

Student Indemnity Policy

Combined Financial Services Guide, Product Disclosure Statement and Policy Wording Version 6



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 Student 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 Student 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 2010.

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 Student Indemnity Policy (policy) underwritten by MDA National Insurance Pty Ltd (MDA National Insurance) ABN 56 058 271 417, AFS Licence No. 238073. You can contact us at any of the addresses shown on the back of this booklet.

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

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

Any 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 which 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 2010 and applies to policies commencing on or after 1 July 2010.

Applying for Student 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

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 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 Student Indemnity Policy

The Student 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 estate, in respect of claims of professional negligence including Good Samaritan Acts (clauses 1 and 2 of the policy). The policy also insures legal costs incurred in connection with the defence or settlement of a claim or investigation or the defence of an allegation of academic misconduct unless the allegation of academic misconduct includes and allegation of breach of any intellectual property rights, including but not limited to copyright (clause 3) and legal costs for the successful defence of an allegation of sexual misconduct by you against a patient or an allegation of criminal conduct in respect of the provision of healthcare services by you (clauses 4 to 7 inclusive). You must obtain our consent before any legal costs are incurred.

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 Student 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. Such matters may be:

- claims that have already been made or threatened against you;
- circumstances you are aware of that could give rise to a claim or investigation; and
- investigations whether commenced or not.

This does not mean that claims notified under an existing policy will not continue to be covered under that policy.

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

The retroactive date on your policy determines how much of your prior practice is covered under your policy. So for example, if you participate in a student elective in May 2010 and you asked for a policy retroactive date of July 2010, the policy would not respond to a claim or investigation arising from your participation in that elective, even if you first learn about the claim or investigation during the period of insurance.

It is important therefore that you consider your prior practice when arranging cover. 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.

The policy can provide cover for more than one student elective, scholarship or clinical placement, provided your retroactive date is on or prior to the commencement of the first elective, scholarship or clinical placement.

Subrogation

We have a right under the policy to take over all of your rights of recovery in respect of a claim and to pursue actions against third parties in your name even if a claim has not actually been paid.

If you surrender any right or settle any claim for contribution, indemnity or recovery without our prior written consent then we may be entitled to reduce our liability under the contract of insurance.

How much we insure you for

The maximum amount we will indemnify you for is \$20,000,000 in the aggregate for all claims made under 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 allegations of sexual misconduct or criminal conduct. Both amounts will be specified in the schedule.

Policy excess

Most policies issued by us to healthcare students do not specify an excess. However if an excess is to apply, it will be detailed in your policy schedule and you must pay us the amount specified 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 by any claimant was made.

What we do not insure you for

The policy will not provide insurance cover in certain circumstances. Clauses 10 and 11 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 12 to 20 inclusive of the policy wording. For example, you must pay the premium when it is due (clause 12). You must also notify us in writing as soon as practicable after you become aware of any claim or investigation or circumstances that could give rise to such (clause 13).

General terms

There are some general terms that apply to all of the insuring clauses. These are set out in clauses 21 to 29 inclusive of the policy.

For example, when a claim includes both allegations that are indemnified under the policy and allegations that are not indemnified, we may reduce the amount of defence costs to an amount that we regard as attributable to the allegations that we provide indemnity for (clause 21).

We also have the right to conduct and control any proceedings (clause 22).

How much will the policy cost?

The annual premium for the policy is \$15 including GST and Stamp Duty.

In order for you to be eligible for this policy, you must be a Member of MDA National. Student Membership of MDA National is free.

Paying your insurance premium

You can pay your premium by:

- cash;
- cheque;
- credit card; or
- direct debit from your bank account.

Cooling off period and cancellation by you

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.

You have no right to cancel the policy after the cooling off period.

Cancellation by us

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

- you failed to disclose or misrepresented to us 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 this policy, including the provision to pay the premium;
- 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. If any of the following occur you must notify 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, 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 Member number;
- the date, time and place of the event;
- the specific nature of the incident as well as a detailed account of the medical service you performed;
- the name and address of any other professionals involved; 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

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 work as a healthcare student

Should you become involved in any investigation, 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, hospital or supervisor 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 made to us relating to our product or services or the complaints handling process itself, where a response 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 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. FOS is not able to consider matters relating to your Membership of MDA National.

For more information about FOS and the types of matters they can resolve, you can visit their website 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

Student Indemnity Policy

This Student 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.

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 for any civil liability arising out of a claim of professional negligence against you but only when:
 - (a) the claim arises directly in connection with the provision of healthcare services by you; and
 - (b) you tell us about the claim in writing during the period of insurance; and
 - (c) the claim is first made against you 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.

