

# Professional Indemnity Insurance Policy

Combined Financial Services Guide,  
Product Disclosure Statement and Policy Wording V.12







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The Financial Services Guide applies to financial services provided on or after the date of issue 11 May 2018.

The Product Disclosure Statement and Policy wording applies to policies commencing on or after 1 July 2018.

## **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 MDA National Limited ABN 67 055 801 771.

### **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?**

We currently offer the following professional indemnity insurance products:

- Professional Indemnity Insurance Policy
- Practice Indemnity Policy
- Dental Indemnity Policy
- Run-off under the Run-off Cover Scheme (ROCS)

Our Professional Indemnity Insurance Policy is only available to Members of MDA National, with limited exceptions. 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 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 15% 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?**

The protection 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 against you;
- handle your claims under the Policy;
- meet our legal obligations;
- administer Government Schemes; and
- provide our products to you and improve the delivery of our products and services.

As part of our commitment to client service and the protection of client confidentiality we have adopted the Australian Privacy Principles set out in the *Privacy Act 1988* (Cth) as amended. You can download our Privacy Policy from our website at [mdanational.com.au](http://mdanational.com.au) or contact our Member Services team on 1800 011 255 to obtain 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**

We are 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 or email to one of our staff.

If you are not satisfied with the response to your complaint or do not take up a matter directly with staff, please contact our Complaints Officer by:

**Phone:** 1800 034 466 (Freecall)  
**Fax:** (08) 9415 1492  
**Email:** [complaintsofficer@mdanational.com.au](mailto:complaintsofficer@mdanational.com.au)  
**In writing:** PO Box 445  
WEST PERTH WA 6872

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 resolution process, you can refer the dispute to the Financial Ombudsman Service Limited (FOS). The 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.

The FOS will review a complaint by you or an insured person only if you or the insured person have first gone through our internal complaints and dispute resolution process and the matter to which the complaint relates is within the FOS' Terms of Reference. Please note that the FOS is not able to consider matters relating to Membership of MDA National.

For more information about the FOS and the types of matters it can resolve, visit its website at [fos.org.au](http://fos.org.au) or contact our Complaints Officer. Online dispute forms are available on the FOS website.

You can contact the FOS by:

**Phone:** 1800 367 287 (local call fee applies)  
**In writing:** GPO Box 3  
MELBOURNE VIC 3001

### Further information and updates

This FSG is issued 11 May 2018 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 Important Information**

This Product Disclosure Statement (PDS) is designed to help you make an informed decision about acquiring the Professional Indemnity Insurance Policy (Policy) underwritten by MDA National Insurance Pty Ltd (MDA National Insurance) ABN 56 058 271 417, AFS Licence 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 the information in the PDS, including the terms and conditions, exclusions and defined terms of the standard Policy wording in Section 3. If a policy is issued to you, you should also read the Certificate of Insurance and any endorsements issued in conjunction with the Policy wording.

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

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

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

This PDS is issued on 11 May 2018 and applies to policies commencing on or after 1 July 2018.

### **Applying for Professional Indemnity Insurance**

You must fill out a proposal to apply for this insurance. In the case of renewal, you must confirm that your details are correct and that you have disclosed to us all the information relevant to your risk.

You can apply for a policy at our website [mdanational.com.au](http://mdanational.com.au). You can request a proposal form by calling 1800 011 255 or visiting the Download Centre of our website.



**Your duty of disclosure and non disclosure**

Before you enter into an insurance contract, you have a duty to tell us anything that you know, or could reasonably be expected to know, may affect our decision to insure you and on what terms. You have this duty until we agree to insure you. You have the same duty before you renew, extend, vary or reinstate an insurance contract.

You do not need to tell us anything that:

- reduces the risk we insure you for; or
- is common knowledge; or
- we know or should know as an insurer; or
- we waive your duty to tell us about.

If you do not tell us anything you are required to, we may cancel your contract or reduce the amount we will pay you if you make a claim under the Policy, or both. If your failure to tell us is fraudulent, we may refuse to pay a claim under the Policy and treat the contract as if it is never existed.

**What makes up the insurance contract?**

The insurance contract is made up of:

- the Certificate of Insurance issued to you;
- the Policy Wording included in this Professional Indemnity Policy booklet;
- any Endorsement to the Policy Wording in relation to this Professional Indemnity Insurance Policy booklet that is current during the period of insurance; and
- any endorsement issued to you.

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

## What you are insured for

The Professional Indemnity Insurance Policy is a contract of insurance. The Policy is available to both medical practitioners and medical students, although some covers apply only to medical practitioners. The following is a summary of the insurance and does not form part of the contract of insurance and does not refer to exclusions or other terms and conditions that may reduce or void the cover. All of the features, terms and conditions of this insurance are set out in the Policy wording (Section 3 of this document).

### Medical practitioners and students

The Policy insures you and your estate for civil liability claims against you or your estate arising:

- directly out of your provision of healthcare services including Good Samaritan acts (clauses 1 and 2);
- out of your unintended breach of privacy legislation (clause 3.1);
- out of you reporting an incident or registered healthcare professional to a hospital, area health authority or professional body, or participating in the examination of such an incident or registered healthcare professional (clause 4).

The Policy insures legal costs:

- incurred by us on your behalf for the defence of a civil fine or penalty arising out of your unintended breach of the *Privacy Act 1988* (Cth) or equivalent State or Territory Legislation (clause 3.2);
- incurred by us on your behalf for the defence of a civil liability claim against you covered under the Policy (clause 5);
- incurred by us on your behalf for assisting you in an investigation by a professional registration board or professional services review committee (clause 6(i));
- of a professional or administrative body which you are ordered to pay as a result of an investigation (clause 6(i));
- incurred by us on your behalf for assisting you in an inquiry arising from your provision of healthcare services, including an investigative proceeding or hearing by or on behalf of a professional body, health services authority, medical tribunal, Royal Commission, Coroner's Court, criminal court, health or medical benefits fund, or the information Commissioner, Privacy Commissioner, consumer protection agency or Anti-Discrimination Board (or equivalent) or, if you are a medical student, by or on behalf of a university that you attend (clause 6(ii));
- which you are ordered to pay as a result of an inquiry (clause 6(ii));
- for the successful defence of a claim against you, criminal proceeding, investigation or inquiry which arises out of alleged criminal conduct or sexual misconduct by you against a patient arising directly out of your provision of healthcare services to the patient (clause 7);

The Policy also:

- insures you for a civil fine or penalty arising out of your unintended breach of the *Privacy Act 1988* (Cth) or equivalent State or Territory Legislation (clause 3.2);
- provides a payment to you if you are first diagnosed during the period of insurance as having acquired HIV, Hepatitis B, Hepatitis C, extremely drug-resistant tuberculosis (XDRTB), multi-drug-resistant tuberculosis (MDRTB) or New Delhi Metallo enzyme enterococci and as a result of contracting such a disease have permanently ceased or substantially altered your medical practice or in the case of a medical student have ceased your medical studies. This benefit is payable only once and only for one communicable disease (clause 8).

### Medical practitioners only

If you are a medical practitioner (but not if you are a medical student), the Policy also insures you and your estate for civil liability claims:

- against a practice entity controlled by you but only when that claim arises directly in connection with your provision of healthcare services (clause 9); and
- against you arising out of your provision of healthcare services as part of your involvement in a clinical trial or research project (but not in relation to you as designer or acting as an administrator or a sponsor of the trial or project) (clause 10).

If you are a medical practitioner (but not if you are a medical student), the Policy also insures legal costs incurred by you with our consent or by us on your behalf in:

- pursuing certain claims by you against others, or defending certain claims against you, of defamation or alleged defamation relating to your provision of healthcare services (clause 11);
- seeking an Apprehended Violence Order where there is a threat to the personal safety of you or your immediate family related to your provision of healthcare services (clause 12);
- defending alleged breaches of the *Competition and Consumer Act 2010* (Cth), the *Trade Practices Act 1974* (Cth) or equivalent State or Territory fair trading legislation arising directly out of your provision of healthcare services (clause 13);
- certain employment disputes (clause 14);
- pursuing certain claims by you against others of lack of procedural fairness in relation to a decision to suspend or revoke mid-term your credentialing with a hospital or health service (clause 14); and
- pursuing or defending an internal complaint or appeal arising directly out of your involvement with a training program approved by a medical college (clause 15).

If you are a medical practitioner (but not if you are a medical student), the Policy also:

- indemnifies you for the reasonable cost of replacement or restoration of certain lost or damaged documents (clause 16); and
- insures you, if you are entitled to indemnity under clause 1, for your loss of income resulting from you attending a hearing at court (clause 17).

## **A claims made policy**

The Professional Indemnity Insurance Policy is a claims made contract of insurance. This means that it covers civil liability claims (and associated legal costs) made against you and notified to us during the period of insurance and the legal costs of investigations and inquiries that you first become aware of and notify to us during the period of insurance. Similarly, the cover for legal costs for other matters only applies to matters that you first become aware of and tell us about during the period of insurance.

