
- any endorsement issued to you.

You must read all of these documents carefully. They should be kept in a secure place.

## A claims made policy

The Professional Indemnity Insurance Policy is a claims made contract of insurance. This means that the policy responds to claims made against you and notified to us during the period of insurance.

The policy does not cover matters you were aware of prior to the commencement of the period of insurance, whether you told us about them on your proposal or not.

If you have a policy with us and you notify us in writing of circumstances which may give rise to a claim during your period of cover, the fact you do not give us written notice of a claim relating to those circumstances before your policy has expired will not, of itself, relieve us of liability in relation to the notified claim. However, you must notify us of the claim as soon as you become aware of it.

## Continuity of cover

Medical negligence claims are often made years after the medical services have been provided so if you want to remain insured it is important that you continue to renew your policy or obtain alternative insurance. If you notify us of a claim after your policy has expired or is cancelled, you may not be indemnified by us for that claim.

## Retroactive cover

The retroactive date on your policy determines how much of your prior practice is covered under your policy. So for example, if you have a retroactive date of 1 July 2003, your policy will not cover a matter which arises from your practice prior to this date, even if you first learn about it and report it to us during the period of insurance. In a limited number of cases, unlimited retroactive cover has been granted.

Everyone's circumstances are unique. As a guide, you may require retroactive cover for any periods where you were not a member of an MDO, or did not have claims incurred Professional Indemnity Insurance or were not indemnified by your employer or under a Government indemnity scheme.

Once your retroactive date has been agreed by us, in most cases, you will retain this retroactive date for each subsequent renewal. However if you do require additional retroactive cover, you can apply for this at any time.

You may also apply for additional retroactive cover for non continuous periods. If we agree to provide this, your policy schedule will specify the additional retroactive periods.

## How much we insure you for

The maximum amount we will indemnify you for is \$20,000,000 in the aggregate for all claims made under this policy. A sub-limit of \$500,000 in the aggregate applies to defence costs for investigations, inquiries and allegations of sexual misconduct or criminal conduct. Both amounts will be specified in the schedule.

The maximum amount of our indemnity includes defence costs.

## Policy excess

The excess, which is set out in the policy schedule, is the amount you must pay to us for each and every claim made under the policy, excluding defence costs. An excess will not apply where the claim only relates to defence costs.

Where the same act or omission gives rise to more than one claim, all such claims will constitute a single claim under the policy.

## What we do not insure you for

The policy will not provide insurance cover in certain circumstances. Clause 9 of the policy wording sets out what the policy does not cover. Please ensure that you read the policy exclusions carefully in order to understand what is not covered.

## Policy conditions

There are things that you must do. If you do not do them, we may be able to reduce or avoid our liability under the policy. These conditions are set out in clauses 11 – 18 of the policy wording. For example, you must pay the premium when it is due. Also, you must notify us in writing as soon as practicable after you become aware of any claim, investigation or inquiry or circumstances that could give rise to such.

## General terms

There are some general terms that apply to all of the insuring clauses. These are set out in clauses 19 – 29 of the policy.

For example, when a claim includes both allegations that are indemnified under the policy and allegations that are not indemnified, we may reduce the amount of defence costs to an amount that we regard as attributable to the allegations that we provide indemnity for.

Also, we have the right to conduct and control any proceedings.

## How much will the policy cost?

In order for you to receive a policy, you must be a member of MDA National and pay your MDA National membership subscription. The amount of this subscription is specified separately in the quotation or renewal documentation.

The total insurance premium is made up of the basic premium, the ROCS Support Payment and Government taxes and charges. The basic premium will vary depending on the risk covered. We use a system of rating factors to calculate this component including your specialty or field of practice, gross annual billings, your retroactive date and the state(s) in which you practice.

The ROCS Support Payment is a component of the premium which goes to fund the Australian Government's Run-off Cover Scheme (ROCS). Regulations require that we pay the Government a certain percentage of premiums collected.

The Premium Support Scheme (PSS) has been established to provide financial assistance with medical indemnity premiums. You must apply separately for each year that you wish to be assessed for eligibility. The scheme may also require that you provide a Statutory Declaration of your Actual Income in order to be eligible. If we receive your PSS application in time and you are eligible, we can collect the premium support payment directly from Medicare Australia and you will only need to pay the balance. Otherwise, you will be required to pay the full amount and we will refund any premium support due to you. If you would like further information in relation to the PSS, please contact Member Services on 1800 011 255.

## Paying your insurance premium

Your premium is an annual premium. Subject to a minimum premium, you can choose to pay your premium quarterly. If you choose to pay quarterly an administration charge is added so your total premium will be more than if you paid in one lump sum.

If you would like to pay monthly, we can provide you with the details of a premium funding provider who can provide a loan for the premium repayable in monthly instalments. The premium funding provider will charge you an interest charge on the amount borrowed. We receive a commission from the premium funding provider.

