

## **Practice Indemnity Policy**

Combined Financial Services Guide, Product Disclosure Statement and Policy Wording V.3







## 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.

## 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 Indemnity 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 receive the total premium paid by you and pay commissions in a separate transaction back to the broker.

## **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 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**

A complaint is an expression of dissatisfaction relating to our product or service conveyed to us, together with a request to remedy the 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.

## **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  
**Email:** [complaintsofficer@mdanational.com.au](mailto: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](http://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 2009 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 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](http://www.mdanational.com.au)

This PDS is issued on 25 May 2009 and applies to policies commencing on or after 1 July 2009.

### 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 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 Centre of our website [www.mdanational.com.au](http://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)*, 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 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.

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. All of the features, terms and conditions of this insurance are set out in the policy wording (Section 3 of this document).

The policy insures you and your employees (but not medical practitioners) for civil liability arising out of claims of professional negligence in the provision of healthcare services (clause 1 of the policy) and for legal costs incurred in connection with the defence or settlement of such a claim.

The policy also covers defence costs incurred by you with our consent for investigations by a Professional Registration Board or Professional Services Review Committee and for inquiries arising from the provision of healthcare by you and your employees such as inquiries by a professional body, health services authority, Coroner's court or a Medical Advisory Committee (clause 2).

You must comply with the conditions in the policy. For example, you must obtain our consent before you incur any legal costs. The policy also excludes certain claims and these are detailed in clauses 6 and 7.

### **What makes up the insurance contract?**

The insurance contract is made up of:

- the policy wording contained within this booklet;
- 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.

If you have a policy with us and you notify us in writing during your period of insurance of circumstances that may give rise to a claim, the fact that 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. However, you must notify us of the claim as soon as you become aware of it.

## **Continuity of cover**

Professional negligence claims are often made years after the healthcare 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**

We offer a range of policy limits. Subject to underwriting approval, we can provide cover up to a maximum of \$5,000,000, \$10,000,000 or \$20,000,000, each in the aggregate for all claims made under the policy. The maximum amount of our indemnity includes defence costs. A sub-limit of \$500,000 in the aggregate applies to defence costs for investigations and inquiries. Both amounts will be specified in the 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.

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.

## What we do not insure you for

The policy will not provide insurance cover in certain circumstances. Clauses 6 and 7 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. These conditions are set out in clauses 8 - 16 of the policy wording. For example, you must pay the premium when it is due and all your employees must be suitably qualified and registered as required to perform the duties for which they are employed. You must also 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 17 - 26 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 17).

We also have the right to conduct and control any legal proceedings.

## 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 specialities conducted within the practice, the number of medical practitioners working for or on behalf of the practice and the number of other 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 or credit card.

## **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.

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 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 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 or a premium instalment;
- you fail to comply with any provision of this 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. You must notify us in writing as soon as practicable by fax to (08) 9415 1492, by mail to any of our offices or via our online notification form if any of the following occur.

**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 healthcare 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 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)

**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, coronial inquiry, hearing or proceeding arising from your provision of healthcare services**

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**

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**

### **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 relating to our product or service conveyed to us, together with a request to remedy the complaint.

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  
**Email:** [complaintsofficer@mdanational.com.au](mailto: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 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 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.fos.org.au](http://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

## 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

#### Professional negligence

1. We will indemnify you and your employees (but not medical practitioners) for any civil liability arising out of a claim of professional negligence, but only when:
  - (a) the claim arises directly in connection with the provision of healthcare services; and
  - (b) the claim is first made against you or your employee during the period of insurance; and
  - (c) the claim is notified to us in writing during the period of insurance; and
  - (d) the claim arises from an act or omission occurring on or after the retroactive date specified in the schedule.

#### Defence costs

2. We will indemnify you and your employees (but not medical practitioners) for:
  - (a) defence costs that we incur on your behalf for any claim covered by this policy under clause 1; and
  - (b) defence costs (up to the sub-limit stated in the schedule) incurred with our consent for any investigation that you or your employee first become aware of and you tell us about in writing during the period of insurance but only if the investigation relates to an act or omission occurring on or after the retroactive date specified in the schedule; and

- (c) defence costs (up to the sub-limit stated in the schedule) incurred with our consent for any inquiry which arises solely from the provision of healthcare services by you or your employee and that you or your employee first become aware of and you tell us about in writing during the period of insurance but only if the inquiry relates to an act or omission occurring on or after the retroactive date specified in the schedule.

### **Non-imputation and severability**

- 3. 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**

- 4. 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 our limit of indemnity in the schedule 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.
- 5. 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.

### **What we exclude from the policy**

- 6. We will not indemnify you or your employees under this policy when:
  - 6.1 and to the extent that, you or your employees are entitled to indemnity for the claim, investigation or inquiry under any other policy issued by us or another insurer (to the extent allowed by law) or you or your employee have the benefit of any other indemnification arrangement including under a government scheme or with a Medical Defence Organisation or other indemnity provider;
  - 6.2 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;