The communicable disease cover applies only if your first diagnosis of having acquired a communicable disease occurs during the period of insurance.

The Policy does not cover matters of which you were aware (or reasonably should have been aware) prior to the commencement of the period of insurance, whether you told us about them on your proposal or not. The Policy does not cover any communicable disease (clause 8) which you knew or ought reasonably to have known you had before we first started providing cover to you for communicable disease under your insurance with us.

Such matters may be:

- claims that have already been made or threatened against you; or
- investigations or inquiries whether commenced or not; or
- a prior diagnosis of your having any communicable disease; or
- circumstances of which you are aware (or reasonably should have been aware) that could give rise to a claim against you, an investigation or inquiry, or a claim by you for indemnity under the Policy.

In relation to civil liability claims against you, if you notify us in writing during the period of insurance of your Policy of circumstances that may give rise to a claim against you, the fact that you do not give us written notice of a claim under the Policy 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 against you as soon as you become aware of it.

If you notify us of a matter after your Policy has expired or is cancelled, you may not be covered for that matter. If you want to remain insured it is important that you continue to renew your insurance with us or obtain alternative insurance. Matters notified prior to the expiry or cancellation of your Policy and accepted by us as a valid claim under the Policy will continue to be covered.

## Retroactive cover

Retroactive cover provides cover for your prior practice in respect of matters that you first become aware of during the period of insurance. The retroactive date of your Professional Indemnity Insurance Policy determines how much of your prior practice is covered under your Policy.

Your Certificate of Insurance will (with limited exceptions) include a retroactive date. The Policy will not cover you for incidents that occurred prior to this date. Due to the nature of healthcare services, it is not unusual for claims against you, investigations or inquiries to arise months or years after the incident giving rise to them occurred. As your Policy is a claims made policy, such matters may be covered, but only if the incident giving rise to them occurred on or after the retroactive date shown on your Certificate of Insurance. In some instances, we may issue a Policy without a retroactive date, in which case the Policy can respond to properly notified matters irrespective of the date of the incident.

When MDA National Insurance offers insurance to a medical practitioner it is obliged to make an offer of insurance which covers the medical practitioner for any claims against you arising from prior incidents that are not otherwise covered by any insurance. Therefore it is very important that you select a retroactive date which provides you with adequate retroactive cover.

Prior to 1997, all Australian Medical Indemnity cover was provided on a claims incurred basis. Claims incurred cover responded to claims against you which arose from incidents which occurred during the period of cover, even if the claim against you came to light after the cover expired. This claims incurred coverage was gradually phased out from 1997 to 2003, after which cover became claims made. Claims made policies cover claims against you which are made and notified during the current period of insurance, and which arise from incidents occurring after the retroactive date of the Policy. Your Policy provides other cover including with respect to investigations and inquiries but only for incidents occurring after the retroactive date of the Policy. If you practised prior to 1 July 2003, it is important to find out when your last claims incurred cover expired.

To illustrate, if your Policy has a retroactive date of 1 July 2003, your Policy would not cover a claim against you or any other matter arising from an incident that occurred before 1 July 2003, even if you first learn of the claim against you, investigation or inquiry or other matter and report it to us during the current period of insurance.

Everyone's circumstances are unique, but as a guide, the following may assist you in making a decision on your retroactive cover needs. Please contact our Member Services team on 1800 011 255 if you require further clarification.

You may require retroactive cover from the first date on which:

- you practised privately in Australia and did not have medical indemnity cover from any source including a Medical Defence organisation; or
- you practised in the public hospital system or a corporate setting and did not have indemnity from your employer or under a Government indemnity scheme; or
- you held a claims made medical indemnity insurance policy; or
- your last claims incurred medical indemnity cover expired; or
- if you are a recent graduate, you commenced your internship; or
- if you are a student, you commenced your medical degree.

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.

## **What we do not insure you for**

The Policy will not provide insurance cover in certain circumstances. Clauses 20 to 23 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 24 to 34 of the Policy. For example, you must pay the premium on or before the date when it is due (clause 24). You must also notify us in writing as soon as practicable after you become aware of any claim against you, investigation or inquiry, or circumstances or any other matter that could give rise to a claim under the Policy (clause 25).

You must meet and co-operate with us for the purposes of discussing your risk management practices if we request such a meeting (clause 28(c)).

Within 30 days of our request, you must provide independent evidence (such as an accountant's report) of your gross annual billings. If the evidence provided differs from the gross annual billings declared to us we may exercise rights against you including cancellation of the policy or charging further premium (clause 34).

## **General terms and definitions**

There are some general terms and definitions that apply to all of the insuring clauses. These are set out in clauses 35 to 45 of the Policy.

For example, when a claim against you, investigation, inquiry or other matter includes both allegations that are indemnified under the Policy and allegations that are not indemnified under the Policy, we may pay only the legal costs that we regard as attributable to the allegations for which we provide indemnity (clause 35).

We also have the right to conduct and control any proceedings that we agree to indemnify under the Policy, although we will not admit liability for or settle any claim against you, by you against another or investigation, inquiry or other matter without your prior consent. However, if you unreasonably refuse to consent to our settling a claim against you or by you against another, or otherwise resolving an investigation, inquiry or other matter, your entitlement to indemnity may be affected (clause 36).

## **Subrogation**

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

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

## How much we insure you for

<p>The total amount we will pay for the aggregate of all claims, legal costs and other matters paid under your Policy during the period of insurance will not exceed the Maximum Limit of Indemnity set out in the Certificate of Insurance</p>	<p>Maximum Limit of Indemnity</p>
<p>All claims under the Policy during the period of insurance</p>	<p>\$20,000,000 in the aggregate</p>
<p>Provided that the Maximum Limit of Indemnity is not exceeded, the following sub-limits apply during the Period of Insurance</p>	<p>Sub-limits as set out below</p>
<p>Clause 3.2 - Fines and penalties for breaches of the <i>Privacy Act 1988</i> (Cth)</p>	<p>\$250,000 in the aggregate</p>
<p>Clause 6 and 7(ii) and (iii) - Legal costs for investigations, inquiries, self-referrals to a health Program under the National Law and claims under the Policy with respect to sexual misconduct and criminal conduct</p>	<p>\$1,000,000 in the aggregate</p>
<p>Clause 8 - Communicable Disease cover</p>	<p>\$100,000 Medical Practitioners \$50,000 Medical Students Payable once only per Insured and for only one Communicable Disease as defined</p>



Clause 11 - Defamation claims against you and pursuit of a defamation allegation against another	<p>\$100,000 in the aggregate for:</p> <p>11.1 defamation claims against you including legal costs for the defence of defamation claims against you; and</p> <p>11.2 legal costs for the pursuit of defamation allegations but only after the exhaustion of \$20,000 excess payable by you</p>
Clause 12 - Legal costs for you seeking an Apprehended Violence Order against another	\$100,000 in the aggregate
Clause 13 - Legal costs of defending alleged breaches of competition, consumer or fair trading legislation	\$100,000 in the aggregate
Clause 14 - Legal costs of employment disputes and credentialing disputes	\$100,000 in the aggregate but in relation to legal costs for any claim by you against another for unpaid remuneration and other monies under clause 14(iii) we will not pay more than the amount sought by you in that claim
Clause 15 - Legal costs of medical college training disputes	\$100,000 in the aggregate
Clause 16 - Loss of Documents	\$100,000 in the aggregate
Clause 17 - Loss of income for attending a hearing at court with respect to a civil liability claim against you	\$20,000 in the aggregate with a maximum of \$2,000 per day for up to 10 days

## **Policy excess**

Most claims under the Policies issued by us to medical practitioners and medical students will not have an excess. If an excess is to apply, it will be detailed in your Certificate of Insurance and you must pay, as directed by us, the applicable amount for each and every relevant matter for which you seek indemnity under the Policy.

An excess of \$20,000 applies to the pursuit of defamation allegations (clause 11.2).

## **Single claim**

For the purposes of determining which one period of insurance applies, where:

- (a) an act or omission;
- (b) one or more related acts or omissions;
- (c) any course of related treatment;
- (d) any acts or omissions which are substantially in common with each other;
- (e) any courses of treatment which are substantially in common with each other; or
- (f) the same or similar underlying cause or source

gives rise to more than one claim against you, all such claims will constitute a single claim against you and will be treated as if first made at the time of the earliest claim against you by any claimant (clause 19).

## **How much will the Policy cost?**

In order for you to receive a Policy, you must be a Member of MDA National (with limited exceptions). If you are a medical practitioner, you must pay your MDA National Membership subscription. The amount of this subscription is specified separately in the quotation or renewal documentation. If you are a medical student, your Membership and the Policy are provided free of charge.