Unless we advise otherwise, any payment reminder we send you does not change the due date for payment of your premium under the terms of your original policy.

## Policy variations

### Treatment of public patients in public hospitals

Occasionally, doctors find they are not able to obtain State or employer indemnity for the treatment of public patients in public hospitals. Doctors in this situation should notify us of their specific circumstances and request cover in writing. An additional premium may apply if this cover is granted.

### Not practising for 3 months or more

If you are planning to take a break of 3 months or more during the insurance year, you may be eligible for a premium reduction. Contact Member Services for more information. While on your break, it is still essential that you maintain cover for your prior practice periods for you to be covered with us. We do not recommend you cancel your policy unless you have alternative cover in place.

### Practising outside Australia

The policy excludes cover for acts or omissions outside Australia unless we have agreed in writing to extend cover for your work outside Australia. Please contact us to discuss your plans if you are proposing to work abroad. Cover is subject to underwriting approval and is generally for short periods of time.

If your practice takes you outside of Australia regularly, please notify us of this fact. Unless you receive a specific advice to the contrary, you will need to request cover for each separate overseas trip.

## Team Doctors travelling with Australian sporting or cultural teams in the United States of America (USA)

If you are accompanying an Australian sporting or cultural team in the USA as the team doctor we can arrange cover for the medical services you provide to team members. You will need to provide us with the details of your trip and request cover in writing. Coverage is subject to underwriting approval.

## Cooling off period

You have a cooling off period that allows you to cancel your policy within 21 days of it being issued if you are not completely satisfied.

You must cancel the policy in writing. We will refund the premium (including any Government duties and charges) which you have paid within 10 working days of receipt of your written notice of cancellation.

Your cooling off right does not apply if you make a claim under your policy prior to your request to cancel it.

## Cancellation

You may cancel your policy at any time by telling us in writing. We will refund the premium for the unexpired period of insurance on a pro-rata basis up to a maximum refund of 50%, less an administration fee unless you have made a claim or notified a potential claim under this policy in which case we will not make any refund.

We may cancel the policy in certain circumstances by giving you 3 business days written notice if:

- you failed to disclose or misrepresented to us any information that you know (or could reasonably be expected to have known) was relevant to our decision to insure you and on what terms;
- you failed to comply with your duty of utmost good faith to us;
- you failed to comply with a provision of this policy, including the provision to pay the premium or a premium instalment;
- you failed to comply with any provision of this policy which requires you to notify us; or
- you make a fraudulent claim under the policy.

## Run-off cover

Run-off Cover is a form of cover generally taken out by professionals when they retire or in the event they stop practising for a significant period of time. Medical negligence claims can be made against a medical practitioner years after the medical services were provided. A Run-off Policy covers claims that first come to light and are notified to us in writing after a nominated cessation date but only in respect of medical services provided during the period from your retroactive date to your nominated cessation date. The cessation date is normally the day after your last day of practice for which you require our cover.

If you would like to find out more about our Run-off Indemnity Policy, please contact Member Services and we will be happy to discuss your needs and send you a Run-off Indemnity Policy Product Disclosure Statement (*PDS*). You can also download the PDS from our website. When considering Run-off Cover, you should be aware that the Australian Government has introduced a statutory Run-off Cover Scheme (*ROCS*) which means you may not need to purchase a Run-off Indemnity Policy from us.

### Run-off Cover Scheme (ROCS)

From 1 July 2004, the Australian Government introduced a Run-off Cover statutory indemnity scheme for doctors who practise in Australia. The scheme provides Run-off Cover to certain eligible doctors without the requirement for premiums to be paid once the doctor is eligible. Your renewal notice and tax invoice/receipt will detail the ROCS Support Payment we have paid on your behalf. Please keep these in a secure place.

You are eligible for ROCS if you:

- a) are aged 65 years and have retired permanently from private medical practice;
- b) have not engaged in private medical practice at any time during the preceding period of 3 years;
- c) have only ever worked in public medical practice and have not undertaken any paid medical practice at any time during the preceding period of 3 years;
- d) have ceased (temporarily or permanently) medical practice because of maternity;
- e) have ceased medical practice because of a permanent disability; or
- f) have left Australia permanently having practiced in Australia on a Visa sub-class 422 or 457.

A doctor's estate will also be eligible for ROCS after the doctor's death.

If you believe you may be eligible for ROCS please contact us as you may not need to purchase a Professional Indemnity Insurance Policy. More information on this scheme is available upon request or from the Department of Health at [www.health.gov.au](http://www.health.gov.au)

## How to make a claim under the policy

Claim and incident reporting is critical and allows us to properly investigate the matter and provide you with sound advice. You must notify us in writing as soon as practicable by fax to (08) 9415 1492 or by mail to any of our offices. You must notify us if any of the following occur.

