

MDA National Practice Indemnity Policy

This Supplementary document details amendments to the MDA National Practice Indemnity Policy V.8 effective **1 July 2023**.

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The amendments documented within this section are effective from 1 July 2023.

The amendments are to:

- update our internal dispute resolution process.
- amend the notice under section 40 *Insurance Contracts Act 1984* (Cth) regarding claims made insurance.
- amend the circumstances in which more than one claim will constitute a single claim, clause 14.
- clarify the application of exclusion 15.10 regarding obstetric services.
- clarify the limited circumstances in which claims against you or an insured person by employees, and others associated with you, will be covered under the Policy, exclusion 15.23.
- clarify that refunds of fees are not covered under the Policy, exclusion 15.24.
- set out the circumstances in which telehealth is not covered, exclusion 15.35.
- clarify what types of information have to be notified to us regarding alteration of risk and the consequences of both providing and failing to provide that information, clause 25.
- clarify the extent of our right to conduct and control proceedings, clause 28.
- amended the definitions of healthcare services, obstetric services and shared care.
- replace the definition of excess with a definition of deductible, replace use of the word “excess” with the word “deductible” wherever it appears in the Policy and include provisions making it clear that limits of indemnity are inclusive of the deductible.

Amendment to SECTION 1 — Financial Services Guide

Page 5 — Internal dispute resolution

The text under the above heading is replaced with:

In our experience, most issues can be resolved by contacting one of our staff. If you do not wish to take up a matter directly with staff, please contact our Complaints Officer by:

Phone: 1800 011 255 (Freecall)

Fax: (08) 9415 1492

Email: complaintsofficer@mdanational.com.au

In writing: PO Box 445 WEST PERTH
WA 6872

We will respond to you with a decision within 15 days.

Amendment to SECTION 2 — Important Information

Page 8 – A claims made Policy

The third paragraph under the above heading is replaced with:

Where you give notice in writing to us of any facts that might give rise to a claim against you or an insured person as soon as reasonably practicable after you become aware of those facts, but before the expiry of the period of insurance, you may have rights under section 40(3) of the *Insurance Contracts Act 1984* (Cth) to be covered in respect of any claim subsequently made against you or an insured person arising from those facts even though the claim is made against you or an insured person after the expiry of the period of insurance. These rights arise under the legislation only and are not terms of this contract of insurance.

Page 9 – Important information

The table on page 9 is replaced with the following:

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 (which is inclusive of any deductible) set out in the Certificate of Insurance</p>	<p>Maximum Limit of Indemnity (which is inclusive of any deductible)</p>
<p>All claims under the Policy during the period of insurance</p>	<p>The aggregate limit set out in the Certificate of Insurance</p>
<p>Provided that the Maximum Limit of Indemnity (which is inclusive of any deductible) is not exceeded, the following sub-limits (which are inclusive of any deductible) apply during the period of insurance</p>	<p>Sub-limits (which are inclusive of any deductible) as set out below</p>
<p>Clauses 1 to 5 Civil Liability, Clinical Trials, Privacy Complaints, Notifiable Conduct and Defence Costs</p>	<p>For each claim the Maximum Limit of Indemnity for any one claim as set out in the Certificate of Insurance</p>
<p>Clause 6 Defence costs for Intellectual Property Disputes</p>	<p>\$150,000 in the aggregate</p>
<p>Clause 7 Defence costs for Defamation</p>	<p>\$150,000 in the aggregate but only after the exhaustion of \$20,000 deductible payable by you</p>
<p>Clause 8 Defence costs for Investigations</p>	<p>\$500,000 in the aggregate</p>
<p>Clause 9 Defence costs for Competition, Consumer and Fair Trading claims</p>	<p>\$150,000 in the aggregate</p>
<p>Clause 10 Defence costs for Employment Disputes</p>	<p>\$100,000 in the aggregate</p>
<p>Clause 11 Loss of Documents</p>	<p>\$100,000 in the aggregate</p>

Page 10 – Single claim

The text under the above heading is replaced with:

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 or an insured person, (whether by one or more claimants) all such claims will constitute a single claim against you and insured persons.

Without limiting the circumstances which constitute a single claim, all claims against you and insured persons:

- i) forming part of a class, group or representative action; or
- ii) 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 against you and insured persons.

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, all such investigations will constitute a single matter for which you and insured persons claim under the Policy.

All claims under the Policy (including those constituting a single claim against you and insured persons, and a single matter for which you and insured persons claim under the Policy):

- a) which arise from an act or omission;
- b) which arise from one or more related acts or omissions;
- c) which arise from any course of related treatment;
- d) forming part of a class, group or representative action;
- e) relating to the pregnancy of any one woman or the birth of the child or the children from that pregnancy; or
- f) (with respect to investigations) which arise from any acts or omissions which are substantially in common with each other,

will constitute a single claim under the Policy and will be deemed (including for the purpose of determining the applicable limits of indemnity) to have been first made at the earliest of either the time the earliest claim was made against you or an insured person, or the time the investigation first arose, regardless of whether that time is before or during the period of insurance.

Where more than one limit applies to claims constituting a single claim under the Policy, the amount payable, in the aggregate, shall not exceed the highest of those applicable limits.

Where more than one deductible applies to claims constituting a single claim under the Policy, the highest applicable deductible is to apply once.