The total insurance premium is made up of the basic premium, the ROCS Support Payment and Government taxes and charges. The basic premium will vary on the risk covered. We use a system of rating factors to calculate this component including:

- your speciality or field of practice;
- your gross annual billings;
- your retroactive date and the nature of practice undertaken in that period; and
- the state(s) in which you practice.

Other factors that could affect the total cost of your Policy are:

- a Premium Support Scheme subsidy; and
- an administration charge if paying your premium by quarterly instalments.

## Premium Support Scheme (PSS)

The PSS has been established by the Australian Government to assist eligible Medical Practitioners to meet the costs of their medical indemnity insurance. We administer the PSS in relation to our Insureds on behalf of the Government.

You must apply for the PSS subsidy separately for each year that you wish to be assessed for eligibility. The PSS may require that you provide a Statutory Declaration of your Actual Income in order to be eligible. You may also apply for an advance payment and, if we receive your PSS application in time and you are eligible, we can collect the PSS payment directly from Medicare Australia and you will only need to pay the balance of the premium. Otherwise, you will be required to pay the full premium amount and we will refund any premium support due to you.

If you receive an advance payment and it is later determined that you are not eligible to receive a PSS payment or you received a higher subsidy than you are entitled to, you will need to repay to us the PSS payment or that portion of the PSS payment that you are not entitled to.

If you would like further information in relation to the PSS, please refer to the PSS Information Booklet available from the Download Centre of our website [mdanational.com.au](http://mdanational.com.au) or contact our Member Services team on 1800 011 255.

## Paying your insurance premium

You can choose to pay your premium annually, quarterly or monthly, by a range of payment options. If you choose to pay by quarterly instalments an administration charge is added so your total premium will be more than if you paid the premium in one transaction.

If you would like to pay monthly, we can provide you with the contact details of a premium funding provider who can provide a loan for the premium which is repayable to them in monthly instalments. The premium funding provider will charge you an application fee and interest on the amount borrowed.

For a total range of payment options please contact our Member Services team on 1800 011 255.

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.

## **Policy variations**

### **Treatment of public patients in public hospitals**

Occasionally, medical practitioners will find that they are not able to access State or employer indemnity for the treatment of public patients in public hospitals. Under such circumstances, you may apply for an extension of cover under your Policy by completing a Treatment of Public Patients form and returning it to us with written confirmation regarding your indemnity status. An additional premium may apply if this cover is issued.

### **Not practising for three months or more**

If you are planning to temporarily cease practice for three consecutive months or more during the insurance year, you may be eligible for a premium reduction. Please contact our Member Services team on 1800 011 255 for more information. While on your break, it is advisable not to let your Policy lapse without first having some other cover in place. In the event a claim is made against you or you become aware of an investigation or inquiry or other matter while you are on your break, you need to have a current insurance policy at the time the claim under the Policy is notified.

### **Run-off cover**

Run-off cover is a form of cover generally taken out by professionals when they permanently cease practice, as claims can be made against a medical practitioner years after the healthcare services are provided.

Run-off indemnity covers claims against you that first come to light and are notified to us in writing after a nominated cessation date, but only in respect of healthcare services provided during the period from your retroactive date to your nominated cessation date. The cessation date is normally the day after your last day of practice for which you require our cover.

If you would like to find out more about run-off cover, please contact our Member Services team on 1800 011 255. When considering run-off cover, you should be aware of the Australian Government's Run-off Cover Scheme (ROCS), which means you may not need to purchase run-off cover from us. Please refer to pages 21-23 for further information on the Scheme.

### **Practising outside Australia**

With the exception of Good Samaritan acts, the Policy excludes cover for acts or omissions outside Australia unless we have agreed in writing to extend cover for your work outside Australia. Please contact us to discuss your plans if you are proposing to work abroad. Cover is subject to our approval and is generally granted only for short periods of time.

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

### **Team doctors travelling overseas**

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

### **Cooling off period**

You have a cooling off period that allows you to cancel your Policy within 21 days of it being issued.

You must cancel the Policy in writing. If you cancel during the cooling off period, we will refund the whole of the premium (including any Government taxes and charges) that you have paid.

However, 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.

If you cancel after the 21 day cooling off period and you have paid the total annual premium and membership subscription, we will refund the premium and membership subscription for the unexpired period of insurance on a pro rata basis, less a cancellation fee equal to 45 days' premium and subscription.

If you are paying by quarterly instalments, you will be required to pay us the cancellation fee equal to 45 days' premium and membership subscription, less any refund that may be due to you.

We will not make any refund where:

- the total annual premium payable is \$20 or less;
- you have made a claim or notified a potential claim under the Policy.

For the avoidance of doubt, cancellation, including refunds of your membership subscription, will be treated similarly.

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

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

## **Refunds**

A premium refund may be due to you if your Policy is cancelled or amended during the year. Subject to the cancellation clause (clause 40), if the total refund is less than \$5 we will, as instructed by you, either issue this as a refund directly to your nominated bank account or donate the amount to a registered charity identified within our Corporate Social Responsibility program.

## **How to make a claim under the Policy**

Early reporting of a matter in respect of which you may be entitled to indemnity under the Policy is critical and is a condition of the Policy. The sooner we know about the matter, the quicker we are able to help.

You must notify us of such matters by providing full details in writing as soon as practicable, and in any event during the period of insurance. You can do this via our online incident notification form available on our website [mdanational.com.au](http://mdanational.com.au), by fax to 1300 011 235 or by mail to any of our offices. The following circumstances are examples:

- a claim has been made or intimated against you or against your practice entity in connection with your provision of healthcare services;
- you become involved in any investigation or inquiry;
- before you incur legal costs for which you may be entitled to indemnity under the Policy (for example in relation to certain employment disputes or alleged breaches of competition consumer or fair trading legislation);
- you lose documents or data relating to your provision of healthcare services; or
- you are diagnosed as having acquired HIV, Hepatitis B, Hepatitis C, extremely drug-resistant tuberculosis (XDRTB), multi-drug-resistant tuberculosis (MDRTB) or New Delhi Metallo enzyme enterococci.

Should you be aware of any circumstances that may give rise to a claim under the Policy, you should notify us as soon as possible.

If you do not use the online notification form, your written notice to us should include:

- your full name, Member number and preferred contact details;
- the specific nature of the matter for which you seek indemnity;
- the name and address of any other practitioners involved;
- the date, time and place of the event;
- if applicable, the name, address and date of birth of the patient involved; and
- a detailed account of the healthcare service you performed.

If you do not notify us during the period of insurance, your entitlement to indemnity under the Policy may be affected. If you are not sure whether to notify or you require assistance, please contact our Medico Legal Advisory team on 1800 011 255 or email [peaceofmind@mdanational.com.au](mailto:peaceofmind@mdanational.com.au).

### **Incidents or circumstances that may give rise to a claim under the Policy**

If at any time after the insurance policy has been issued and during any period of insurance you become aware of any circumstances which could potentially give rise to a claim under the Policy, whether you make a claim or not, you should let us know as soon as possible. Don't, for example, wait until a claim is made against 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 against you.

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

### **Run-off Cover Scheme (ROCS)**

From 1 July 2004, the Australian Government introduced the ROCS for medical practitioners who have ceased practice in Australia and who satisfy certain eligibility criteria, and to the estates of deceased medical practitioners.

The ROCS ensures that eligible medical practitioners get secure and free medical indemnity cover for incidents which have occurred but have not been notified to insurers prior to becoming eligible for ROCS.

Under the ROCS, medical indemnity insurers are required to provide indemnity to eligible medical practitioners based on their last contract of insurance. The medical indemnity insurers manage any claims that emerge under a ROCS insurance policy. The Government reimburses the insurer for any valid claims (including the cost of managing claims) made against eligible medical practitioners.

Regulations require that we pay the Government a certain percentage of premiums collected to fund the ROCS. Your renewal notice will detail the ROCS Support Payment we have paid on your behalf.

## Eligibility

You are eligible for ROCS if you:

- (a) are aged 65 years or over and have retired permanently from remunerated private medical practice;
- (b) are aged 65 years or over and have retired permanently from all remunerated medical practice (including public sector);
- (c) have not engaged in any remunerated private medical practice at any time during the preceding period of 3 years;
- (d) have not engaged in any (including public sector) remunerated medical practice in the preceding 3 years;
- (e) have ceased all remunerated (temporarily or permanently) medical practice because of maternity\*;
- (f) have ceased all remunerated medical practice because of a permanent disability\*\*; or
- (g) have left Australia permanently having practised in Australia on a Visa sub class 422 or 457.

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

\* A person is taken to have ceased practice as a medical practitioner because of maternity if and only if:

- (a) the person has ceased all practice as a medical practitioner:
  - (i) because she is pregnant;
  - (ii) has given birth; or
  - (iii) in order to care for one or more children to whom she has given birth; or
  - (iv) is recovering from a pregnancy (including a miscarriage or stillbirth); and
- (b) another person who is a medical practitioner has certified, that the person is pregnant, has given birth or is recovering from a pregnancy as the case may be.

