

MDA National Professional Indemnity Insurance Policy

Supplementary Financial Services Guide (FSG) & Product Disclosure Statement (PDS) including Amendments to the Policy Wording V.13.

This Supplementary document details amendments to the MDA National Professional Indemnity Insurance Policy V.13 effective 1 July 2022.

The amendments to Section 2 (the PDS) are:

- to confirm that cover for **investigations, inquiries**, and self-referral regarding a health impairment, extends to Medicare audits, coronial inquiries and Ahpra investigations, reference to clause 15 of Policy Wording.
- to further clarify **your** rights under s 40(3) of the *Insurance Contracts Act 1984* (Cth).
- to clarify when the **excess** will be requested by **us**, reference to clause 32 of Policy Wording.

The amendments to Section 3 (the Policy Wording) are:

- to correct typographical errors in V.13, namely to clause 26.12 (b), clause 26.22 (b), and the definitions of **healthcare services** and **inquiry**.
- to amend the definition of **healthcare services** to clarify what constitutes a healthcare report or healthcare opinion, Words with Special Meanings.
- to amend the definition of **inquiry** to clarify that it does not include Ahpra investigations, Words with Special Meanings.
- to amend the definition of **investigation** to clarify that it includes Ahpra investigations, Words with Special Meanings.
- to correct, in clauses 6 and 7, the reference to the relevant exclusion concerning **healthcare services** in the United States.
- to remove the reference to any acts or omissions which are substantially in common with each other from the list of circumstances in which more than one claim will constitute a single claim.
- to amend the exclusion for treatment to members of **your immediate family** so that all treatment other than emergency medical treatment to **your immediate family** is excluded, clause 26.5.
- to amend the **Policy** to set out the circumstances in which **claims against you, investigations and inquiries** with respect to an act or omission outside **your field of practice** at the time of the act or omission are not covered, clause 26.7.
- to clarify the operation of the exclusion regarding sexual misconduct and criminal conduct, clause 26.12.
- to confirm that the **Policy** does not cover workers compensation claims, clause 26.24.
- to clarify the limited circumstances in which **claims against you** by employees will be covered under the **policy**, clause 27.2
- to clarify **your** contractual obligation to notify **us** of claims against **you, investigations and inquiries**, clause 33.
- to reinstate the prevention of loss provisions, clause 39 A.

Amendment to SECTION 2 — Product Disclosure Statement

Page 10 — Legal Representation and Costs for Investigations, Inquiries and Other Matters

The table on page 10 under this heading is replaced with:

We will...	Medical Practitioner	Medical Student	Aggregate Sub-limits*
Represent you and pay legal costs when you are the subject of an investigation or inquiry (including but not limited to Ahpra investigations, coronial inquiries and, unless you are a Medical student , Medicare audits)	✓	✓	
Represent you and pay legal costs when self-referring regarding a health impairment	✓	✓	
Pay costs you are ordered to pay with respect to covers for investigations and inquiries (including but not limited to Ahpra investigations, coronial inquiries and, unless you are a medical student , Medicare audits)	✓	✓	\$2 million
Represent you and pay legal costs in defending allegations of some sexual misconduct and criminal matters	✓	✓	
Represent you and pay legal costs in certain employment, credentialling and training disputes	✓	✗	\$100,000 but for claims by you for unpaid remuneration we will not pay more than the amount reasonably sought by you
Represent you and pay legal costs when you are defamed	✓	✗	\$100,000 (with Excess of \$20,000)
Represent you and pay legal costs in obtaining AVO's on your behalf	✓	✗	\$100,000

*Provided that the Maximum Limit of Indemnity is not exceeded

Page 13/14 – a claims made policy

The second last paragraph under this heading is replaced by:

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

Page 17 – Policy conditions – what you must do

Examples of what you must do Policy excess

The words under this heading are replaced with:

An **excess** of \$20,000 applies to the pursuit of defamation allegations (clause 13).

Most claims under the **Policies** issued by **us** will not have an **excess** additional to that for pursuit of defamation. If an additional **excess** is to apply, it will be detailed in **your Certificate of Insurance**. Although it is a condition of cover under this **Policy** that **you** must pay, as directed by **us**, the applicable **excess** for each and every relevant matter for which **you** seek cover under the **Policy** (clause 32), in most circumstances **you** will only be directed to pay the **excess** after **we** have confirmed **you** will be covered for the claim under

your Policy and as **legal costs** are incurred.

Notification of claims facts and circumstances

This heading and the words under it are replaced with:

Notification of claims

You must notify **us** in writing as soon as practicable after **you** become aware of any **claim against you, investigation or inquiry**. (clause 33).