Good Samaritan acts

2. We will indemnify you for any civil liability arising out of a claim of professional negligence against you when the claim arises directly from the provision of emergency medical assistance by you where you are in attendance as a bystander and where there is no expectation of payment or other reward but only when:
 - (a) the claim is first made against you during the period of insurance; and
 - (b) you tell us about the claim in writing during the period of insurance; and
 - (c) the claim arises from an act or omission occurring on or after the retroactive date specified in the schedule.

This clause only applies to acts necessary to stabilise the patient or prepare the patient for transfer.

Legal Costs

3. We will indemnify you for:
- (a) defence costs that we incur on your behalf for any claim covered by this policy under clauses 1 and 2; and
 - (b) defence costs (up to the sub-limit stated in the schedule) incurred with our consent for any investigation that you first become aware of and tell us about in writing during the period of insurance; and
 - (c) defence costs incurred with our consent in defending an allegation of academic misconduct by you made by the university you attend, unless the allegation of academic misconduct includes an allegation of breach of any intellectual property rights, including but not limited to, copyright.

Defence Costs for allegations of sexual misconduct and criminal matters

4. Notwithstanding exclusion 10.14, we will indemnify you (up to the sub-limit stated in the schedule) against the defence costs for the successful defence of any claim or investigation which arises out of any alleged criminal conduct or sexual misconduct by you against a patient arising out of the provision of healthcare services, if and when:
- (a) (i) in the case of a criminal proceeding you have not been found guilty of or admit to a criminal offence; or
 - (ii) the outcome of an investigation by a registration body is that no finding of professional misconduct has been made against you; or
 - (iii) in the case of a civil claim, there is a final judgment in your favour; or
 - (iv) the claim or investigation has been permanently discontinued,
- but only if:
- (b) you first become aware of the claim or investigation and you tell us about it in writing during the period of insurance; and
 - (c) the claim or investigation from an act or omission occurring on or after the retroactive date or within any additional retroactive period specified in the schedule; and
 - (d) when all appeal rights of any party in relation to those allegations have been exhausted.

5. We may at our absolute discretion agree to advance the defence costs referred to in clause 4 as they are incurred and prior to finalisation of any claim or investigation. We may in our absolute discretion cease to advance defence costs to you at any time and take steps to recover from you any costs paid in your defence.
6. If we do advance defence costs pursuant to clause 5 and we subsequently determine that we have no liability under clause 4, then you must repay those defence costs to us.
7. If we do not advance defence costs and you are eligible for indemnity under clause 4, you must provide evidence of the defence costs and we reserve the right to pay only reasonable costs incurred in your defence.

How much we insure you for

8. 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. If an excess applies, you must pay an excess in respect of each claim made under the policy.
9. 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 by any claimant 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.

What we exclude from the policy

10. We will not indemnify you under this policy when:
 - 10.1 and to the extent you are entitled to indemnity for the claim or investigation under a previous policy issued by us or another insurer (to the extent allowed by law) or you have the benefit of a prior indemnity arrangement with a Medical Defence Organisation or you are indemnified under a government or university scheme or you are entitled to any indemnity from your employer or any other indemnity provider;
 - 10.2 the claim or investigation arises from any act or omission which occurred prior to the retroactive date specified in the schedule;
 - 10.3 the claim or investigation arises from any act or omission or claim or investigation that you have or should have told us about in your proposal;
 - 10.4 the claim or investigation arises from circumstances which you notified to us or to another insurer, Medical Defence Organisation or other indemnity provider before the period of insurance;

- 10.5 the claim arises in any way out of the provision of healthcare services to a public patient in a public hospital;
- 10.6 the claim or investigation arises in any way out of the provision of healthcare services by you where you are acting outside the terms and guidelines of your university elective or scholarship placement except where the claim or investigation relates to the provision of emergency medical assistance by you where you are in attendance as a bystander and where there is no expectation of payment or reward;
- 10.7 the claim or investigation arises in any way out of the provision of healthcare services by you when you are not under the supervision of a medical practitioner except where the claim or investigation relates to the provision of emergency medical assistance by you where you are in attendance as a bystander and where there is no expectation of payment or reward;
- 10.8 the claim or investigation arises because of your continuing use of a procedure or practice in the provision of healthcare services 14 days after you have received notice from us under clause 15 asking you to stop using the procedure or practice;
- 10.9 the claim or investigation arises in any way out of the provision of healthcare services by you and in respect of which you represent yourself or hold yourself out as a medical practitioner;
- 10.10 the claim or investigation arises in any way out of or in connection with defamation or any allegation of defamation or the authorship of any published material;
- 10.11 the claim arises in any way from any activity in connection with or sponsorship of a clinical trial or research project. This exclusion does not apply to your provision of 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;
- 10.12 the claim or investigation arises in any way out of the provision of healthcare services by you while intoxicated or otherwise impaired by the use of an intoxicant or drug, except for the reasonable refusal to provide healthcare services because of the influence of such intoxicant or drug;
- 10.13 the claim or investigation arises in any way as a result of the transmission of a contagious disease from you, or someone for whom you are vicariously liable, to a patient when at the time of transmission, you knew, or should reasonably have known that the infected person was carrying the disease;