\*\* A person is taken to have ceased practice as a medical practitioner because of permanent disability if and only if the person has permanently ceased all medical practice because:

- (a) the person has incurred an injury, or suffers from an illness, that is permanent, or is likely to be permanent; and
- (b) as a result of the injury or illness, the person can no longer practice in the area of medicine in which he or she had (at the time of the injury or illness) chosen to practice and been qualified to practice; and
- (c) another person who is a medical practitioner has certified that the person:
  - (i) has incurred an injury or suffers from an illness, that is permanent or is likely to be permanent; and
  - (ii) can no longer practise in that area of medicine.



### **Factors affecting your eligibility**

You should be aware that you will immediately become ineligible for ROCS for a number of reasons including if:

- you engage in any remunerated private medical practice, regardless of how few hours you work; or
- you work in the public sector and claim against your Medicare Australia provider number.

More information on the ROCS is available from the Department of Health and Ageing at [health.gov.au](http://health.gov.au).

If you believe you may be eligible for the ROCS, please contact our Member Services team on 1800 011 255 as you may not need to purchase or renew your Professional Indemnity Insurance Policy.

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

Please refer to pages 4 and 5 of the Financial Services Guide.

### **Financial Claims Scheme**

This Policy may be a 'protected policy' under the Federal Government's Financial Claims Scheme (FCS), which is administered by the Australian Prudential Regulation Authority (APRA). The FCS is intended to protect certain policyholders in the extremely unlikely event of an insurer becoming insolvent. A person entitled to claim under a protected policy may be entitled to payment under the FCS although access to the scheme is subject to eligibility criteria. Information about the FCS can be obtained from FCS at [fcs.gov.au](http://fcs.gov.au) or by calling the FCS infoline on 1300 558 849.

## SECTION 3: Policy Wording

### Professional Indemnity Insurance Policy

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

When issuing your 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 this Policy wording and the Certificate of Insurance carefully and keep them in a safe place. When reading this Policy wording, please note the use of specially defined words in clause 45.

### What we insure you for

#### Civil Liability

1. We will indemnify you for civil liability for a claim against you arising directly out of your provision of healthcare services, but only when:
  - (a) the claim against you is first made during the period of insurance; and
  - (b) you tell us about the claim against you in writing during the period of insurance; and
  - (c) the claim against you arises from an act or omission occurring on or after the retroactive date and not within any non-practising period.

Notwithstanding exclusion 20.4, when we have separately agreed in writing to do so, we will indemnify you under this clause for civil liability for a claim against you arising out of your provision of healthcare services to a public patient in a public hospital.

#### Good Samaritan acts

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

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

### Breach of privacy

3. We will indemnify you:
  - 3.1 for civil liability for a claim against you arising out of your unintended breach of the *Privacy Act 1988* (Cth) or equivalent State or Territory legislation in connection with your provision of healthcare services, but only when:
    - (a) the claim against you is first made during the period of insurance; and
    - (b) you tell us about the claim against you in writing during the period of insurance; and
    - (c) the claim against you arises from an act or omission occurring on or after the retroactive date and not within any non-practising period.
  - 3.2 to the extent permitted by law, for a civil fine or penalty arising out of your unintended breach of the *Privacy Act 1988* (Cth) or equivalent State or Territory legislation but only when:
    - (a) the breach arises out of your provision of healthcare services; and
    - (b) you first become aware of the possible or alleged breach during the period of insurance; and
    - (c) you tell us in writing about the possible or alleged breach during the period of insurance; and
    - (d) the breach occurred on or after 1 July 2018 or the retroactive date, whichever is the later.

We will not indemnify you with respect to any breach which occurs or continues after you knew, or reasonably ought to have known that you would contravene the *Privacy Act* or equivalent legislation.

### Liability for reports about others

4. We will indemnify you for civil liability for a claim against you (including a claim for defamation) arising directly out of you, in good faith and in the public interest, reporting an incident or a registered healthcare professional to a hospital, area health authority or professional body or participating in the examination of the incident or registered healthcare professional, but only when:
  - (a) the claim against you is first made during the period of insurance; and
  - (b) you tell us about the claim against you in writing during the period of insurance; and
  - (c) the claim against you arises from a report made on or after the retroactive date.

### **Legal costs for defending claims against you**

5. Subject to clause 36, we will indemnify you for legal costs that we incur on your behalf for defending you against any civil liability claim against you that is covered under any of clauses 1 to 4 or 10 of your Policy.

### **Legal costs for investigations, inquiries and self-referral to a health Program under the National Law**

6. We will indemnify you for:
  - (i) legal costs that we incur on your behalf in assisting you in an investigation and legal costs of a professional registration board or professional services review committee that you are ordered to pay as a result of a finding made against you in the investigation; and
  - (ii) legal costs that we incur on your behalf in assisting you in an inquiry arising from the provision of healthcare services by you; and legal costs that you are ordered to pay as a result of a finding made against you in the inquiry; but only when:
    - (a) you first become aware of the investigation or inquiry during the period of insurance; and
    - (b) you tell us about the investigation or inquiry in writing during the period of insurance; and
    - (c) the investigation or inquiry arises out of an act or omission occurring on or after the retroactive date and not within any non-practising period.
  - (iii) Notwithstanding exclusions 20.11, 20.12, 20.13, 20.14 and 20.17, costs that we incur on your behalf for reasonable legal assistance requested by you during the period of insurance to apply for referral to a Health Program established under the National Law in respect of an impairment that you have that detrimentally affects your provision of healthcare services as a medical practitioner or your undertaking clinical training as a medical student.

### **Legal costs for defence against allegations of sexual misconduct and criminal conduct towards patients**

7. We will indemnify you for reasonable legal costs incurred by you with our consent, or incurred by us on your behalf, for the successful defence of any claim against you, criminal proceeding, investigation or inquiry, arising out of alleged sexual misconduct or criminal conduct by you against a patient arising directly out of your provision of healthcare services to the patient, if and when:
- (i) in the case of a civil liability claim against you, it has been permanently discontinued, or there is a final judgment in your favour; or
  - (ii) in the case of a criminal proceeding, it has been permanently discontinued, or you have been found not guilty, or the charges against you have been dropped; or
  - (iii) in the case of an investigation or inquiry, it has been permanently discontinued, or the outcome is that no finding of professional misconduct has been made against you;
- but only if:
- (a) you first become aware of the claim against you, criminal proceeding, investigation or inquiry during the period of insurance; and
  - (b) you tell us about the claim against you, criminal proceeding, investigation or inquiry during the period of insurance; and
  - (c) the claim against you, investigation or inquiry arises from an act or omission occurring on or after the retroactive date and not within any non-practising period; and
  - (d) all appeal rights of any party in relation to the allegations made against you have been exhausted.

We may at our absolute discretion agree to advance the legal costs under this clause to you as they are incurred and prior to the finalisation of any claim against you, criminal proceeding, investigation or inquiry. We may in our absolute discretion cease to advance legal cost to you at any time and take steps to recover from you any legal cost already paid under this clause.

If we do advance legal costs to you, and we subsequently determine that we have no liability to pay those legal costs under this clause, then you must repay those legal costs to us.

If we do not advance legal costs and you are eligible for indemnity under this clause, you must provide evidence of the legal costs incurred by you. We will indemnify you only for the reasonable costs incurred by you in conducting your defence.

### **Communicable disease cover**

8. We will indemnify you for communicable disease, but only when:
- (i) you are first diagnosed as having a communicable disease during the period of insurance; and
  - (ii) you tell us in writing about the diagnosis during the period of insurance; and
  - (iii) if you are insured under your Policy as:
    - (a) a medical practitioner, you show us that, solely by reason of that diagnosis, you have permanently ceased practice as a medical practitioner or substantially altered your practice of medicine; or
    - (b) a medical student, you show us that, solely by reason of that diagnosis, you have permanently ceased studies as a medical student;

but not if:

- (iv) you have been diagnosed prior to the commencement of the period of insurance as having the communicable disease; or
- (v) you knew or a reasonable person in your professional position could be expected to have known that you had the communicable disease before the date when we first commenced providing insurance for communicable disease to you under insurance that you have continuously renewed with us from that date until the period of insurance; or
- (vi) you have previously received a payment from us, another insurer, a medical defence organisation or medical indemnity provider as a result of your having been diagnosed as having the same or any other communicable disease.

The amount we will pay will be the amount set out for the Sub-Limit of Indemnity for clause 8 in the Certificate of Insurance for:

- (a) a medical student if you were a Medical Student at the time of the diagnosis; and
- (b) a medical practitioner if you were a Medical Practitioner at the time of the diagnosis.

The amount for communicable disease is payable once only and only for one communicable disease.

