

# Professional Indemnity Insurance Policy

## Supplementary Financial Services Guide (FSG) & Product Disclosure Statement (PDS) including Amendments to the Policy Wording V.12

This Supplementary document details amendments to the MDA National Professional Indemnity Insurance Policy V.12 effective 1 July 2019.

The amendments are:

- to update the name and contact details of the external dispute resolution body from the Financial Ombudsman Services to Australian Financial Complaints Authority (AFCA) in the Financial Services Guide;
- to clarify that the legal costs of defending you against the imposition of a fine or penalty arising from an unintended breach of the *Privacy Act 1988* (Cth) are covered under the Policy, Clause 3.2;
- to provide cover for mandatory notification costs arising from an unintended breach of the *Privacy Act 1988* (Cth), Clause 3.3;
- to increase the sub-limit for legal costs for investigations and inquiries and self referrals to a health program under the National Law to \$2,000,000, clauses 6 and 7(ii) and (iii) ;
- to provide, subject to limitations, automatic cover for a total of six months while you are outside Australia, clauses 8A and 8B;
- to increase the cover available for the costs of defending defamation claims against you under the Policy to the limit of indemnity, Clause 11;
- to clarify the allocation of successful costs orders in pursuit of defamation claims, Clause 11.2;
- to update sub-limits in the table “How much we insure you for”, Clause 13;
- to make amendments to the single claim provision, Clause 19;
- to insert a condition to clarify the obligation, where applicable, to pay an excess, Clause 24 A;
- to amend the Policy Conditions to enable MDA National Insurance to undertake an audit of a Member’s gross annual billings and practice, Clause 34;
- to amend the Cancellation clause and remove the minimum threshold for a refund, Clause 41;
- to clarify the interpretation of pronouns and other gendered terms, Clause 44;
- to add new definitions of Eligible Data Breach and Employer Indemnified, Clause 45;
- to amend the definition of Excess.

The amendments apply to policies commencing on or after 1 July 2019. This Supplementary FSG, PDS and Amendments to the Policy Wording should be read in conjunction with the Professional Indemnity Insurance Policy Combined FSG, PDS and Policy Wording Version 12 which is available from the Download Centre on our website, [mdanational.com.au](http://mdanational.com.au).



## **Amendment to SECTION 1: Financial Services Guide**

### **1. Page 5 -External Dispute Resolution**

This section is amended to read:

#### **External dispute resolution**

If you are not satisfied with the outcome of our internal resolution process, you can refer the dispute to the Australian Financial Complaints Authority (AFCA). The AFCA 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 AFCA 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 AFCA's Terms of Reference. Please note that the AFCA is not able to consider matters relating to Membership of MDA National.

You can contact the AFCA by:

Phone: 1800 931 678  
(local call fee applies)

In writing: GPO Box 3 MELBOURNE  
VIC 3001.

## **Amendments to SECTION 2: Product Disclosure Statement**

### **2. Page 9 - Medical Practitioners and Students**

The following bullet point is added immediately after the first bullet point under the words

The Policy also:

- insures you for the cost of mandatory notification arising out of your unintended breach of the *Privacy Act 1988* (Cth) or equivalent State or Territory Legislation (Clause 3.3)

### **3. Page 9 - Medical Practitioners and Students**

The following bullet point is added immediately after the last bullet point under the words

The Policy also:

- provides limited cover for the first six months you are overseas in any period of insurance (but not, with some exceptions, with respect to the United States).

### **4. Page 12 - Policy Conditions**

The following sentence is added to the final paragraph of the section titled Policy Conditions:

We also have a right to conduct an audit of your gross annual billings and your practice (Clause 34).

## 5. Page 9 - Medical Practitioners and Students

The table in this section is replaced with the table below.

### How much we insure you for

The total amount we will pay for the aggregate of all claims, legal costs and other matters under your Policy during the period of insurance will not exceed the Maximum Limit of Indemnity set out in the Certificate of Insurance	Maximum Limit of Indemnity
All claims under the Policy during the period of insurance	\$20,000,000 in the aggregate
Provided that the Maximum Limit of Indemnity is not exceeded, the following sub-limits apply during the Period of Insurance	Sub-limits as set out below
Clause 3.2 - Fines and penalties for breaches of the <i>Privacy Act 1988</i> (Cth) Clause 3.3 - Costs of mandatory notification arising from 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	\$2,000,000 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 11.1 - Defamation claims against you	\$20,000,000 in the aggregate for:
	11.1 defamation claims against you including legal costs for the defence of defamation claims against you; and
Clause 11.2 - Defamation allegations pursued by you against another	\$100,000 in the aggregate for:
	11.2 legal costs for the pursuit of defamation allegations but only after the exhaustion of \$20,000 excess payable by you
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

## **6. Page 16 - Policy excess**

The text under this heading is replaced with:

### **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 it is a condition of indemnity under this Policy that you must pay, as directed by us, the applicable excess 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).