Amendment to SECTION 3 — Policy Wording

Page 28 – Words with Special Meanings

The definition of **healthcare service** is replaced with:

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, including via **telehealth**; 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, prepared by **you** at the request of a third party who is a lawyer, insurer or statutory body; 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 within **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.

Page 29 – Words with Special Meanings

The definition of **inquiry** is replaced with:

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 Ahpra, a professional registration board or professional services review committee.

The definition of **investigation** is replaced with:

Investigation means an **investigation** or disciplinary or administrative

proceeding by Ahpra, 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 paragraphs (a) and (b) of the definition of “**inquiry**”

Page 33 – Clause 6 Overseas Cover (medical practitioners only)

The reference to clause 26.22 is amended to 26.21

Page 33 – Clause 7 Overseas Cover (medical students only)

The reference to clause 26.22 is amended to 26.21

Page 46 – Clause 25 Single claim

Clause 25 is amended to read:

Single claim

25. Where:

- (a) an act or omission;
- (b) one or more related acts or omissions; or
- (c) any course of related treatment

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 deemed to have been first made at the time the earliest claim was made against **you** regardless of whether that time is before or during the **period of insurance**.

Without limiting the circumstances which constitute a single claim, all claims:

- forming part of a class, group or representative action; or
- relating to the pregnancy of any one woman or the birth of the child or the children from that pregnancy will constitute a single claim.

Where:

- (a) an act or omission;
- (b) one or more related acts or omissions;
- (c) any course of related treatment; or
- (d) any acts or omissions which are substantially in common with each other

gives rise to more than one **investigation or inquiry**, all such **investigations and inquiries** will constitute a single matter for which **you** claim under the **Policy** and will be deemed to have been first made at the time the earliest **investigation or inquiry** arose regardless of whether that time is before or during the **period of insurance**.

Page 47 – Clause 26.5 and 26.7 Exclusions

Clause 26.5 is replaced with the following:

26.5 the **claim against you** arises out of the provision of medical treatment (other than emergency medical treatment) by **you** to a member of **your immediate family**.

Clause 26.7 is replaced with the following:

26.7 the **claim against you, investigation or inquiry**, arises in any way out of a practice or procedure not within with **your field of practice**, except where the **claim against you, investigation or inquiry** for which **you** claim under the **Policy** relates to Good Samaritan acts described in clause 5.

However, if the **claim against you, investigation or inquiry** arises from an act or omission occurring prior to the **period of insurance** but while **we** were **your** insurer then, for the purpose of this exclusion only, **field of practice** is altered to mean the **field of practice** set out in the **Certificate of Insurance** in place at the time of that act or omission.

Page 48 – Clause 26.12 Exclusions

Clause 26.12 is amended to read:

26.12 the matter for which **you** claim under the **Policy** arises in any way out of any alleged:

- (a) sexual misconduct or criminal conduct, except to the extent that **you** are covered for **legal costs** under clause 16; or
- (b) sexual misconduct, including sexual harassment, except to the extent that **you** are covered for **legal costs** under clause 18(i), 18 (ii) or 18 (iii);

Page 50 – Clause 26.22 Exclusions

Clause 26.22 is amended to read:

26.22 the matter for which **you** claim under the **Policy** arises out of proceedings, judgment or order by a court or other body:

- (a) outside of Australia; or
- (b) which apply the laws of a country other than Australia

with respect to 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 via **telehealth**.

Clause 26.24 is replaced with:

26.24 the matter for which **you** claim under the **Policy**:

- (a) 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. For the avoidance of doubt, and without limiting the operation of this exclusion, **we** will not, for example, cover **you** or make a payment with respect to any workers' compensation claim by **you** or against **you**; or

- (b) arises in any way out of a **claim against you** for personal injury or property damage by an employee or contractor of yours (or of a practice entity controlled by **you**), in the course of their employment or engagement.

Page 51 – Clause 27.2 Exclusions

Clause 27.2 is replaced with:

27.2 the **claim against you** is by an employee or contractor of **you** or of a practice entity controlled by **you**, except to the extent that **you** are covered for **legal costs** under clause 18;

Page 52 – Clause 33 Conditions

Clause 33 is replaced with:

You have to notify us of a claim against you

33. **You** must notify **us** in writing as soon as practicable after **you** become aware of any **claim against you, investigation, inquiry, criminal action, prosecution or loss of documents.**

Page 54 – Clause 39 Prevention of Loss

The following wording is inserted at the end of the clause:

39A **You** must use all reasonable measures to avoid or reduce any liability under your **Policy**.

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