

Practice Indemnity Policy

Combined Financial Services Guide, Product Disclosure Statement and Policy Wording V.5



Introduction

This brochure is divided into three sections.

Section 1 is our financial services guide. It contains information about who we are and the financial services that we provide. **2**

Section 2 is the product disclosure statement. It contains information about the Practice Indemnity Policy. **6**

Section 3 is the policy wording. **14**

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

The financial services guide applies to financial services provided on or after the date of issue 15 May 2010.

The product disclosure statement and policy wording applies to policies commencing on or after 1 July 2011.

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 provide financial product advice in relation to, 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
- Practice Indemnity Policy
- Student Indemnity Policy
- Run-off under the Run-off Cover Scheme (ROCS)

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 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, by email or via our website. 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 products through a nominated finance corporation, where applicable 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) and the Run-off Cover Scheme (ROCS). These fees may be based on the number of policyholders and/or Members and are not based on any premium amount. No fee paid to us relating to the PSS or ROCS is deducted out of premiums or any monies paid by policyholders.

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 may pay referral fees to third parties who refer business to us as a lump sum amount or a percentage of the total premium. We receive the total premium paid by you and pay commissions and referral fees in a separate transaction back to the broker or third party.

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 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 or third party 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 or write to us at any of 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. We view complaint resolution as an important part of our continuous improvement process.

A complaint is an expression of dissatisfaction made to us, relating to our products or services or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected.

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 034 466 (Freecall)
Fax: (08) 9415 1492
Email: complaintsofficer@mdanational.com.au
In writing: PO Box 1557
SUBIACO WA 6904

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 Financial Ombudsman Service Limited (FOS). FOS is an independent and impartial national body established to handle enquiries and complaints and to resolve disputes between consumers and their financial services provider. Their service is free to consumers.

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

For more information about FOS and the types of matters they can resolve, visit their website at www.fos.org.au or contact our Complaints Officer. Online dispute forms are available on their website.

You can contact FOS by:

Phone: 1300 780 808 (local call fee applies)
In writing: GPO Box 3
MELBOURNE VIC 3001

Further information and updates

This FSG is issued 15 May 2010 and applies to financial services provided on or after that date. Please check our website for updates.

SECTION 2: 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 Practice Indemnity Policy (policy) underwritten by MDA National Insurance Pty Ltd (MDA National Insurance) ABN 56 058 271 417, AFS Licence Number 238073. You can contact us at any of the addresses shown on the back of this booklet.

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 a policy is issued to you, you should also read the schedule and any endorsements issued in conjunction with the policy wording.

Any financial product 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 that generally affects the policy, we may provide all policyholders with a new or supplementary PDS.

Updates will also be available on our website www.mdanational.com.au This PDS is issued on 15 May 2011 and applies to policies commencing on or after 1 July 2011.

Applying for Practice Indemnity Insurance

You must fill out a proposal to apply for this insurance. In the case of renewal, you must confirm that your details are correct and that you have disclosed to us every matter that you know, or could reasonably be expected to know, is relevant to our decision whether to accept your risk and, if so, on what terms.

A policy proposal is included in the application pack, or is available by calling 1800 011 255 or visiting the Download Centre of our website www.mdanational.com.au

Your duty of disclosure

Before you enter into or renew a contract of general insurance with us, you have a duty, under the *Insurance Contracts Act 1984* (Cth), to disclose to us every matter that you know, or could reasonably be expected to know, 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
- that is of common knowledge; or
- that we know or, in the ordinary course of our business, ought to know; or
- when compliance with the duty of disclosure is waived by us.

Non-disclosure

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 Practice Indemnity Policy

The Practice Indemnity 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 meets your needs.

The policy insures you and people who fall within the definition of insured persons for civil liability for claims arising directly in connection with your provision of healthcare services and claims arising from an unintentional breach of privacy (clauses 1 and 2 of the policy) and for legal costs incurred in connection with the defence or settlement of such a claim. You are also able to seek assistance with the handling of patient complaints.