### Any circumstance that may give rise to a claim

If at any time during the period of insurance you become aware of any matter which you believe may result in a claim against you, let us know as soon as you can. Prompt reporting will enable us to manage the process at an early and crucial time and also advise you as to how you might respond. Don't wait until a claim is made against you. Your written advice to us should include:

- your name and member number;
- the date, time and place of the event;
- the specific nature of the incident as well as a detailed account of the professional service you performed;
- the name and address of any other professionals involved; and
- the name, address and age of the patient involved.

If you suspect that the law may have been broken you should immediately notify us, as it may need to be reported to the police.

You must immediately send us all legal documents and other correspondence you receive relating to any circumstance which has resulted in, or may result in, a claim.

To assist you further, an incident notification form is available on our website [www.mdanational.com.au](http://www.mdanational.com.au)

### Any claim for medical negligence made against you

Hopefully you will have told us about the matter well before it becomes a claim. However, whether we have been notified or not, send all the details of the claim to us as soon as possible, including all legal documents and letters from lawyers.

## **Any investigation, coronial inquiry, hearing or proceeding arising from your work as a medical practitioner**

Should you become involved in any investigation or inquiry, let us know as soon as you can. We have a wealth of experience in handling such matters but in some cases we may need to engage lawyers to represent you.

## **What to do when something goes wrong**

Patients are always entitled to a full, accurate, sympathetic and prompt account of the facts, but care must be taken not to admit liability.

Refrain from entering into any correspondence with the patient, hospital or supervisor without first speaking to us.

## **What to do if you want to make a complaint**

### **Internal dispute resolution**

We are committed to dealing openly with all of our policy holders and will endeavour to resolve any complaint quickly, efficiently and fairly.

In our experience, most issues can be resolved with a quick phone call. If you do have a complaint in relation to our products or services, please contact our Complaints Officer by:

Phone: 1800 011 255  
Fax: (08) 9415 1492  
In writing: PO Box 1557  
SUBIACO WA 6904  
Email: [complaintsofficer@mdanational.com.au](mailto:complaintsofficer@mdanational.com.au)

We will respond to you with a decision within 15 business days. If you are satisfied with our response, the matter will be considered resolved. If you are not satisfied with our response and wish to pursue the matter further you may wish to refer the matter to the external dispute resolution scheme to which we belong.

## External dispute resolution

If you are not satisfied with the outcome of our internal dispute resolution process, you can refer the dispute to the Insurance Ombudsman Service Limited (IOS). IOS is an independent and impartial national body established to handle enquiries and complaints and to resolve disputes within the general insurance industry. Their service is free to consumers.

IOS will only review complaints if they have first gone through our internal complaints and dispute resolution process. Please note that IOS can consider insurance matters only. IOS is not able to consider matters relating to your membership of MDA National. For more information about IOS and the types of matters they can resolve, their internet address is [www.insuranceombudsman.com.au](http://www.insuranceombudsman.com.au) or contact our Complaints Officer.

You can contact IOS by:

Phone: 1300 780 808 (local call fee applies)  
Email: [ios@insuranceombudsman.com.au](mailto:ios@insuranceombudsman.com.au)  
In writing: PO Box 561  
Collins Street West  
MELBOURNE VIC 8007

# Policy Wording

## Professional Indemnity Insurance Policy

This Professional Indemnity Insurance Policy is issued by MDA National Insurance Pty Ltd ABN 56 058 271 417, AFS Licence No. 238073.

When issuing this policy we have relied on the information you have given us in your proposal. You must tell us without delay if any of this information is incorrect or if it changes.

Please read the policy and schedule carefully and keep it in a safe place. When reading this policy, please note the use of specially defined words which are listed at the end of the policy.

## What we insure you for

### Medical negligence

1. We will indemnify you, up to the amount stated in the schedule for all sums which you become legally liable to pay as compensation for any civil liability in respect of claim(s) of medical negligence against you, but only when:
  - a) the claim is first made against you during the period of insurance; and
  - b) you tell us about the claim in writing during the period of insurance; and
  - c) the claim arises directly in connection with the provision of medical services by you.

### Additional Coverage

2. We will indemnify you, up to the amount stated in the schedule for all sums which you become legally liable to pay as compensation for any civil liability in respect of claim(s) (including claim(s) for defamation) that arise(s) directly out of you, in good faith and in the public interest, reporting an incident or a medical practitioner to a hospital, area health authority or professional body or participating in the investigation of such an incident, but only when:
  - a) the claim is first made against you during the period of insurance; and
  - b) you tell us about the claim in writing during the period of insurance.

3. We will indemnify you, up to the amount stated in the schedule for all sums which a practice entity controlled by you is legally liable to pay as compensation for any civil liability in respect of claim(s) of medical negligence, but only when:
  - a) the claim is first made against the practice entity controlled by you during the period of insurance; and
  - b) you tell us about the claim in writing during the period of insurance; and
  - c) the claim arises directly in connection with the provision of medical services by you.