- 6.3 the claim, investigation or inquiry arises from circumstances notified to us or to another insurer or Medical Defence Organisation or indemnity provider before the period of insurance;
- 6.4 the claim arises in any way out of the provision of healthcare services to a public patient in a public hospital;
- 6.5 the claim, investigation or inquiry arises in any way out of a practice or procedure not directly connected with the provision of healthcare services;
- 6.6 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 or the ordinary course of his or her employment or contract;
  - (b) outside the boundaries of his or her training and/or qualifications; or
  - (c) outside the terms and conditions of his or her registration;
- 6.7 the claim, investigation or inquiry arises in any way out of the provision of healthcare services by a person who at the time was not legally permitted to provide those healthcare services, to the extent of that proportion of liability attributed to that person or to the acts or omissions of that person. For the avoidance of doubt, our liability under this policy may be reduced by the percentage of that person's involvement or contribution to the incurred loss or damage;
- 6.8 the claim, investigation or inquiry arises in any way out of any actual or alleged sexual harassment, sexual misconduct, criminal conduct or unlawful discrimination;
- 6.9 the claim 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 a principal, partner, director or employee of the insured;
- 6.10 the claim, investigation or inquiry arises in any way from a practice or procedure specifically excluded in the schedule;
- 6.11 the claim, investigation or inquiry arises in any way from the practice of midwifery or the management of labour or childbirth by any of your employees, except as required for the provision of emergency medical assistance where your employee is in attendance as a bystander and where you or your employee as the case may be have no expectation of payment or other reward;

- 6.12 the claim arises in any way out of cosmetic procedures provided by anyone other than a medical practitioner where a medical practitioner:
- (a) has not first assessed the patient and determined the treatment plan;
  - (b) does not continue to provide oversight of the treatment; and
  - (c) with the exception of any procedures specified in the schedule with reference to this clause, does not directly supervise the treatment and is not physically present;
- 6.13 and to the extent that, the claim arises from the acts or omissions of a medical practitioner who does not have adequate medical indemnity insurance to cover his or her own liabilities arising from that claim unless you have taken all necessary steps to ensure that the medical practitioner has a current and adequate medical indemnity insurance policy;
- 6.14 the claim, investigation or inquiry arises in any way out of or in connection with defamation or any allegation of defamation or the authorship of any published material;
- 6.15 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 the provision of healthcare 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;
- 6.16 the claim or inquiry 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;
- 6.17 the claim or inquiry arises in any way as a result of the transmission of a contagious disease from an employee, contractor or anyone for whom you are vicariously 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;
- 6.18 the claim is made against an insured who is a medical practitioner and where the claim arises from the provision of healthcare services by such medical practitioner in his or her capacity as a medical practitioner;

- 6.19 a person makes a claim because and only because, that person is or was your employee or agent, (including a partner, director or officer) or because you did not employ that person;
- 6.20 the claim arises solely in respect of a person's functions and duties as a director and/or officer of the insured, or any other legal entity, corporation or body corporate;
- 6.21 or to the extent that the claim 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;
- 6.22 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 medical practitioner or an employee as an intrinsic part of their provision of healthcare services to your patients;
- 6.23 the claim or inquiry arises in any way out of the unlawful sale, supply, use or application of any substance;
- 6.24 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;
- 6.25 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. 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;
- 6.26 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;
- 6.27 the claim, investigation or inquiry arises out of or is connected with any trading debt or any guarantee given for a debt;
- 6.28 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. 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;

- 6.29 the claim, investigation or inquiry:
- (a) arises out 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;
  - (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;
- 6.30 you or your employee have admitted liability for the claim or settled, or agreed to settle the claim without our consent;
- 6.31 the claim arises from an actual or alleged contravention of any provision of the Trade Practices Act 1974 (Cth) or any equivalent State or Territory fair trading legislation. This exclusion does not apply to any civil liability arising out of an alleged breach of Part V of the Trade Practices Act 1974 (Cth) (or any equivalent State or Territory fair trading legislation) where the alleged breach is directly related to the provision of healthcare services to a patient and does not arise from conduct which is fraudulent or intended to mislead or deceive; or
- 6.32 the claim, investigation or inquiry arises in any way from advertising in whatever form and whether by you or by another.

### **Fraudulent claims**

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

### **Conditions**

#### **Payment of premium**

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

#### **When you have to notify us**

9. You must notify us in writing as soon as practicable after you become aware of:
- (a) any claim, investigation or inquiry; and
  - (b) any circumstance that might lead to a claim or to an investigation or inquiry involving you or an employee.

10. If you seek indemnity under this policy you must tell us about any other insurance or entitlement to indemnity that may indemnify you or your employees in respect of such claim, investigation or inquiry, including the identity of the other insurer, the policy number and any other information that we may reasonably require.

### **Your duty to co-operate**

11. You and your employees 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 healthcare practice; and
  - (b) co-operate fully with us, our investigators and legal representatives.
12. You and your employees 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**

13. You and your employees must not, without our prior written consent:
  - (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; or
  - (c) 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.
14. You and your employees must use all reasonable measures to avoid or reduce any liability under this policy.

### **Alteration of risk**

15. 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) 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; or
  - (c) any material change in the nature of the practice or the healthcare services provided by you or your employees.

### Registration and qualifications

16. It is a condition of this policy that all medical practitioners and employees are suitably qualified and registered to provide healthcare as required to perform the duties for which they are employed.

### General terms

#### Allocation of defence costs

17. 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

18. You and your employees 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 19, any appeal as we see fit; and
  - (b) we may do so in your name or your employee's name.

However we will not admit liability for or settle any claim against you or your employees without your or your employees' prior consent. If you or your employee refuses 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 or your employee.

### Appeals

19. 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**

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

### **Cancellation**

22. 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.
23. 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 knew (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 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**

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

### **Interpretation**

25. 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.
26. Under this policy the masculine includes the feminine and the singular includes the plural and vice versa.

## Definitions

27. 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 employee; or
- (b) an intimation of an intention to seek compensation, damages or injunctive relief from you or an employee.

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

**Cosmetic procedures** are those procedures where the primary purpose is the alteration of the external appearance of a patient for non-pathological reasons.

**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.

**Employee** means a natural person not being a medical practitioner who:

- (a) is employed by you during the period of insurance;
- (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 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.

**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.

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

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

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

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

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

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

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

**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 the entity named in the schedule as the insured.





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