The policy provides cover against certain claims arising out of you or an insured person, in good faith and in the public interest, reporting an incident or a registered health care professional to a hospital, area health authority or professional body or participating in an investigation of such an incident (clause 3).

The policy indemnifies you and an insured person for defence costs that we incur on your behalf for claims covered under clause 1, 2 and 3.

The policy insures against the reasonable cost of replacement or restoration of certain lost or damaged documents (clause 5).

The policy also covers defence costs incurred by us on behalf of you and an insured person for:

- intellectual property disputes and defamation claims (clauses 6 and 7);
- any official proceeding, inquiry or examination in relation to the provision of healthcare services by you or an insured person where you or the insured person are required to respond, participate or attend (clause 8); and
- trade practices claims (clause 9).

What makes up the insurance contract?

The insurance contract is made up of:

- 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 Practice Indemnity 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.

Under Section 40(3) of the *Insurance Contracts Act 1984* (Cth), if you notify us in writing during your period of insurance of circumstances that may give rise to a claim, we will not be relieved of liability under the policy by reason only that any claim relating to those circumstances was made after your period of insurance. However, you must notify us of the claim as soon as you become aware of it.

Continuity of cover

Civil liability claims are often made years after the 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

With limited exceptions, your policy will contain a retroactive date which is specified on the policy schedule. The policy coverage is limited to incidents that occur on or after the retroactive date. So, if you have a retroactive date of 1 July 2003, for example, your policy will not cover a claim arising from an incident that occurred prior to this date, even if you first learn about the claim and report it to us during the period of insurance.

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.

How much we insure you for

Subject to underwriting approval, we can provide cover up to a maximum of \$5,000,000 or \$10,000,000, each in the aggregate for all claims made under the policy. The policy limit may be reinstated if a reinstatement is indicated on the policy schedule. The maximum amount of our indemnity includes defence costs. A sub-limit applies to the cover for loss of documents and for defence costs for investigations, defamation and intellectual property disputes and trade practices claims. Any reinstatements offered on the policy limit (clause 13) and all applicable sub limits will be set out in your Policy Schedule.

Policy excess

You must pay us any amount detailed in your policy schedule as the excess for each and every claim made under the policy (clause 11). Where the same act or omission or one or more related acts or omissions give rise to more than one claim whether by one or more claimants, or to more than one investigation, all such claims or investigations 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 (clause 12).

What we do not insure you for

The policy will not provide insurance cover in certain circumstances. Clauses 14 and 15 of the policy wording set 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 and to cancel the policy. These conditions are set out in clauses 16 to 24 inclusive of the policy wording.

For example, you must pay the premium when it is due (clause 16) and all your employees must be suitably qualified and registered as required to perform the duties for which they are employed and you must take steps to ensure that each health professional has current and adequate professional indemnity insurance (clause 24).

You must also notify us in writing as soon as practicable after you become aware of any claim, investigation or circumstances that could give rise to such (clause 17).

General terms

There are some general terms that apply to all of the insuring clauses. These are set out in clauses 25 to 34 inclusive of the policy wording.

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 (clause 25).

We also have the right to conduct and control any legal proceedings (clause 26).

How much will the policy cost?

The total insurance premium is made up of the basic premium 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:

- the specialties conducted within the practice;
- the number of health professionals working for or on behalf of the practice; and
- the number of other practice employees.

Paying your insurance premium

Your premium is an annual premium. 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 policy.

You can pay your premium by cheque, credit card or BPAY.

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) that you have paid within 10 working days of receipt of your written notice of cancellation.

Your cooling off right does not apply if you notify a potential claim or 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, less an amount equal to 45 days premium, unless you have made a claim or notified a potential claim under the policy in which case we will not make any refund.