## Automatic additional cover for medical practitioners

### Your practice entity (medical practitioners only)

9. If you are a medical practitioner, we will indemnify under your Policy a practice entity controlled by you for civil liability for a claim:
- (i) made against that practice entity arising directly from healthcare services provided by you personally; and
  - (ii) for which you could claim indemnity under your Policy if it were made against you;

but only when:

- (a) the claim is first made against the practice entity during the period of insurance; and
- (b) you tell us about the claim against the practice entity in writing during the period of insurance; and
- (c) the claim against the practice entity arises from an act or omission occurring on or after the retroactive date and not within any non-practising period; and
- (d) the practice entity and you comply with the terms and conditions of your Policy that you must comply with.

We will also indemnify the practice for legal costs incurred by us on its behalf to defend against the claim against the practice entity. If the practice entity is not 100% owned by you, the indemnity we will pay shall be proportional to your percentage ownership of the practice entity.

### Clinical trials cover (medical practitioners only)

10. If you are a medical practitioner, we will indemnify you for civil liability for a claim against you arising directly out of the provision of healthcare services by you as part of your involvement in a clinical trial or research project that both:
- (i) has approval from an ethics committee in accordance with the National Health and Medical Research Council guidelines; and
  - (ii) has been conducted in accordance with any conditions or approval made by the ethics committee;

but only when:

- (a) the claim against you is first made during the period of insurance; and
- (b) you tell us about the claim against you in writing during the period of insurance; and
- (c) the claim against you arises from an act or omission occurring on or after the retroactive date and not within any non-practising period.

## **Defamation claims and legal costs of defamation allegations (medical practitioners only)**

11. If you are a medical practitioner, we will indemnify you for:
- 11.1 civil liability for a claim against you (and for legal costs that we incur on your behalf for defending you against that claim) arising from defamation by you in the course of your provision of healthcare services but only when:
    - (a) the claim against you is first made during the period of insurance; and
    - (b) you tell us about the claim against you in writing during the period of insurance; and
    - (c) the defamation occurred on or after the later of 1 July 2017 or the retroactive date and not within any non-practising period; and
    - (d) you did not engage in the alleged defamation with dishonest or malicious intent, or knowingly or deliberately in contravention of any law, rule, regulation or order of a court or tribunal, or with reckless disregard for the consequences; and
    - (e) the claim against you is not a claim for which you are entitled to indemnity under clause 4 (Liability for reports about others); and
  - 11.2 legal costs incurred by us on your behalf in pursuing a defamation allegation against a person who is not a registered healthcare professional or a medical student that arises from defamation of you as a medical practitioner or directly in relation to the healthcare services that you provide, but only when:
    - (a) you first become aware of the alleged defamation during the period of insurance; and
    - (b) you tell us about the alleged defamation in writing during the period of insurance; and
    - (c) the alleged defamation occurred on or after the later of 1 July 2017 or the retroactive date and not within any non-practising period.

In respect of indemnity under sub-clause 11.2 for a defamation allegation made by you against another the excess of \$20,000 applies to each separate pursuit of one or more defamation allegations.

We will not pay or incur, or continue to pay or incur, legal costs of you pursuing any defamation allegation if we, in our absolute discretion, consider that your allegation does not have reasonable prospects of success, or for any other reason, including but not limited to legal costs, should not be pursued. We may, but are not obliged to, seek legal advice as to the merits and prospect of success of your allegation.

If you pursue a defamation allegation and you become entitled to a payment for legal costs, you must repay to us any money incurred by us in pursuit of the defamation allegation, less any of the excess paid by you.



- 11.3 We will not indemnify you or make any payment under either sub-clause 11.1 or 11.2 when the matter for which you claim indemnity under the Policy:
- (a) arises from defamation that occurred outside Australia; or
  - (b) is subject to the law of a country other than Australia; or
  - (c) is based on or derived from a judgment or order of a court of a country other than Australia.

**Legal costs for Apprehended Violence Orders (medical practitioners only)**

12. If you are a medical practitioner, we will indemnify you for legal costs we incur on your behalf in seeking an Apprehended Violence Order or equivalent relief where there is a threat to the personal safety of you or a member of your immediate family, but only when:
- (a) you first become aware of the threat during the period of insurance; and
  - (b) you tell us about the threat in writing during the period of insurance; and
  - (c) the threat is related to your provision (or non provision) of healthcare services occurring on or after the retroactive date.

**Legal costs for alleged breaches of the *Competition and Consumer Act* and fair trading legislation (medical practitioners only)**

13. If you are a medical practitioner, we will indemnify you for legal costs incurred by us on your behalf to defend against a claim that you breached a provision of the *Competition and Consumer Act 2010* (Cth), the *Trade Practices Act 1974* (Cth) or any State or Territory fair trading legislation in connection with your provision of healthcare services, but only when:
- (a) the claim that you breached the legislation is first made against you during the period of insurance; and
  - (b) you tell us about the claim that you breached the legislation in writing during the period of insurance; and
  - (c) the claim that you breached the legislation arises from an act or omission occurring on or after the retroactive date and not within any non-practising period; and
  - (d) the claim that you breached the legislation does not arise from a malicious act or omission or intentional breach.

### **Legal costs for employment and credentialing disputes (medical practitioners only)**

14. If you are a medical practitioner, we will indemnify you for legal costs we incur on your behalf for:

- (i) defending against an allegation or claim against you by a person formerly, currently or proposed to be employed or contracted as a staff member by you that relates to or arises from the contract or proposed contract under which the employee or contracted staff member was, is or will be engaged to assist you in the provision of healthcare services; or
- (ii) defending against an allegation or claim against you by your former, current or proposed employer or principal that relates to or arises from the contract or proposed contract under which you were, are or will be employed or contracted to provide healthcare services in your field of practice; or
- (iii) pursuing an allegation or claim by you, as an employee, against your former, current or proposed employer or, as a contracted staff member, against your principal that, in either case, relates to or arises from the contract or proposed contract under which you were, are or will be employed or engaged to provide healthcare services in your field of practice, but in relation to any claim by you for unpaid remuneration or other monies, we will not pay legal costs in excess of the amount sought by you in that claim;

in each case of sub-clauses (i), (ii) or (iii) above, including a complaint under anti-discrimination or equal opportunity legislation; or

- (iv) pursuing an allegation by you of lack of procedural fairness in relation to a decision which has resulted in a mid-term suspension or revocation of your credentialing with a hospital or health service;

but only when:

- (a) you first become aware of the allegation or claim against you or the matters which give rise to a claim by you against another during the period of insurance; and
- (b) you tell us about the allegation or claim against you or the matters which give rise to a claim by you against another in writing during the period of insurance; and
- (c) the allegation or claim against you, or claim by you against another, arises from an act, omission or event occurring on or after the retroactive date and not within any non-practising period.

We will not pay or incur, or continue to pay or incur, legal costs of you pursuing any allegation or claim by you against another if we, in our absolute discretion, consider that such allegation or claim does not have reasonable prospects of success, or for any other reason, including but not limited to legal costs, should not be pursued. We may, but are not obliged to, seek legal advice as to the merits and prospects of success of such allegation or claim.

We will not indemnify you under this clause in respect of an allegation or claim against you or allegation or claim by you against another, arising from bodily injury, mental injury, sickness, disease, disability, incapacity or death.

#### **Legal costs for Medical College training disputes (medical practitioners only)**

15. If you are a medical practitioner, we will indemnify you for legal costs incurred by us on your behalf in pursuing or defending against an internal complaint or appeal under the by-laws of a medical college arising out of your involvement with a training program approved by that Medical College, but only when:
- (a) you first become aware of the complaint or appeal or the facts and circumstances giving rise to the complaint or appeal during the period of insurance; and
  - (b) you tell us about the complaint or appeal in writing during the period of insurance; and
  - (c) the complaint or appeal relates to an act, omission or event occurring on or after the retroactive date and not within any non-practising period.

We will not pay or incur, or continue to pay or incur, legal costs of you pursuing any complaint or appeal if we, in our absolute discretion, consider that the pursuit of such complaint or appeal does not have reasonable prospects of success, or for any other reason, including but not limited to legal costs, should not be pursued. We may, but are not obliged to, seek legal advice as to the merits and prospects of success of such complaint or appeal.

#### **Loss of Documents (medical practitioners only)**

16. If you are a medical practitioner, in the event of any loss of documents which in the ordinary course of your providing healthcare services were in your possession or the possession of those to whom the documents were entrusted by you, we will indemnify you for the reasonable costs and expenses incurred by you in replacing or restoring those documents, but only when:
- (a) the loss of documents occurred, or you first become aware of, the loss of documents during the period of insurance; and
  - (b) you notify us about the loss of documents in writing during the period of insurance; and
  - (c) we have agreed to the costs of replacement or restoration before they are incurred.