## **7. Page 16 - Single claim**

The text under this heading is replaced by:

Single claim

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;

gives rise to more than one claim against you (whether by one or more claimants), 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.

Without limiting the circumstances which constitute a single claim, all claims forming part of a class, group or representative action will constitute a single claim (Clause 19).

## **8. Page 18 - Policy variations**

The following heading and Clause is added immediately after the Run-off cover section:

### **Travelling overseas**

As set out below, the Policy provides limited cover for the first six months you are overseas in any period of insurance (but not, with some exceptions, with respect to the United States). If you will be overseas for more than six months or the overseas cover does not apply you can seek an extension of cover under your Policy by completing the Overseas Cover Request form via the Member Online Services section of our website [mdanational.com.au](http://mdanational.com.au) or by writing to us.

## **9. Pages 18 and 19 - Policy variations**

### **Practising outside Australia and Team Doctors Travelling Overseas**

These sections are replaced with:

#### **Practising outside Australia**

If you are a medical student on an overseas elective as part of your university course, the Policy automatically extends parts of your cover while you are overseas but not (with the exception of Good Samaritan acts) with respect to the United States (Clause 8A).

If you are a medical practitioner then, subject to limitations, the Policy automatically extends parts of your cover for the first six months you are overseas but not (with the exception of Good Samaritan acts and acting as a team doctor) with respect to the United States (Clause 8B).

## **10. Page 20 - Refunds**

This section is replaced with the following:

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 a refund is due to you, we will either issue it directly to your nominated bank account or issue a refund cheque to your last known address or if instructed by you, donate the amount to a registered charity identified within our Corporate Social Responsibility Program.

## Amendments to SECTION 3: Policy Wording

### 11. Page 22 - Clause 3 Breach of privacy

Clause 3 is replaced by:

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 (and for legal costs that we incur on your behalf for defending you against the imposition of the 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.
- 3.3 for the reasonable costs of notifying anyone legally required to be notified of an actual, suspected or alleged or possible eligible data breach under 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 actual, suspected, alleged or possible eligible data breach during the period of insurance; and
  - (c) you tell us in writing about the actual, suspected, alleged or possible eligible data breach during the period of insurance; and
  - (d) the eligible data breach occurred on or after 1 July 2018 or the retroactive date, whichever is the later; and
  - (e) we have agreed to the costs of notification before they are incurred.



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 1988* or equivalent legislation.

## **12. Page 26 – Clause 5 Legal costs for defending claims against you**

Clause 5 is amended to read:

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, 2, 3.1, 4, 10 or 11.1 of your Policy.

## **13. Page 29 – Clause 9 Automatic additional cover for Medical Practitioners**

The following is inserted before Clause 9:

### **Automatic additional cover for medical students**

#### **Overseas Cover (medical students only)**

**8A** If you are a medical student, but only if you are on an overseas elective as part of your university course, we will extend indemnity under clauses 1, 2, 4, 5, 6 and 8 to you with respect to your provision of healthcare services outside the Commonwealth of Australia but not with respect to the United States (other than for Clause 2) as set out in Clause 20.22.

This cover does not apply to any period prior to 1 July 2019.

### **Automatic additional cover for medical practitioners**

#### **Overseas Cover (medical practitioners only)**

**8B** In any policy period, for the first six months you are overseas (whether or not continuous and whether or not you were practicing for that entire time) we will, subject to the circumstances set out below, extend the following covers to you with respect to your provision of healthcare services outside the Commonwealth of Australia but not with respect to the United States as set out in Clause 20.22 (other than for clauses 2 and 8B (ii) (b)). We will extend indemnity under clauses:

- (i) 2, 4, 5, 6, 8, 12 and 16 if you are employer indemnified but only to the extent that the cover provided in those clauses exceeds your entitlement to indemnity from any other policy or source;
- (ii) 1, 2, 4, 5, 6, 8, 12, 16 and 17 if you are not employer indemnified but only if:
  - (a) you are undertaking a fellowship in a recognised Australian healthcare training program; or
  - (b) you are accompanying, as a team doctor, an Australian sporting team or cultural group, but you will only be covered with respect to claims against you by members of that team or group who are Australian residents; or
  - (c) your healthcare services are as a volunteer with a charitable organisation; or
  - (d) your healthcare services are disaster relief work.

This cover does not apply to any period prior to 1 July 2019.

Where you will be overseas for more than six months in any period of insurance, or you will be overseas and the circumstances in (i) and (ii) above do not apply, you can apply for an extension of cover under your Policy by completing the Overseas Cover Request form via the Member Online Services section of our website [mdanational.com.au](http://mdanational.com.au) or by writing to us.