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

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

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. If any of the following occur you must tell us in writing as soon as practicable via our online notification form, by fax to 1300 011 235 or by mail to any of our offices.

Incidents or circumstances that may give rise to a claim

If at any time during the period of insurance you become aware of a matter that you believe may result in a claim against you or your employee, let us know as soon as you can. Prompt reporting will enable us to manage the process at an early and crucial time and allow us to 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 policy 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 performed and by whom;
- the name and address of any other professionals involved and their relationship to the practice; and
- the name, address and date of birth 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 circumstances that have resulted, or may result in a claim.

To assist you further, an incident notification form is available on our website www.mdanational.com.au

You receive advice that a claim has or will be 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 correspondence from lawyers.

Any investigation, arising from your provision of healthcare services

Should you become involved in any official proceeding, inquiry or examination, 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

Speak to us first. Patients are always entitled to a full, accurate, sympathetic and prompt account of the facts, but you must not admit liability or do anything that may compromise our ability to defend a claim.

Refrain from entering into any correspondence with the patient without first contacting us.

What to do if you want to make a complaint about us

Internal dispute resolution

We are committed to dealing openly with all of our clients and will endeavour to resolve any complaint quickly, efficiently and fairly. We view complaint resolution as an important part of our continuous improvement process.

A complaint is an expression of dissatisfaction made to us, relating to our products and services or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected.

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 034 466 (Freecall)
Fax: (08) 9415 1492
Email: complaintsofficer@mdanational.com.au
In writing: PO Box 1557
SUBIACO WA 6904

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 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 Financial Ombudsman Service Limited (FOS). FOS 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.

FOS will only review complaints if they have first gone through our internal dispute resolution process. Please note that FOS can consider insurance matters only.

For more information about FOS and the types of matters they can resolve, you can visit their website www.insuranceombudsman.com.au or contact our Complaints Officer.

You can contact FOS by:

Phone: 1300 780 808 (local call fee applies)

**In writing: GPO Box 3
MELBOURNE VIC 8007**

SECTION 3: Policy Wording

Practice Indemnity Policy

This Practice Indemnity 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. Changes to the practice which may affect your risk or exposure to risk must be reported to us as soon as practicable. If you fail to do so, you may lose your right to indemnity under this policy.

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

Civil liability

1. We will indemnify you and the insured persons for any civil liability for a claim arising directly in connection with your provision of healthcare services, but only when:
 - a) the claim is first made against you or the insured person during the period of insurance; and
 - b) you tell us about the claim in writing during the period of insurance.

Privacy complaints

2. We will indemnify you and the insured persons for any civil liability for a claim arising from an unintentional breach of the *Privacy Act 1988* (Cth) or equivalent State or Territory legislation, but only when:
 - a) the claim is first made against you or the insured person during the period of insurance; and
 - b) you tell us about the claim in writing during the period of insurance.

Notifiable conduct protection

3. We will indemnify you and the insured persons for any civil liability for a claim (including a claim for defamation) that arises directly out of you or an insured person, in good faith and in the public interest, reporting an incident or a registered health professional 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 or the insured person during the period of insurance; and
 - b) you tell us about the claim in writing during the period of insurance.

Defence costs for claims

4. We will indemnify you and the insured persons for defence costs that we incur on your behalf for any claim covered by this policy under clauses 1, 2 and 3.

Loss of documents

5. In this clause 'loss of documents' means any of:
 - i) the loss of, damage to or destruction of physical documents; or
 - ii) the deletion, corruption or modification of any electronic document or data.

In the event of any loss of documents which were in your possession or the possession of those to whom the documents were entrusted by you in the ordinary course of business, we will indemnify you for reasonable costs and expenses incurred by you in replacing or restoring those documents up to the sub-limit stated in the schedule provided that:

- a) the loss of documents occurred in Australia during the period of insurance; and
- b) you notify us about the loss of documents in writing during the period of insurance; and
- c) we have agreed to the costs of replacement or restitution before they are incurred.