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

### Loss of Income (medical practitioners only)

17. If you are a medical practitioner, we will reimburse you for your personal income forgone by you as a result of you attending a hearing at court if and only if it is with respect to a matter for which you are indemnified under clause 1 of this Policy and;
- (a) lawyers instructed by us on your behalf confirm in writing that your attendance is required;
  - (b) you are unable to work on the relevant day due to your attendance at court;
  - (c) you furnish to us evidence, satisfactory to us, of your loss of income and that the loss of income resulted from your attendance at a hearing at court;
  - (d) the claim against you was made after 1 July 2018.

### How much we insure for you

18. The Maximum Level of Indemnity and, provided the Maximum Limit of indemnity is not exceeded, the sub-limits of indemnity are set out in the following table.

<b>The total amount we will pay for the aggregate of all claims, legal costs and other matters paid under your Policy during the period of insurance will not exceed the Maximum Limit of Indemnity set out in the Certificate of Insurance</b>	<b>Maximum Limit of Indemnity</b>
All claims under the Policy during the period of insurance	\$20,000,000 in the aggregate
<b>Provided that the Maximum Limit of Indemnity is not exceeded, the following sub-limits apply during the period of insurance</b>	<b>Sub-limits as set out below</b>
Clause 3.2 - Fines and penalties for breaches of the <i>Privacy Act 1988</i> (Cth)	\$250,000 in the aggregate
Clause 6 and 7(ii) and (iii) - Legal costs for investigations, inquiries, self referrals to a health Program under the National Law and claims under the Policy with respect to sexual misconduct and criminal conduct	\$1,000,000 in the aggregate

Clause 8 - Communicable Disease cover	\$100,000 Medical Practitioners \$50,000 Medical Students  Payable once only per Insured and for only one Communicable Disease as defined
Clause 11 - Defamation claims against you and pursuit of a defamation allegation against another	\$100,000 in the aggregate for: <ul style="list-style-type: none"> <li>defamation claims against you including legal costs for the defence of defamation claims against you; and</li> <li>legal costs for the pursuit of defamation allegations but only after the exhaustion of \$20,000 excess payable by you</li> </ul>
Clause 12 - Legal costs for you seeking an Apprehended Violence Order against another	\$100,000 in the aggregate
Clause 13 - Legal costs of defending alleged breaches of competition, consumer or fair trading legislation	\$100,000 in the aggregate
Clause 14 - Legal costs of employment disputes and credentialing disputes	\$100,000 in the aggregate but in relation to legal costs for any claim by you against another for unpaid remuneration and other monies under clause 14(iii) we will not pay more than the amount sought by you in that claim
Clause 15 - Legal costs of medical college training disputes	\$100,000 in the aggregate
Clause 16 - Loss of Documents	\$100,000 in the aggregate
Clause 17 - Loss of income for attending a hearing at court with respect to a civil liability claim against you	\$20,000 in the aggregate with a maximum of \$2,000 per day for up to 10 days

19. For the purpose of determining which one period of insurance applies, where:
- (a) an act or omission;
  - (b) one or more related acts or omissions;
  - (c) any course of related treatment;
  - (d) any acts or omissions which are substantially in common with each other;
  - (e) any courses of treatment which are substantially in common with each other; or
  - (f) the same or similar underlying cause or source
- gives rise to more than one claim against you, all such claims will constitute a single claim against you and will be treated as if first made at the time of the earliest claim against you by any claimant.

## **Exclusions**

### **What we exclude from your Policy**

20. We will not indemnify you or make a payment under your Policy when:
- 20.1 and to the extent that you are entitled to indemnify under a previous policy issued by us or another insurer (to the extent allowed by law) or you have the benefit of a prior indemnification arrangement with a Medical Defence Organisation or you are indemnified under a government scheme or you are entitled to any indemnity from your employer or other indemnity provider;
  - 20.2 the matter for which you claim under the Policy:
    - (a) was known by you, or a reasonable person in your professional position could be expected to have known; or
    - (b) arises out of an act, omission or event which you knew, or a reasonable person in your professional position could be expected to have known before the period of insurance commenced, might give rise to the matter, but this exclusion does not apply for the purposes of clause 8(v);
  - 20.3 the matter for which you claim under the policy arises from circumstances which you notified to us, to another insurer, Medical Defence Organisation or indemnity provider before the period of insurance;
  - 20.4 the claim against you arises in any way out of your provision of healthcare services to a public patient in a public hospital except to the extent that we have confirmed in writing that you are indemnified under clause 1;
  - 20.5 the claim against you arises out of the provision of elective medical treatment by you to a member of your immediate family on or after 1 July 2004;

- 20.6 the matter for which you claim under the policy arises in any way out of an act or omission by you when you were not registered, were prohibited from practising or you acted outside of, or did not comply with the terms, limitations or requirements of your registration;
- 20.7 the matter for which you claim under the policy, arises in any way out of a practice or procedure not associated with your field of practice, except where the matter for which you claim under the policy relates to Good Samaritan acts described in clause 2;
- 20.8 the matter for which you claim under the policy 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 27 asking you to stop using the procedure or practice;
- 20.9 the matter for which you claim under the policy arises in any way out of or in connection with defamation or any allegation of defamation, except to the extent that we agree to indemnify you under clause 4 or clause 11;
- 20.10 the claim against you arises in any way from any of the following activities in connection with a clinical trial or research project:
- (a) claims against you in any way relating to your sponsorship, administration, design or control of the trial or project;
  - (b) claims against you arising from adverse outcomes where you did not provide healthcare services;
  - (c) claims against you relating to the clinical trial or research project protocol;
  - (d) claims against you relating to your overseeing the clinical trial or research project or any act or omission by you as a member of an ethics committee;
- 20.11 the claim against you or inquiry arises in any way as a result of the transmission of a disease from you or from someone for whom you are vicariously liable to a patient when, at the time of transmission, you knew or reasonably should have known that the infected person was carrying the disease;
- 20.12 the matter for which you claim under the policy arises in any way out of any actual or alleged:
- (a) sexual misconduct or criminal conduct, except to the extent that you are indemnified for your legal costs under clause 7; or
  - (b) sexual misconduct, including sexual harassment, except to the extent that you are indemnified for legal costs under clause 14(i), 14(ii) or 14(iii);

- 20.13 the claim against you or inquiry 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 service because of the influence of such intoxicant or drug;
- 20.14 the matter for which you claim under the policy 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;
- 20.15 and to the extent that you are legally obliged:
- (a) as a result of an investigation or inquiry to refund any fee charged to or in respect of a patient; or
  - (b) to pay a fine or a civil or criminal penalty, except to the extent that we agree to indemnify you under clause 3.2; or
  - (c) to pay punitive, aggravated or exemplary damages; or
  - (d) in relation to matters under clauses 14 and/or 15, to pay any other party any amount for legal costs;
- 20.16 the claim against you arises in any way out of the development, manufacture, storage, supply or endorsement of any good or product, except for the manufacture or supply of a product by you as an intrinsic part of you providing healthcare services to your patients;
- 20.17 the claim against you or inquiry arises in any way out of the unlawful sale, supply, use or administration of any substance;
- 20.18 the matter for which you claim under the policy arises in any way out of the ownership, use, lease, occupation or state of any premises or anything done or omitted to be done in respect of the state of any premises;
- 20.19 the matter for which you claim under the policy 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, except for the provision of healthcare services to a patient who has symptoms, whether actual or alleged, as a result of exposure to pollution (including asbestos), whether directly or indirectly;
- 20.20 the matter for which you claim under the policy arises in any way out of:
- (a) any contract for the sale or purchase of any asset, property or investment, including a contract for the purchase or sale of all or part of your or another practice providing healthcare services;
  - (b) any dispute arising out of or in connection with an employment contract or contract for services entered into in connection with your sale of a practice;



- (c) any contractual liability, warranty or guarantee except if you would have been otherwise liable in the absence of the contractual liability, warranty or guarantee;
  - (d) any trading debt or guarantee for payment of a trading debt;
  - (e) payment or non-payment of any dividend or other form of profit sharing or distribution;
- 20.21 the matter for which you claim under the policy 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 does not apply to any healthcare procedure performed as a result of or in an attempt to prevent any injuries arising out of any terrorism, war or warlike situation;
- 20.22 the matter for which you claim under the policy arises out of:
- (a) a judgment or order:
    - (i) by a court in the United States of America or its territories; or
    - (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 (other than loss of electronic documents or data) which occur within the territorial limits of the United States of America or its territories.
- This exclusion does not apply to Good Samaritan acts described in clause 2;
- 20.23 you have, without our consent, admitted liability with respect to any matter for which you claim or may be entitled to claim under the policy;
- 20.24 the matter for which you claim under the policy is a matter in respect of which we are prohibited from providing or not authorised to provide cover, including but not limited to workers' compensation.
21. In addition to clause 20, if you are a medical practitioner, we will not indemnify you or make a payment under your Policy when:
- 21.1 the matter for which you claim under the policy arises from the acts or omissions of an employee, contractor or any other person when those acts or omissions were:
    - (a) outside the terms and conditions of his or her employment, contract or agreement; or
    - (b) outside the boundaries of his or her training and/or qualifications; or
    - (c) not under your supervision.