- 10.14 the claim or investigation arises in any way out of any actual or alleged sexual harassment, sexual misconduct, criminal conduct or unlawful discrimination except to the extent that you are indemnified for defence costs under clauses 4;
- 10.15 the claim or investigation arises in any way out of any wilful violation or breach of any statute or regulation or out of any act committed with dishonest, malicious or criminal intent;
- 10.16 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, civil or criminal penalty; or
 - (c) to pay punitive, aggravated or exemplary damages;
- 10.17 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 you as an intrinsic part of you providing healthcare services to your patients;
- 10.18 the claim or investigation arises in any way out of the unlawful sale, supply, use or administration of any substance;
- 10.19 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;
- 10.20 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 however 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;
- 10.21 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;
- 10.22 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, insurrection, military or usurped power, however 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;

10.23 the claim or investigation arises out of:

- (a) a judgment or order:
 - (i) by a court in the United States of America or its territories;
 - (ii) by a court elsewhere exercising jurisdiction under a Local, State, or Federal Law of the United States of America; or
 - (iii) based on, derived from, or to enforce a judgment or order by a court referred to in (i) or (ii); or
- (b) acts or omissions which occur within the territorial limits of the United States of America or its territories.

This exclusion does not apply to Good Samaritan acts; or

10.24 you have admitted liability for the claim or settled the claim without our consent.

Fraudulent claims

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

Conditions

Payment of premium

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

When you have to notify us

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

Stop notice

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

Your duty to co-operate

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

Prevention of loss

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

Alteration of risk

20. You must give us notice as soon as practicable of any material alteration of the risk during the period of insurance including without limitation any material change in the nature of the services provided by you.

General terms

Allocation of defence costs

21. 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, investigation consisting of covered allegations bears to the whole of the claim, investigation.

Our right to the conduct and control of proceedings

22. You agree that:

- (a) we have the conduct of all matters that we agree to indemnify under this policy, including the investigation, defence, avoidance, reduction, settlement and subject to clause 23, any appeals as we see fit; and,
- (b) we may do so in your name.

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

Appeals

23. 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 advanced defence costs to you 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 the costs and expenses of the appeal.

Our decision to fund 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 and your appeal is unsuccessful or discontinued, we will not pay any additional legal costs associated with the appeal or any further expenses which may be an outcome of the appeal.

If you proceed with the appeal without our consent and your appeal is successful we will indemnify you for the reasonable legal costs incurred in the course 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 your reasonable legal fees and expenses incurred in the appeal.

Subrogation

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

Cancellation

26. 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 fail 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 your professional situation); or
 - (e) you make a fraudulent claim under the policy.

Governing law

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

Interpretation

28. 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.
29. Under this policy the masculine includes the feminine and the singular includes the plural and vice versa.

Definitions

30. In this policy:

Claim means:

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

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

Criminal conduct means conduct that is or could be in breach of criminal law, regardless of whether or not a criminal charge has been brought in relation to the conduct.

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

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

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

Healthcare services means the following services that you provide:

- (a) healthcare treatment, services or advice or a report of those things provided to a patient or in relation to a patient in a professional capacity, provided that the activity is of a type that is appropriate to be conducted by a healthcare student at your stage of study; and
- (b) emergency medical assistance where you are in attendance as a bystander and for which you receive no income and have no expectation of payment or other reward.

Insured means the person named in the schedule.

Investigation means an investigation, inquiry or disciplinary or administrative proceeding including but not limited to a Board, Tribunal, Royal Commission, Professional Body or Coronial Court but not a criminal prosecution.

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 or licensed to practice under the laws and rules which govern the practice of medicine in the country in which the healthcare services are provided.

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.

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, AFS Licence No 238073 being the insurer named in the schedule.

You and **your** means:

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



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