We will not indemnify you for any costs and expenses incurred in replacing or restoring electronic documents or data as a result of a computer virus or an unauthorised access to your systems where you do not have appropriate back up storage systems and protocols and current security software installed to protect your documents and data from such risks.

Defence costs for intellectual property disputes

6. We will indemnify you and the insured persons up to the sub-limit set out in the schedule for defence costs that we incur on your behalf for any claim for infringement of copyright, trade mark, patent or registered design but only when:
 - a) the claim is related to your provision of healthcare services;
 - b) the claim is first made against you during the period of insurance;
 - c) you tell us about the claim in writing during the period of insurance; and
 - d) the claim does not arise from a malicious or intentional act or omission.

Defence costs for defamation

7. We will indemnify you and the insured persons up to the sub-limit set out in the schedule for defence costs that we incur on your behalf for any claim for actual or alleged defamation but only when:
 - a) the claim is related to your provision of healthcare services;
 - b) the claim is first made against you during the period of insurance;
 - c) you tell us about the claim in writing during the period of insurance; and
 - d) the claim does not arise from a malicious or intentional act or omission; and
 - e) you have paid the excess stated in the schedule applicable to this clause.

Defence costs for investigations

8. We will indemnify you and insured persons up to the sub limit set out in the schedule for defence costs that we incur on your behalf for any investigation arising directly out of your provision of healthcare services but only when:
 - a) you or the insured person is first made aware of the investigation during the period of insurance; and
 - b) you tell us about the investigation in writing during the period of insurance.

Defence costs for trade practices claims

9. We will indemnify you and insured persons up to the sub limit set out in the schedule for defence costs that we incur on your behalf for defending any claim or allegation that you or an insured person breached a provision of the *Competition and Consumer Act 2010* (Cth) or of the *Trade Practices Act 1974* (Cth) (or any equivalent State or Territory fair trading legislation) but only when:
 - a) the claim or allegation is related to your provision of healthcare services;
 - b) the claim or allegation is first made against you during the period of insurance;
 - c) you tell us about the claim or allegation in writing during the period of insurance; and
 - d) the claim or allegation does not arise from a malicious or intentional act or omission.

Non-imputation and severability

10. In the event that this policy covers more than one person or entity, any conduct, act or omission by one person or entity which would allow us to refuse indemnity or to reduce our liability under this policy will not prejudice the right of any other person or entity to indemnity provided that the other person or entity:
 - a) had no prior knowledge of the conduct, act or omission; and
 - b) provides written notice to us of the conduct, act or omission as soon as they first became aware of it.

How much we insure you for

11. The total amount (including defence costs and claimant's costs) payable by us for all claims under this policy will not exceed the amount set out as the maximum amount of our indemnity in the schedule or any applicable sub-limit and applies after you have paid any excess set out in the schedule. You must pay the excess in respect of each claim you make under the policy.
12. Where the same act or omission or one or more related acts or omissions give rise to more than one claim (whether by one or more claimants), 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.
Where the same act or omission or one or more related acts or omissions give rise to more than one investigation, all such investigations will constitute a single claim under the policy and will be treated as if first made at the time the earliest investigation arose.
13. Notwithstanding clause 11 if the maximum amount of our indemnity in the schedule is exhausted, we will reinstate the amount of our indemnity (with the same sub-limits) the number of times specified in the schedule during the period of insurance for subsequent claims under the policy that are notified to us in writing during the period of insurance and that are not related to any investigation or claim (or to any circumstances that may give rise to an investigation or claim) that have been previously notified to us. If there are no reinstatements specified in the schedule then the amount of our indemnity will not be reinstated.