- 21.2 a person makes a claim against you because, and only because, that person is or was an employee or agent of you or a practice entity controlled by you or because you or a practice entity controlled by you did not employ that person, except to the extent that you are indemnified for legal costs under clause 14;
  - 21.3 the matter for which you claim under the policy arises in any way out of a dispute between you and a current, former or prospective partner or co-owner in your practice entity, other than a claim against you of professional negligence;
  - 21.4 the matter for which you claim under the policy arises from any act or omission occurring or allegedly occurring outside the Commonwealth of Australia or its territories or protectorates, unless we have agreed in writing to extend cover and then only to the jurisdictions and for the period of time specified by us in writing. This exclusion does not apply to Good Samaritan acts described in clause 2 or to loss of electronic documents or data covered under clause 16;
  - 21.5 the matter for which you claim under the policy is in connection with an allegation or claim against you or by you against another relating to your credentialing with a hospital or health service, except to the extent that you are covered under clause 14(iv).
22. In addition to clause 21, if you are a medical student, we will not indemnify you or make a payment under your Policy when:
- 22.1 the matter for which you claim under the policy arises in any way out of your provision of healthcare services where you are acting outside the terms and guidelines of your university elective or scholarship placement, except where the matter for which you claim under the policy relates to Good Samaritan acts described in clause 2;
  - 22.2 the matter for which you claim under the policy arises in any way out of your provision of healthcare services when you are not under the supervision of a medical practitioner, except where the matter for which you claim under the policy relates to Good Samaritan acts described in clause 2;
  - 22.3 the matter for which you claim under the policy arises in any way out of your provision of healthcare services in respect of which you represented or held yourself out as a medical practitioner.

### **Fraudulent claims**

23. We may reject a claim under your Policy if the claim or any part of the claim is fraudulent or made fraudulently.

## Conditions

### Payment of premium

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

### You have to notify us of a claim against you or incident

25. You must notify us in writing as soon as practicable after you become aware of:

- (a) any claim against you, investigation or inquiry;
- (b) any fact or circumstance that might lead to a claim against you or to an investigation or inquiry involving you; and
- (c) any other circumstance which might give rise to a matter for which you may be entitled to make a claim under your Policy whether or not such a claim is made.

### Other insurance

26. If you seek indemnity under your Policy you must tell us about any other insurance or other entitlement to indemnity that may indemnify or compensate you, including the identity of the other insurer or indemnifier, the policy number and any other information that we may reasonably require.

### Stop notice

27. 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 giving rise to a claim against you, investigation or inquiry; and
- (b) we give you 14 days' notice asking you to stop using the procedure or practice.

### Your duty to co-operate

28. 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 healthcare practice and books and records of your medical services; and
- (b) co-operate fully with us, our investigators and legal representatives; and
- (c) attend any risk management meetings that we request in writing and co-operate fully with us by providing us with all information concerning your risk management.

29. Your duty to co-operate includes, but is not limited to:
- (a) providing medical records, treatment notes, billing records, tax returns, and other financial documents;
  - (b) providing information and identifying and locating witnesses;
  - (c) permitting our investigators and legal representatives access to your practice records;
  - (d) attending meetings in person or by telephone with us or our investigators or legal representatives or experts engaged by or for us, for the purpose of being interviewed or providing information or evidence in oral or written form;
  - (e) co-operating with our investigators and legal representatives in the preparation, defence or conduct of legal proceedings;
  - (f) refraining from direct communication with any court, tribunal or other decision-making body and any other party involved in a claim against you, an investigation or inquiry, or an allegation made by you without, or contrary to, approval or advice from us or our legal representatives;
  - (g) attending court, investigations, inquiries and other hearings for the purpose of giving evidence or assisting our legal representatives;
  - (h) undergoing medical and other examinations;
  - (i) seeking our consent, or advice from our legal representatives, in relation to and before communicating with other persons or entities involved in a claim against you, an investigation or inquiry or an allegation pursued by you; and
  - (j) complying with our requests for information, including for evidence of gross annual billings and other financial information.
30. 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**

31. You must not, without our prior written consent:
- (a) admit liability for a claim against you or potential claim against you; or
  - (b) do or not do anything which may compromise us, including our ability to defend you against a claim against you or potential claim against you or assist you in an investigation or inquiry; or
  - (c) make any payment or settlement, or offer of payment or settlement, of any claim against you or potential claim against you
- in respect of which we may be liable to indemnify you.
32. You must use all reasonable measures to avoid or reduce any liability under your Policy.

**Alteration of risk**

33. You must give us notice as soon as practicable of any material alteration of the risk during the period of insurance, including without limitation any material change in your field of practice, the nature or extent of the healthcare services provided by you, the risk category you have previously declared or your gross annual billings. We will be entitled to exercise rights including but not limited to adjusting the premium that you are liable to pay and/or amending the terms of your Policy to reflect the change in the risk.

**Proof of billings**

34. If we request it, you must provide us with independent evidence (such as an accountant's report) of your gross annual billings for the period of insurance within 30 days of the request. If your gross annual billings vary from the range shown in your field of practice, we will be entitled to exercise rights against you including cancellation of the policy or charging further premium. If you do not provide the evidence within 30 days after our request, we may cancel your Policy. Your obligations under this clause and our entitlement to adjust the premium continue after the termination, expiration or cancellation of the Policy.

## **General terms**

### **Allocation of defence costs**

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

### **Our right to the conduct and control of proceedings**

36. You agree that:

- (a) we have the right to conduct and control all matters that we agree to indemnify under your Policy, including their investigation, defence, avoidance, reduction, settlement and, subject to clause 37, any appeal as we see fit; and
- (b) we may do so in your name.

However, we will not admit liability for or settle any claim against you, investigation, inquiry or other matter without your prior consent, which is not to be withheld unreasonably. In determining whether your consent has been withheld unreasonably, we can take into account any factor including the merits and prospects of success and costs and may, but are not obliged to, seek legal advice.

If you do not consent to our settling a claim against you, or otherwise resolving an investigation, inquiry or other matter, your entitlement to indemnity for legal costs will cease and our liability is limited to the amount we recommend in settlement and/or payment of legal costs up to the date that we recommended settlement of the claim against you or resolution of the investigation, inquiry or other matter to you.

### **Appeals**

37. 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 indemnified you or advanced legal costs to you under your Policy, and you want to appeal against that decision, you must request our written approval within 14 days after the decision is handed down, or within such shorter period as would be reasonable having regard to the time limit for an appeal to be filed. You must do so in writing, setting out your reasons for wanting to appeal. We will inform you in writing whether we consent or not to pay your legal costs of the appeal.

We will not pay or incur, or continue to pay or incur, legal costs of you pursuing any appeal if we, in our absolute discretion, consider that such appeal does not have reasonable prospects of success, or for any other reason, including but not limited to legal costs, should not be pursued. We may, but are not obliged to, seek legal advice as to the merits and prospect of success of such appeal.

Our decision to pay your legal costs of any appeal is final and in our complete discretion.

If you decide to appeal without our consent, we will not pay any additional legal costs associated with the appeal or any further amount which may be an outcome of the appeal.

If your appeal is successful and you are entitled to a payment or refund of legal costs paid by us and/or any money that we paid the claimant, that payment or refund becomes a debt to us and you must forward that payment or refund to us less any legal fees and expenses you have incurred in the appeal.

The amount payable under the Policy in respect of any appeal is included in the relevant sublimit.

### Subrogation

38. You agree not to surrender any right to, or settle any claim against you or by you against another for, contribution, indemnity or recovery, without our consent.
39. If we make a payment under your Policy, we are subrogated to all of your rights of contribution and indemnity or recovery.

### Cancellation

40. You may cancel your Policy at any time by notifying us in writing.

If you cancel your Policy within the cooling off period of 21 days after it was issued to you, your premium will be refunded in full with no cancellation fee deducted.

If you cancel your Policy outside the cooling off period, a cancellation fee applies which is equivalent to 45 days' premium.

If you have paid your premium in full, we will deduct this cancellation fee from the refund. If you are paying the premium in instalments, you are still liable to pay the cancellation fee. We will issue any refund directly to your nominated bank account or if instructed by you (or if the total refund is less than \$5), donate the amount to a registered charity identified within our Corporate Social Responsibility program.

There will be no refund of premium (but our rights to a cancellation fee are maintained) where:

- (a) the total premium paid is \$20 or less; or
- (b) you have notified a claim or potential claim under the Policy.

Within 30 days of cancellation you must pay to us any cancellation fee and any outstanding premium owing at the date of cancellation, failing which we may recover those amounts from you as a debt.