### Defence Costs

4. We will indemnify you against defence costs:
  - a) that we incur on your behalf for any claim covered by this policy under clauses 1, 2 and 3; and
  - b) incurred with our consent for any investigation that you first become aware of and tell us about in writing during the period of insurance; and
  - c) incurred with our consent for any inquiry which arises from the provision of medical services and that you first become aware of and tell us about in writing during the period of insurance.

### Defence costs for allegations of sexual misconduct and criminal matters

5. Notwithstanding exclusion 9.16, we will indemnify you against defence costs for the successful defence of any claim, investigation or inquiry which arises out of any alleged sexual misconduct by you against a patient or alleged criminal conduct by you in respect of the provision of medical services by you provided that we will not be liable to indemnify you unless and until you are exonerated from any allegation of misconduct, criminal conduct or wrongdoing and all appeal rights of any party in relation to those allegations have been exhausted or the claim, investigation or inquiry has been discontinued.
6. We may agree to advance the defence costs referred to in clause 5 to you. If we do advance defence costs and you admit liability, misconduct or wrongdoing or there is a finding, determination or judgment against you, then you must repay those defence costs to us. We may cease to advance defence costs to you at any time.

## How much we insure you for

7. The total amount (including defence costs and claimant's costs) payable by us under this policy will not exceed the amount set out as the maximum amount of our indemnity in the schedule and applies after you have paid the excess set out in the schedule. You must pay an excess in respect of each claim you make under the policy.
8. Where the same act or omission gives rise to more than one claim, all such claims will constitute a single claim under the policy and will be treated as if first made at the time the earliest claim against you was made.

## What we exclude from the policy

9. We will not indemnify you under this policy when:
  - 9.1 you are entitled to indemnity under a previous policy issued by us or another insurer or you have the benefit of a prior indemnification arrangement with a Medical Defence Organisation or you are indemnified under a Government scheme or you are entitled to any indemnity from your employer;
  - 9.2 the claim, investigation or inquiry arises from any act or omission which occurred prior to the retroactive date and outside any additional retroactive period(s) specified in the schedule;
  - 9.3 the claim, investigation or inquiry arises from any act or omission or claim, investigation or inquiry that you have or should have told us about in your proposal;
  - 9.4 the claim, investigation or inquiry arises from circumstances which you notified to us or to another insurer or Medical Defence Organisation before the period of insurance;
  - 9.5 the claim arises in any way out of the provision of medical services to a public patient in a public hospital;
  - 9.6 the claim arises out of the provision of elective medical treatment by you on or after 1 July 2004 to a member of your immediate family. For the purposes of this exclusion, 'immediate family' means your current or former spouse, de facto or domestic partner, your children or the children of your current or former spouse, de facto or domestic partner, your brother, your sister or your parents;
  - 9.7 the claim, investigation or inquiry arises in any way out of a practice or procedure not associated with your field of practice except where the claim, investigation or inquiry relates to the provision of emergency medical assistance by you where you are in attendance as a bystander and where you have no expectation of payment or other reward;
  - 9.8 the claim arises from the acts or omissions of an employee, contractor or any other person when those acts or omissions were:

- a) outside the terms and conditions of his or her employment; or
  - b) outside the boundaries of his or her training and/or qualifications;  
or
  - c) not under your supervision;
- 9.9 the claim, investigation or inquiry arises because of your continuing use of a procedure or practice in the provision of medical services 14 days after you have received notice from us under clause 13 asking you to stop using the procedure or practice;
- 9.10 the claim, investigation or inquiry arises in any way out of you providing medical services that you were not permitted to provide because you were not registered, were prohibited from practising or you acted outside of, or did not comply with, the terms or conditions placed on your registration;
- 9.11 the claim or inquiry arises in any way out of or in connection with defamation or any allegation of defamation except to the extent that we agree to indemnify you under clause 2;
- 9.12 the claim arises in any way out of or in connection with the provision of services or advice in relation to the research, design, development, manufacture, distribution or sale of goods or products or potential goods or products;
- 9.13 the claim arises in any way from any activity in connection with or sponsorship of a clinical trial or research project. This exclusion does not apply to your provision of medical services to a participant in a clinical trial or research project provided that the clinical trial or research project has been approved by a properly constituted Ethics Committee in accordance with National Health and Medical Research Council Guidelines and has been conducted in accordance with any conditions or approvals made by such Ethics Committee;
- 9.14 the claim or inquiry arises in any way out of the provision of medical services by a person while intoxicated or otherwise impaired by the use of a drug except for the reasonable refusal to provide medical services because of the influence of such intoxicant or drug;
- 9.15 the claim or inquiry arises in any way as a result of the transmission of a contagious disease to a patient when at the time of transmission, you knew or should have reasonably known that the infected person was carrying the disease;
- 9.16 the claim, investigation or inquiry arises in any way out of any actual or alleged sexual harassment, sexual misconduct, criminal conduct or unlawful discrimination except to the extent that we agree to indemnify you for defence costs under clause 5;