#### **14. Page 30 - Clause 11 Defamation claims and legal costs of defamation allegations (medical practitioners only)**

Clause 11.1 is amended to remove the words: "(and for legal costs that we incur on your behalf for defending you against that claim)" from Clause 11.1. and to remove the word "alleged" from Clause 11.1 (d) so that Clause 11.1 is replaced with the following:

11 If you are a medical practitioner, we will indemnify you for:

11.1 civil liability for a claim against you 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 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);

In Clause 11.2 the last paragraph beginning with 'If you pursue a defamation allegation ...' has been replaced with the following:

If, as a result of the pursuit of a defamation action (by you or by us on your behalf), you become entitled to payment by another party for legal costs, you must direct payment to us of an amount equal to any amount incurred by us (but not including any excess paid to us by you) in pursuit of the defamation action. If your entitlement to legal costs is less than the amount incurred by us (but not including any excess paid to us by you), you must direct payment to us of the full amount.

#### **15. Page 32 - Clause 14 (iii) Legal costs for employment and credentialing disputes (medical practitioners only)**

Replace the words "in excess of" with the words "greater than" in the last line of paragraph 14 (iii).

## 16. Page 34 - Clause 18 How much we insure you for

The table in this section is replaced with the table below.

### How much we insure you for

The total amount we will pay for the aggregate of all claims, legal costs and other matters under your Policy during the period of insurance will not exceed the Maximum Limit of Indemnity set out in the Certificate of Insurance	Maximum Limit of Indemnity
All claims under the Policy during the period of insurance	\$20,000,000 in the aggregate
Provided that the Maximum Limit of Indemnity is not exceeded, the following sub-limits apply during the Period of Insurance	Sub-limits as set out below
Clause 3.2 - Fines and penalties for breaches of the <i>Privacy Act 1988</i> (Cth) Clause 3.3 - Costs of mandatory notification arising from 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	\$2,000,000 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 11.1 – Defamation claims against you	\$20,000,000 in the aggregate for:
	11.1 defamation claims against you including legal costs for the defence of defamation claims against you; and
Clause 11.2 – Defamation allegations pursued by you against another	\$100,000 in the aggregate for:
	11.2 legal costs for the pursuit of defamation allegations but only after the exhaustion of \$20,000 excess payable by you
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

## **17. Page 36 - Clause 19 Single Claim**

A new heading of Single Claim has been inserted and Clause 19 is amended to read as follows:

19. 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;

gives rise to more than one claim against you (whether by one or more claimants), 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.

Without limiting the circumstances which constitute a single claim, all claims forming part of a class, group or representative action will constitute a single claim.

## **18. Page 39 - Clause 20.22 Exclusions**

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

Clause 20.22 is amended to read

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 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 or Overseas Cover provided in Clause 8B (ii) (b) or loss of electronic documents or data covered under Clause 16.

## **19. Page 40 - Clause 21.4 Exclusions**

Clause 21.4 is amended to read:

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 Overseas Cover provided in clauses 8A and 8B, Good Samaritan acts described in Clause 2 or to loss of electronic documents or data covered under Clause 16.

## **20. Page 41 - Clause 24A Payment of Premium**

The following clause is added after Clause 24:

### **Payment of Excess**

24A. It is a condition precedent to cover that you must pay, as directed by us, the applicable excess for each and every relevant matter for which you seek indemnity under the Policy.

## **21. Page 43 - Clause 34 Proof of Billings**

The following sentence is added at the end of Clause 34:

You agree that we are entitled but not obliged to conduct an audit of your gross annual billings and an audit that your practice is consistent with your field of practice.

## **22. Page 45 - Clause 40 Cancellation**

The third paragraph in the Cancellation clause has been amended and the clause now reads:

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 issue a refund cheque to your last known address or if instructed by you, 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 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.

## **23. Page 46 - Clause 41 Cancellation**

41. We may cancel your Policy by giving you three business days' written notice if:

Replace Clause 41 (c) with:

- (c) you fail to comply with a provision of your Policy including the provisions to pay the premium and to pay the excess.

## **24. Page 46 - Clause 44 Interpretation**

Clause 44 is amended to read:

44. Under your Policy, words in the masculine, feminine and neuter genders include any other gender and the singular includes the plural and vice versa unless the context otherwise requires.

## **25. Page 47 - Clause 45 Definitions**

The following new definitions have been inserted after the definition of Documents:

"Eligible data breach" means a data breach involving unauthorised access to or unauthorised disclosure of personal information that is likely to result in serious harm to any individual to whom the information relates and which must be notified pursuant to the provisions of the *Privacy Act 1988* (Cth) or equivalent State or Territory legislation.

"Employer Indemnified" means any circumstance in which you are entitled to indemnity from another source (e.g. government, hospital, employer, insurer or other indemnity provider) with respect to your civil liability for claims against you resulting from your provision of healthcare services.

## **26. Page 47 - Clause 45 Definitions**

The definition of excess is amended to read:

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



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