41. We may cancel your Policy by giving you three business days' written notice if:
- (a) you fail to disclose or misrepresent to us any information that you know or could reasonably be expected to know was relevant to our decision to insure you and on what terms; or
  - (b) you fail to comply with your duty of utmost good faith to us; or
  - (c) you fail to comply with a provision of your Policy including the provision to pay the premium; or
  - (d) you are paying your premium by instalments and at least one instalment remains unpaid for over one month; or
  - (e) you fail to comply with any provision of your Policy which requires you to notify us including your obligation to notify us of any change in the healthcare services provided by you; or
  - (f) you make a fraudulent claim under the Policy.

Within 30 days of cancellation you must pay to us any outstanding premium owing at the date of cancellation, failing which we may recover the outstanding premium from you as a debt.

### **Governing law**

42. Any dispute that arises between you and us under your Policy will be subject to the law and jurisdiction of Western Australia.

### **Interpretation**

43. The headings in this Policy wording are included for descriptive purposes only and do not form part of your Policy for the purposes of construction or interpretation.
44. Under your Policy the masculine includes the feminine and the singular includes the plural and vice versa.



## Definitions

45. In your Policy:

**Certificate of Insurance** means the Certificate of Insurance to your Policy.

**Claim against you** means:

- (a) a demand for, or an assertion of a right to, compensation, damages or injunctive relief made against you; or
- (b) an intimation of an intention to seek compensation, damages or injunctive relief from you.

**Communicable Disease** means HIV, Hepatitis B or Hepatitis C viruses, extremely drug-resistant tuberculosis (XDRTB), multi-drug-resistant tuberculosis (MDRTB) and New Delhi Metallo enzyme enterococci.

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

**Documents** means any written, printed or reproduced material, or any electronic document or data used in connection with your practice providing healthcare services, but does not include any currency, negotiable instrument, cheque, stamp, bond or coupon, or any document evidencing title to or constituting a form of security.

**Excess** means the amount set out in the Certificate of Insurance that must be paid to us or at our direction before we will indemnify you.

**Field of practice** means the field of practice set out in the Certificate of Insurance and any other field of practice notified to us during the period of insurance for which we have agreed in writing to extend cover under your Policy.

**Healthcare service** means:

- (a) If you are a medical practitioner, the following services that you personally provide:
  - (i) 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; or
  - (ii) supervision, training or direction of a healthcare student or registered healthcare professional who is undertaking a recognised healthcare training program; or
  - (iii) supervision or direction of a person who is not a medical practitioner to assist you in providing healthcare treatment, services or advice to a patient; or
  - (iv) supervision, training or direction of a medical practitioner whose registration or licence is conditional upon such supervision; or
  - (v) a healthcare report or opinion not for the purpose of treatment; or

- (vi) healthcare advice to a person or organisation in relation to a person's fitness to carry out certain duties or activities; or
- (vii) writing an academic paper or an article in a peer reviewed, refereed healthcare journal; or
- (viii) as part of a professional but non-clinical role in medical education at a recognised institution, healthcare administration or medical research

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

- (b) If you are a medical student, the 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 medical student at your stage of medical study.

**Immediate family** means:

- (a) your current or former spouse, de facto or domestic partner;
- (b) your children;
- (c) the children of your current or former spouse, de facto or domestic partner;
- (d) your brothers, your sisters or your parents.

**Inquiry** means a hearing, inquiry, disciplinary or administrative proceeding, investigative process or conciliation:

- (a) in the case of medical practitioners and medical students, by or on behalf of a professional body, health services authority, medical tribunal, Royal Commission, Coroner's Court, criminal court, health or medical benefits fund, Information Commissioner, Privacy Commissioner, consumer protection agency or Anti-Discrimination Board (or equivalent);
- (b) in the case of medical students, by or on behalf of a university that you attend; and
- (c) including a notification, warning or intimation of (a) or (b)

but not by or on behalf of a professional registration board or professional services review committee.

**Investigation** means an investigation or disciplinary or administrative proceeding by a professional registration board or professional services review committee, including a notification, warning or intimation of those proceedings but not by or on behalf of an entity referred to in the definition of "inquiry".

**Legal costs** means lawyers' fees and disbursements reasonably and necessarily incurred for matters covered under your Policy, including for:

- (a) defending you against an allegation or claim against you; or
- (b) attending or assisting in an investigation or inquiry; or
- (c) prosecuting any proceedings for indemnity, contribution, recovery or other remedy; or
- (d) investigating, avoiding, reducing or settling any such matters above;

but does not include:

- (e) travel expenses or personal expenses incurred by you; and
- (f) any fees payable for lodgement of an appeal under the by-laws of a medical college.

**Loss of Documents** means:

- (a) the loss of, damage to or destruction of physical documents; or
- (b) the deletion, corruption or modification of electronic documents or data.

**Medical practitioner** means:

- (a) an individual registered, licensed, or provisionally registered or licensed, and providing healthcare services;
- (b) a final year medical student who has made an application for provisional registration;

in Australia as a medical practitioner under a law of the Commonwealth or any State or Territory of Australia that provides for the registration or licensing of medical practitioners.

**Medical student** means an individual who is both enrolled as a student in a faculty of medicine of an Australian university and registered as a medical student under a law of the Commonwealth or any State or Territory of Australia that provides for the registration of medical students.

**Non-practising period** means any period commencing after the retroactive date that is set out in the Certificate of Insurance or was declared by you to us and has been accepted by us as a period during which you did not practise as a registered healthcare professional or engage in providing any healthcare services in Australia.

**Period of insurance** means the period of insurance set out in the Certificate of Insurance.

**Policy** means the Certificate of Insurance, this Policy wording, any Endorsement to the Policy wording and current during the period of insurance, and any endorsements issued to you during the period of insurance.

**Proposal** means all documents comprising your application for, or renewal of, your professional indemnity insurance with us, including any Pre-Renewal Questionnaire.

**Registered healthcare professional** means a medical practitioner or an individual who practises a healthcare related vocation and who is registered under a law of the Commonwealth or any State or Territory of Australia to practise that vocation.

**Retroactive date** means the date specified in the Certificate of Insurance as the retroactive date.

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

**You** and **your** mean:

- (a) the person named as the insured in the Certificate of Insurance; and
- (b) the executor or administrator of that person's estate.



## SECTION 4: NSW Healthcare Liability Act 2001

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

### **Insurance Regulation Order 2006**

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

##### **Division 1**

###### **1. Preliminary**

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

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

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

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

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

## Division 2 - Existing policyholders

### 2. Decisions concerning individual cover

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

#### ***Withdrawal of cover***

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

### **3. Proper notice and explanation**

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

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

- (1) This clause applies to a refusal to provide approved insurance because of the incident and claims history of an existing policyholder.
- (2) For the purposes of this clause a decision by an insurer to charge a medical practitioner a premium which is at least twice the premium charged by the insurer to all, or a majority of, medical practitioners of the same premium category, is taken to be a decision to refuse to provide approved insurance.



- (3) If within 28 days of receiving notice of a decision to refuse to provide approved insurance in respect of an existing policyholder, the policyholder:
- (a) authorises the insurer, in writing, to notify the Medical Board of any matter which forms the basis of the decision and to provide to the Medical Board information and documentation relevant to such matter; and
  - (b) authorises the Medical Board, in writing, to provide to the insurer a copy of its advice to the practitioner as to the outcome of any such notification, if made, and in those cases where the Medical Board refers a matter to an Impaired Registrants Panel or for assessment under Part 5A of the *Medical Practice Act 1992*, copies of any relevant decisions, reports and recommendations arising from the referral,
- an insurer is to forward the relevant information to the Medical Board.
- (4) If an insurer is authorised to forward information to the Medical Board under sub clause (3), an insurer is not to give effect to the decision to refuse to provide professional indemnity insurance pending whichever of the following occurs first:
- (a) the expiration of a period of three months from the date of forwarding the relevant information pursuant to sub clause (3); or
  - (b) receipt and consideration by the insurer of copies of the information referred to under sub clause (3)(b).
- (5) If such matters are the subject of a referral to an Impaired Registrants Panel or form the basis of a referral for assessment under Part 5A of the *Medical Practice Act 1992*, the insurer is to:
- (a) review its decision (whether or not it has already given effect to that decision) following receipt and consideration by the insurer of any reports and recommendations arising from the referral, and of advice of any action taken by the Medical Board consequent upon those reports and recommendations; and
  - (b) take reasonable steps to advise the relevant practitioner of the outcome of that review.
- (6) Nothing in this clause prevents an insurer from charging a premium of an amount that does not constitute a refusal to provide approved insurance under sub clause (2) pending receipt of the Medical Board's advice or the expiration of three months, whichever first occurs, in accordance with sub clause (3).

## **Division 3 - New Applicants**

### **5. Decisions concerning individual cover**

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

#### ***Newly qualified practitioners***

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

#### ***Refusal of cover***

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





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