- 9.17 a person makes a claim because, and only because, that person is or was an employee or agent of you or a practice entity controlled by you or because you or a practice entity controlled by you did not employ that person;
- 9.18 or to the extent that, the claim involves a legal obligation:
  - a) to refund any fee charged to a patient;
  - b) to pay damages by reference to any fee charged to a patient;
  - c) to pay a fine, civil or criminal penalty; or
  - d) to pay punitive, aggravated or exemplary damages;
- 9.19 the claim or inquiry arises in any way out of the manufacture, distribution, storage, supply or sale of any goods and/or products;
- 9.20 the claim or inquiry arises in any way out of the unlawful sale, supply, use or application of a prohibited substance;
- 9.21 the claim, investigation or inquiry arises in any way out of the ownership, use or occupation or state of any premises or anything done or omitted to be done in respect of the state of any premises;
- 9.22 the claim, investigation or inquiry arises in any way out of or in connection with an actual or threatened pollution of the environment, (including exposure to asbestos) or a requirement for you to deal with that pollution exposure however this exclusion does not apply to the provision of medical services to any patient who has symptoms whether actual or alleged as a result of any exposure to pollution including asbestos whether directly or indirectly;
- 9.23 the claim arises out of or is connected with any contractual liability, warranty or guarantee except if you would have been otherwise liable in the absence of the contractual liability, warranty or guarantee;
- 9.24 the claim, investigation or inquiry arises out of or is connected with acts of terrorism, war, invasions, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, insurrection, military or usurped power however this exclusion shall not apply to any medical procedure performed as a result of any injuries arising out of any terrorism, war or warlike situation;
- 9.25 the claim, investigation or inquiry arises out of:
  - a) a judgment or order:
    - (i) by a court in the United States of America or its territories;
    - (ii) by a court elsewhere exercising jurisdiction under a Local, State or Federal Law of the United States of America; or

- (iii) based on, derived from or to enforce a judgment or order by a court referred to in (i) or (ii);
  - b) acts or omissions which occur within the territorial limits of the United States of America or its territories;
- 9.26 the claim, investigation or inquiry arises from any act or omission occurring or allegedly occurring outside the Commonwealth of Australia or its territories or protectorates, unless we have agreed in writing to extend cover and then only to the jurisdictions and for the period of time specified by us in writing;
- 9.27 you have admitted liability for the claim or settled the claim without our consent.

### Fraudulent claims

10. We may reject a fraudulent claim for indemnity or any part of a claim for indemnity that is fraudulent.

## Conditions

### Payment of Premium

11. You must pay the premium, or any instalment of premium, on or before the date when it is due.

### When you have to notify us

12. You must notify us in writing as soon as practicable after you become aware of any claim, investigation or inquiry.

If you seek indemnity under this policy you must tell us about any other insurance or entitlement to indemnity that may indemnify you in respect of such claim, investigation or inquiry.

### Stop notice

13. You must stop using a procedure or practice in providing medical services if:
- a) we consider that the practice or procedure poses an unreasonable risk of medical negligence; and
  - b) we give you 14 days notice asking you to stop using the procedure or practice.

## Your duty to co-operate

14. You must, at your expense:
  - a) give us, our investigators and legal representatives all information, documents and assistance we reasonably require including without limitation access to books and records of your medical practice; and
  - b) co-operate fully with us, our investigators and legal representatives.
15. You agree to waive any legal professional privilege to the extent only that the privilege would otherwise prevent any legal representative appointed by us from disclosing information to us.

## Prevention of loss

16. You must not:
  - a) admit liability for a claim or potential claim;
  - b) do or not do anything which may compromise our ability to defend a claim or potential claim;
  - c) make any payment or settlement of any claim or potential claim;in respect of which we may be liable to indemnify you without our prior written consent.
17. You must use all reasonable measures to avoid or reduce any liability under this policy.

## Alteration of risk

18. You must give us notice as soon as practicable of any material alteration of the risk during the period of insurance including without limitation any material change in your field of practice or the nature of the professional services provided by you, or the risk category or billings bands you have previously declared.

## General Terms

### Allocation of defence costs

19. If a claim, investigation or inquiry includes both allegations in relation to which you are entitled to indemnity under this policy and allegations in relation to which you are not entitled to indemnity under this policy, we will pay only that proportion of defence costs which are attributable to the covered allegations. We will determine in our absolute discretion the allocation of defence costs between the covered allegations and the uncovered allegations and will inform you of our determination in writing. In determining the allocation of defence costs, we will have regard to the proportion which that part of the claim consisting of covered allegations bears to the whole of the claim.