What we exclude from the policy

14. We will not indemnify you or any insured person under this policy when:
 - 14.1 the claim or investigation arises from any act or omission or circumstance that you have or should have told us about in your proposal or otherwise in accordance with your duty of disclosure;
 - 14.2 the claim or investigation arises from an act or omission or circumstances notified to us or to another insurer or Medical Defence Organisation or indemnity provider before the period of insurance;
 - 14.3 and to the extent that you or an insured person are entitled to indemnity for the claim or investigation under any other policy issued by us or another insurer (to the extent allowed by law) or you or the insured person have the benefit of any other indemnification arrangement including under a government scheme or with a Medical Defence Organisation or other indemnity provider;
 - 14.4 the claim or investigation arises from an act or omission occurring prior to any retroactive date specified in the schedule;
 - 14.5 the claim or investigation arises from any fact, situation or circumstance which you or an insured person knew before this policy began, or which a reasonable person in your position or a reasonable person in the position of an insured person would have thought, before this policy began, might result in someone making an allegation against you or an insured person that might be covered by this policy;

- 14.6 and to the extent that the claim arises from the acts or omissions of a health professional who does not have current and adequate professional indemnity insurance to cover his or her own liabilities arising from that claim;
- 14.7 the claim or investigation is made against an insured person who is a health professional and the claim or investigation arises from the provision of healthcare services by the insured person in his or her capacity as a health professional;
- 14.8 the claim or investigation arises in any way out of a practice or procedure not directly connected with the provision of healthcare services;
- 14.9 the claim or investigation arises in any way from a practice or procedure specifically excluded in the schedule;
- 14.10 the claim arises in any way from the provision of obstetric care by someone other than a medical practitioner who specialises in Obstetrics except where a nurse or midwife employed by you provides antenatal or postnatal care under the supervision of such a medical practitioner;
- 14.11 the claim arises in any way from a clinical trial or participation in a clinical trial by you or an insured person;
- 14.12 the claim arises in any way out of the provision of healthcare services to a public patient in a public hospital;
- 14.13 the claim or investigation arises in any way from the acts or omissions of a person when those acts or omissions were:
 - a) outside the boundaries of his or her training and/or qualifications; or
 - b) outside the terms and conditions of his or her registration; or
 - c) outside the terms and conditions or the ordinary course of his or her employment or contract with you;
- 14.14 the claim or investigation arises in any way out of any actual or alleged sexual harassment, sexual misconduct, criminal conduct or unlawful discrimination;
- 14.15 the claim arises in any way out of the provision of healthcare services by a person while intoxicated or otherwise impaired by the use of an intoxicant or drug, except the reasonable refusal to provide healthcare services because of the influence of such intoxicant or drug;
- 14.16 the claim arises in any way as a result of the transmission of a contagious disease from an employee, contractor or anyone for whom you are liable, to a patient when at the time of transmission, you or your employee or contractor knew or should have reasonably known that the infected person was carrying the disease;

- 14.17 the claim or investigation arises out of a fault or alleged fault in any equipment or machinery used in the provision of healthcare services where such equipment or machinery was not used, maintained or serviced in accordance with any requirement or recommendation of the manufacturer;
- 14.18 the claim arises in any way out of the development, manufacture, storage or supply of any good or product. This exclusion does not apply to the manufacture or supply of a product by a health professional or by an insured person as an intrinsic part of their provision of healthcare services to your patients;
- 14.19 the claim or investigation arises in any way from any dishonest, fraudulent, illegal, criminal or malicious act or omission of any person who was at the time of the act or omission an insured person or a principal, partner or director of yours;
- 14.20 the claim or investigation:
- a) arises out of 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;
 - b) arises out of any judgment or order by a court outside the Commonwealth of Australia or its territories or protectorates; or
 - c) is based on, derived from or an enforcement of any judgment, order or award obtained within or determined pursuant to the laws of any country outside the territorial limits of the Commonwealth of Australia;
- 14.21 you or an insured person have admitted liability for the claim or settled, or agreed to settle, the claim without our consent;
- 14.22 any dispute between you and an insured person or a person who may become an insured person, except:
- a) a claim or investigation arising out of the provision of healthcare services to that person; or
 - b) a claim for contribution in relation to a claim by a third party arising directly in connection with your provision of healthcare services;
- 14.23 a person makes a claim because, and only because, that person is or was your employee or agent (including a partner, director or officer of yours) or because you did not employ that person;
- 14.24 or to the extent that the claim or investigation involves a legal obligation:
- a) to refund any fee charged to a patient;
 - b) to pay a fine or a civil or criminal penalty; or
 - c) to pay punitive, aggravated or exemplary damages;