## Our right to the conduct and control of proceedings

20. You agree that:

- a) we have the conduct of all matters that we agree to indemnify under this policy, including the investigation, defence, avoidance, reduction, settlement and, subject to clause 21, any appeal as we see fit; and
- b) we may do so in your name.

However we will not admit liability for or settle any claim against you without your prior consent. If you refuse to consent to our settling a claim, our liability is then limited to the amount we recommend in settlement plus defence costs up to the date we recommend settlement of the claim to you.

## Appeals

21. If you are dissatisfied with the decision made by a court, board, tribunal or other decision making body in a matter in which we have represented you under this policy, and you want to appeal against that decision, you must request our written approval within 7 days after the decision is handed down. You must do so in writing, setting out your reasons for wanting to appeal. We will inform you in writing within 10 working days after we receive your request whether we consent or not to pay the costs and expenses of the appeal. If you decide to appeal without our consent, we will not pay any additional expenses associated with the appeal, or any further expenses which may be an outcome of the appeal. If your appeal is successful and you are entitled to a payment or refund of defence costs and/or any money that we paid the claimant, that payment or refund becomes a debt due to us and you must forward that payment or refund to us less any legal fees and expenses you have incurred in the appeal.

## Subrogation

- 22. You agree not to surrender any right to, or settle any claim for, contribution, indemnity or recovery, without our consent.
- 23. If we make a payment under this policy, we are subrogated to all your rights of contribution and indemnity or recovery.

## Cancellation

- 24. You may cancel this policy at any time by notifying us in writing. We will refund the premium for the unexpired period of insurance on a pro-rata basis (up to a maximum refund of 50%) less an administration fee, unless you have made a claim or notified a potential claim under this policy in which case we will not make any refund.
- 25. We may cancel this policy by giving you 3 business days written notice if:
  - a) you failed to disclose or misrepresented to us any information that you know (or could reasonably be expected to have known) was relevant to our decision to insure you and on what terms;

- b) you failed to comply with your duty of utmost good faith to us;
- c) you fail to comply with a provision of this policy including the provision to pay the premium;
- d) you are paying your premium by instalments and at least one instalment remains unpaid for over one month;
- e) you fail to comply with any provision of this policy which requires you to notify us (including your obligation to notify us of any change in your professional situation); or
- f) you make a fraudulent claim under the policy.

### Governing law

26. Any dispute that arises between you and us under this policy will be subject to the law and jurisdiction of Western Australia.

### Interpretation

27. The headings in this policy are included for descriptive purposes only and do not form part of this policy for the purposes of construction or interpretation.
28. Under this policy the masculine includes the feminine and the singular includes the plural and vice versa.

### Address for notices

29. Any notice to us must be delivered or sent to:

MDA National Insurance  
Level 3, 516 Hay Street  
SUBIACO WA 6008  
Fax: (08) 9415 1492

### Definitions

30. In this policy:

**Additional retroactive period** means the period set out in the schedule as the additional retroactive period.

**Claim** means:

- a) a demand for, or an assertion of a right to, compensation or damages or an intimation of an intention to seek compensation or damages; or
- b) a circumstance that might lead to a claim under (a) above.

**Claimant's costs** means legal costs, disbursements and related expenses you have to pay to the person making the claim against you.

**Defence costs** means legal costs, disbursements and related expenses reasonably and necessarily incurred:

- a) in defending any proceedings;
- b) in attending or assisting in an investigation or inquiry;
- c) in prosecuting any proceedings for indemnity, contribution or recovery; or
- d) in investigating, avoiding, reducing or settling any claim.

**Excess** means the amount you must pay to us for each claim made and notified under the policy, excluding defence costs, as set out in the schedule.

**Field of practice** means the field of practice in which you ordinarily provide medical services as set out in the schedule and any other field of practice notified to us for which we have agreed to extend cover.

**Inquiry** means a hearing, inquiry, disciplinary or administrative proceeding established to investigate by a professional body, health services authority, tribunal, Royal Commission or Coronial Court but not before a Medical Board or Professional Services Review Committee.

**Insured** means the person named in the schedule.

**Investigation** means an investigation, inquiry or disciplinary or administrative proceeding by a Medical Board or Professional Services Review Committee.

**Medical negligence** means actual or alleged negligence or breach of duty or statutory duty in connection with the provision of or failure to provide medical services.

**Medical practitioner** means an individual registered or licensed as a medical practitioner under a State or Territory law that provides for the registration or licensing of medical practitioners.

**Medical services** means the following services that you provide:

- a) medical treatment, services or advice or a report of those things provided to a patient or in relation to a patient in a professional capacity;
- b) supervision, training or direction of a medical student(s) or medical practitioner(s) who are undertaking a recognised medical training program;
- c) supervision or direction of a person who is not a medical practitioner, to assist you provide medical treatment, services or advice to a patient;
- d) a medical report or opinion not for the purpose of treatment;

- e) medical advice to a person or organisation in relation to a person's fitness to carry out certain duties or activities;
- f) writing an academic paper or an article in a peer reviewed, refereed medical journal;

provided that the activity is of a type that a qualified medical practitioner would ordinarily provide if he or she were carrying out your field of practice; and

- g) emergency medical assistance where you are in attendance as a bystander and for which you receive no income and have no expectation of payment or other reward.

**Period of insurance** means the period of insurance set out in the schedule.

**Policy** means this policy wording, the schedule, any endorsements and your proposal.

**Proposal** means all documents comprising your application for or renewal of this policy including any pre-renewal questionnaire.

**Retroactive date** means the date specified in the schedule as the retroactive date.

**Schedule** means the current schedule to this policy.

**We, our and us** means MDA National Insurance Pty Ltd ABN 56 058 271 417 and AFS Licence No. 238073 being the insurer named in the schedule.

**You and your** means:

- a) the individual named in the schedule as the insured; and
- b) the executor or administrator of that individual's estate.

# NSW Healthcare Liability Act (2001)

## NSW Healthcare Liability Act (2001)

We are required to provide NSW medical practitioners applying for insurance with the following extract from the Insurance Regulation Order made pursuant to the Act.

### Insurance Regulation Order - Part 2

#### *Part 2 - Decisions concerning individual cover*

#### **Division 1**

##### 1. Preliminary

- (1) For the purposes of this Part: a refusal to provide approved insurance includes:
  - (i) not accepting an offer to enter into a contract for such insurance; or
  - (ii) cancelling a contract for such insurance; or
  - (iii) not renewing such insurance; or
  - (iv) not offering such insurance.

#### *Copy of requirements of this Part to be provided to practitioners*

- (2) An insurer must provide an applicant for approved insurance or an existing policyholder with a copy of the conditions the insurer must comply with under this Part.

#### *Provision of claims history upon request by practitioner*

- (3) An insurer, within ten working days of receiving a written request from a medical practitioner who:
  - a) is covered by approved insurance by the insurer; or
  - b) within the immediately preceding six years has been covered by professional indemnity insurance by the insurer, must provide to the medical practitioner his or her record of claims history for whichever is the lesser of the following periods:
    - (i) the most recent six year period of the insurance cover; or
    - (ii) the total period that the insurer has provided professional indemnity insurance to the practitioner.

## Division 2 - Existing policyholders

### 2. Decisions concerning individual cover

- (1) During the period that an adverse decision applies to an existing policy holder, access to risk management activities, which have the purpose of assisting the policyholder to reduce his or her individual claims risk, are to be offered or facilitated by the insurer.

#### *Withdrawal of cover*

- (2) An insurer must not refuse to provide approved insurance to an existing policyholder:
  - (a) who has been registered as a medical practitioner for a period of less than three years and who has not previously had his or her name removed from the medical register following disciplinary proceedings; or
  - (b) who has held specialist qualifications recognised under the Health Insurance Act for a period of less than three years and who has not previously had his or her name removed from the medical register following disciplinary proceedings; or
  - (c) in the case of a medical practitioner to whom paragraph (a) or (b) does not apply, unless the medical practitioner has an incident and claims history the insurer considers warrants such a decision.
- (3) Sub-clause (2) does not apply where an insurer refuses to provide approved insurance:
  - (a) for a reason which is of a similar kind to a reason that enables the cancellation of a contract of general insurance, or the avoidance of a claim or policy, in accordance with the relevant provisions of the Insurance Contracts Act; or
  - (b) for a reason which relates to a breach or non-observance by the medical practitioner of the terms and conditions of the relevant insurance policy, or the non-payment of the relevant premium; or
  - (c) because the insurer ceases to engage in the business of providing professional indemnity insurance to non-exempt medical practitioners.
- (4) For the purposes of this clause a decision by an insurer to charge a medical practitioner a premium which is at least twice the premium charged by the insurer to all, or a majority of, medical practitioners of the same premium category is taken to be a decision to refuse to provide approved insurance.

### 3. Proper notice and explanation

- (1) Subject to clause 4 of this Part, an insurer must not (whether upon renewal or otherwise), because of the incident and claims history of an existing policy holder, make an adverse decision in respect of the approved insurance of the policy holder or a decision to refuse to provide approved insurance to the policy holder, unless the insurer:
  - (a) in the case of any adverse decision, has given the policy holder 28 days' written notice prior to the decision taking effect; or
  - (b) in the case of a decision to refuse to provide professional indemnity insurance, has given the policyholder two months' written notice prior to the decision taking effect together with a copy of the claims history specified at clause 1 (3) of this Part.
- (2) Prior to giving such notice under sub-clause (1) (a) the insurer must:
  - (a) give the relevant medical practitioner a reasonable opportunity to discuss the proposed decision and the reasons for it with the insurer; and
  - (b) take into account any matters raised by the medical practitioner in the course of those discussions.
- (3) If requested by the relevant medical practitioner, the insurer must provide to him or her a written explanation of the reasons for its refusal to provide approved insurance.
- (4) This clause does not apply where an insurer upon renewal of professional indemnity insurance continues to give effect to an adverse decision made prior to the insurance being renewed.
- (5) For the purposes of this clause a decision by an insurer to charge a medical practitioner a premium which is at least twice the premium charged by the insurer to all, or a majority of, medical practitioners of the same premium category is taken to be a decision to refuse to provide approved insurance.