- 14.25 the claim or investigation arises in any way out of the unlawful sale, supply, use or application of any substance;
- 14.26 the claim or investigation 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;
- 14.27 the claim or investigation 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. This exclusion does not apply to the provision of healthcare 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;
- 14.28 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;
- 14.29 the claim or investigation arises out of or is connected with any trading debt, any guarantee given for a debt, any payment (or non payment) or dividend or other form of profit distribution or the sale or purchase of any assets, property or investments;
- 14.30 the claim or investigation 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. This exclusion shall not apply to any healthcare procedure performed as a result of any injuries arising out of any terrorism, war or warlike situation;
- 14.31 the claim or investigation arises in any way from the loss of property including but not limited to money, computer or other electronic equipment, precious metal, gemstones, negotiable instruments, jewellery, artworks or antiques belonging to you or for which you are responsible;
- 14.32 any claim or investigation arising out of taxes or taxation or debts;
- 14.33 any claim for actual or alleged defamation except to the extent that we indemnify you for defence costs under clause 7.

Fraudulent claims

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

Conditions

Payment of premium

16. You must pay the premium on or before the date when it is due.

When you have to notify us

17. You must notify us in writing as soon as practicable after you become aware of:
- any claim or investigation;
 - any circumstance that might lead to a claim or to an investigation involving you or an insured person; and
 - any other circumstance which might give you or an insured person a right to seek indemnity under this policy.
18. If you seek indemnity under this policy you must tell us about any other insurance or entitlement to indemnity that may indemnify you or an insured person in respect of such claim or investigation, including the identity of the other insurer, the policy number and any other information that we may reasonably require.

Your duty to co-operate

19. You and the insured persons must, at your or their expense:
- 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 healthcare practice; and
 - co-operate fully with us, our investigators and legal representatives.
20. You and the insured persons 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

21. You and your employees must not, without our prior written consent:
- admit liability for a claim or potential claim;
 - do or not do anything which may compromise our ability to defend a claim or potential claim; or
 - make any payment or settlement, or offer of payment or settlement, of any claim or potential claim;
- in respect of which we may be liable to indemnify you.
22. You and your employees must use all reasonable measures to avoid or reduce any liability covered under this policy.

Alteration of risk

23. You must give us notice as soon as practicable of any material alteration in the risk during the period of insurance including without limitation:
- a) any significant expansion of the practice (whether by acquisition of another business or otherwise); or
 - b) any material change in the nature of the practice or the healthcare services provided by you or an insured person; or
 - c) you becoming insolvent, being declared or an application being made for you to become bankrupt, having or an application being made to have a receiver, liquidator or administrator appointed, making a composition with your creditors or generally taking advantage of any statute for the relief of insolvent debtors or applying to be wound up or dissolved.

Registration and qualifications

24. It is a condition of this policy that all health professionals, employees and contractors engaged by you are suitably qualified and registered to provide healthcare as required to perform the duties for which they are employed and that you have taken all necessary steps to ensure that each health professional has current and adequate professional indemnity insurance.

General terms

Allocation of defence costs

25. If a claim or investigation 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 or investigation consisting of covered allegations bears to the whole of the claim or investigation.

Our right to the conduct and control of proceedings

26. You and the insured persons agree that:
- a) we have the right to conduct and control all matters that we agree to indemnify under this policy, including the investigation, defence, avoidance, reduction, settlement and, subject to clause 27, any appeal as we see fit; and
 - b) we may do so in your name or the insured person's name.

However we will not admit liability for or settle any claim, investigation or inquiry against you or an insured person without your or their prior consent. If you or the

insured person refuse to consent to our settling a claim, or otherwise resolving an investigation or inquiry, our liability is then limited to the amount we recommend in settlement and/or defence costs up to the date we recommend settlement of the claim or resolution of the investigation to you and the insured person.

Appeals

27. 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 or an insured person under this policy, and you want to appeal against that decision, you must request our written approval within 7 business 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 business days after we receive your request whether we consent or not to pay your legal costs of the appeal. Our decision to pay the legal costs of any appeal is final and in our complete discretion. We reserve the right to seek the opinion of appropriate counsel to advise on the merits and prospects of success of any such action prior to providing our decision. If you decide to appeal without our consent, we will not pay any additional legal costs associated with the appeal (whether successful or not) or any further amount 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 paid by us 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

28. You and the insured persons agree not to surrender any right to, or settle any claim for, contribution, indemnity or recovery, without our consent.
29. If we make a payment under this policy, we are subrogated to all your rights of contribution and indemnity or recovery and those of the insured persons.

Cancellation

30. 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 less an amount equal to 45 days premium, unless you have made a claim or notified a potential claim under this policy in which case we will not make any refund.
31. We may cancel this policy by giving you 3 business days written notice if:
- you failed to disclose or misrepresented to us any information that you knew (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 fail to comply with a provision of this policy including the provision to pay the premium;

- d) 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 the healthcare services provided by you); or
- e) you make a fraudulent claim under the policy.

Governing law

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

Interpretation

33. 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.
34. Under this policy the masculine includes the feminine and the singular includes the plural and vice versa.

Definitions

35. In this policy:

Claim means:

- a) a demand for, or an assertion of a right to, compensation, damages or injunctive relief from you or an insured person; or
- b) an intimation of an intention to seek compensation, damages or injunctive relief from you or an insured person; or
- c) an allegation of unlawful conduct, misconduct or unsatisfactory conduct against you or an insured person.

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;
- c) in prosecuting any proceedings for indemnity, contribution or recovery; or
- d) in investigating, avoiding, reducing or settling any claim.

Dental health professional means a dentist or an individual who practices in a healthcare vocation related to the field of dentistry and who is registered under a law of any state or territory of Australia to practice that vocation of an individual who is participating in a recognised health care training program and/or examination with the objective or becoming licensed and registered in Australia as a dentist.

Documents means any written, printed or reproduced material, or any electronic document or data used in connection with the business of the practice but does not include any currency, negotiable instrument, cheque, stamp, bond or coupon or any document evidencing title to or which constitutes a form of security.

Employee means a natural person not being a health professional who:

- a) is employed by you during the period of insurance; or
- b) was employed by you prior to the period of insurance; or
- c) is a student working for you at your premises under a work experience program to provide or assist in the provision of healthcare services; or
- d) the executor or administrator of the estate of someone referred to in (a), (b) or (c) above.

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

Health professional means a medical practitioner or a dental health professional.

Healthcare services means:

- a) those medical treatments, services or advice provided to patients in the course of your business as advised in your proposal, accepted by us and as set out in the schedule; or
- b) the rendering of emergency medical assistance to a person where your employee is in attendance as a bystander and where there is no expectation of payment or other reward.

Insured person means a person who is or was your employee or a partner of yours but only to the extent that the person is not engaged in the provision of healthcare services as a health professional.

Investigation means any official proceeding, inquiry or examination in relation to the provision of healthcare services by you or an insured person where you or the insured person are legally or professionally required to respond, participate or attend.

Medical practitioner means an individual registered as a medical practitioner with the Medical Board of Australia.

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

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

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

Retroactive date means any 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 the entity named in the schedule as the insured.



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