### 4. Opportunity for consideration by Medical Board at practitioner's election

- (1) This clause applies to a refusal to provide approved insurance because of the incident and claims history of an existing policyholder.
- (2) For the purposes of this clause a decision by an insurer to charge a medical practitioner a premium which is at least twice the premium charged by the insurer to all, or a majority of, medical practitioners of the same premium category, is taken to be a decision to refuse to provide approved insurance.
- (3) If within 28 days of receiving notice of a decision to refuse to provide approved insurance in respect of an existing policyholder, the policyholder:
  - (a) authorises the insurer, in writing, to notify the Medical Board of any matter which forms the basis of the decision and to provide to the Medical Board information and documentation relevant to such matter; and

- (b) authorises the Medical Board, in writing, to provide to the insurer a copy of its advice to the practitioner as to the outcome of any such notification, if made, and in those cases where the Medical Board refers a matter to an Impaired Registrants Panel or for assessment under Part 5A of the Medical Practice Act 1992, copies of any relevant decisions, reports and recommendations arising from the referral, an insurer is to forward the relevant information to the Medical Board.
- (4) If an insurer is authorised to forward information to the Medical Board under sub-clause (3), an insurer is not to give effect to the decision to refuse to provide professional indemnity insurance pending whichever of the following occurs first:
  - (a) the expiration of a period of three months from the date of forwarding the relevant information pursuant to sub-clause 3); or
  - (b) receipt and consideration by the insurer of copies of the information referred to under sub-clause (3) (b).
- (5) If such matters are the subject of a referral to an Impaired Registrants Panel or form the basis of a referral for assessment under Part 5A of the Medical Practice Act 1992, the insurer is to:
  - (a) review its decision (whether or not it has already given effect to that decision) following receipt and consideration by the insurer of any reports and recommendations arising from the referral, and of advice on any action taken by the Medical Board consequent upon those reports and recommendations; and
  - (b) take reasonable steps to advise the relevant practitioner of the outcome of that review.
- (6) Nothing in this clause prevents an insurer from charging a premium of an amount that does not constitute a refusal to provide approved insurance under sub-clause (2) pending receipt of the Medical Board's advice or the expiration of three months, whichever first occurs, in accordance with sub-clause (3).

### Division 3 - New applicants

#### 5. Decisions concerning individual cover

- (1) In this clause a refusal of an application for approved insurance includes a decision to not accept an offer to enter into a contract for such insurance.

#### *Newly qualified practitioners*

- (2) An insurer must not make a significant adverse decision in respect of an application for approved insurance from a medical practitioner who has not previously held professional indemnity insurance with that insurer:
  - (a) if the applicant has been registered as a medical practitioner for a period of less than three years and has not previously had his or her name removed from the medical register following disciplinary proceedings; or
  - (b) if the applicant has held specialist qualifications recognised under the Health Insurance Act for a period of less than three years and has not previously had his or her name removed from the medical register following disciplinary proceedings.

#### *Refusal of cover*

- (3) Before giving effect to a decision to refuse an application for approved insurance from a medical practitioner an insurer must give the medical practitioner a reasonable opportunity to discuss the proposed decision and the reasons for it with the insurer.
- (4) If requested by a medical practitioner whose application for approved insurance is refused, the relevant insurer must provide him or her with a written explanation of the reasons for its refusal.

**Perth**

Level 3, 516 Hay Street  
Subiaco WA 6008  
Ph: (08) 6461 3400  
Member Services Fax: (08) 6461 3488  
Claims Fax: (08) 9415 1492

**Melbourne**

Level 1  
101 Dundas Place  
Albert Park VIC 3206  
Ph: (03) 9915 1700  
Member Services Fax: (03) 9915 1788  
General Fax: (03) 9690 6272

**Sydney**

Level 5, AMA House  
69 Christie Street  
St Leonards NSW 2065  
Ph: (02) 9023 3300  
Fax: (02) 9460 8344

**Brisbane**

Level 8  
87 Wickham Terrace  
Spring Hill QLD 4000  
Ph: (07) 3120 1800  
Fax: (07) 3839 7822

**Adelaide**

Level 24, Santos House  
91 King William Street  
Adelaide SA 5000  
Ph: (08) 8233 5842  
Fax: (08) 8233 5858

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