Amendment to SECTION 3 — Policy Wording

Page 20 – Clause 13 How much we will pay

Remove the words:

13. The total amount of indemnity we will pay and, provided the maximum amount of indemnity is not exceeded, the sub-limits of indemnity are set out in the

following table:

Replace those words with:

13. The Maximum Limit of Indemnity (which is inclusive of any deductible) and, provided the Maximum Limit of Indemnity is not exceeded, the sub-limits of indemnity (which are inclusive of any deductible) are set out in the following table:

The table on page 20 is replaced with:

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 (which is inclusive of any deductible) set out in the Certificate of Insurance	Maximum Limit of Indemnity (which is inclusive of any deductible)
All claims under the Policy during the period of insurance	The aggregate limit set out in the Certificate of Insurance
Provided that the Maximum Limit of Indemnity (which is inclusive of the deductible) is not exceeded, the following sub-limits (which are inclusive of any deductible) apply during the period of insurance	Sub-limits (which are inclusive of any deductible) as set out below
Clauses 1 to 5 Civil Liability, Clinical Trials, Privacy Complaints, Notifiable Conduct and Defence Costs	For each claim the Maximum Limit of Indemnity for any one claim as set out in the Certificate of Insurance
Clause 6 Defence costs for Intellectual Property Disputes	\$150,000 in the aggregate
Clause 7 Defence costs for Defamation	\$150,000 in the aggregate but only after the exhaustion of \$20,000 deductible payable by you or the insured person
Clause 8 Defence costs for Investigations	\$500,000 in the aggregate
Clause 9 Defence costs for Competition, Consumer and Fair Trading claims	\$150,000 in the aggregate
Clause 10 Defence costs for Employment Disputes	\$100,000 in the aggregate
Clause 11 Loss of Documents	\$100,000 in the aggregate

Page 20 – Single claim

Clause 14 is replaced with:

14. 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 or an insured person, (whether by one or more claimants) all such claims will constitute a single claim against you and insured persons.

Without limiting the circumstances which constitute a single claim, all claims against you and insured persons:

- i) forming part of a class, group or representative action; or
- ii) 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 against you and insured persons.

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, all such investigations will constitute a single matter for which you and insured persons claim under the Policy.

All claims under the Policy (including those constituting a single claim against you and insured persons, and a single

matter for which you and insured persons claim under the Policy):

- a) which arise from an act or omission;
- b) which arise from one or more related acts or omissions;
- c) which arise from any course of related treatment;
- d) forming part of a class, group or representative action;
- e) relating to the pregnancy of any one woman or the birth of the child or the children from that pregnancy; or
- f) (with respect to investigations) which arise from any acts or omissions which are substantially in common with each other,

will constitute a single claim under the Policy and will be deemed (including for the purpose of determining the applicable limits of indemnity) to have been first made at the earliest of either the time the earliest claim was made against you or an insured person, or the time the investigation first arose, regardless of whether that time is before or during the period of insurance.

Where more than one limit applies to claims constituting a single claim under the Policy, the amount payable, in the aggregate, shall not exceed the highest of those applicable limits.

Where more than one deductible applies to claims constituting a single claim under the Policy, the highest applicable deductible is to apply once.

Page 22 – Exclusions

Exclusion 15.10 is replaced with:

15.10 the matter for which you or an insured person claim under the Policy arises in any way from the provision of obstetric procedures unless obstetric services are noted on the Certificate of Insurance and the obstetric services are provided by any of the following employed or contracted by you:

- a) a medical practitioner who specialises in obstetrics; or
- b) a general practitioner engaged in shared care; or
- c) a nurse or midwife providing antenatal or postnatal care either under the guidance of a person described in paragraphs (a) or (b) or otherwise acting within the nurse or midwife's scope of practice.

Page 24 – Exclusions

Exclusion 15.23 is replaced with:

15.23 the matter for which you or an insured person claim under the Policy:

- a) is a claim against you or an insured person by an employee, partner, principal, director, officer, or contractor of yours, except to the extent that you are covered for legal costs under Clause 10 or the claim against you or an insured person arises solely and directly out of your provision of healthcare services to that person; or
- b) 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.

Page 24 – Exclusions

Exclusion 15.24 is replaced with:

15.24 and to the extent that you or an insured person are obliged:

- a) to refund any fee charged to or in respect of a patient; or
- b) to pay a fine or a civil or criminal penalty; or
- c) to pay punitive, aggravated or exemplary damages;

Page 25 Exclusions

Add exclusion 15.35

15.35 the matter for which you or an insured person claim under the Policy arises from the provision of healthcare services (including provision of prescriptions, medical certificates, or referrals to another practitioner) based on the transmission of images, patient data, online questionnaires or text based chat when there is no video or telephone consultation with the patient and there has not been a previous face to face consultation with the patient.

Page 27 Alteration of risk

The text under the above heading is replaced with:

25. You must give us notice as soon as practicable of any material alteration in the risk during the period of insurance, including without limitation:

- a) any expansion of your practice providing healthcare services including:
 - i) by acquisition of or merger with another practice or business;

- ii) increasing the locations at which your practice operates;
- iii) increasing, by more than 10% of the number disclosed to us, the number of insured persons, employees, health professionals engaged by You.
- b) the sale of your practice (either in whole or in part) or any shares in your practice;
- c) any change in the ownership of your practice;
- d) any change in either the nature of your practice or the healthcare services provided in your practice; or
- e) you becoming insolvent, being declared or an application being made for you to become bankrupt, having or an application being made to have a receiver, liquidator or administrator appointed, making a composition with your creditors or generally taking advantage of any statute for the relief of insolvent debtors or applying to be wound up or dissolved.

We may, but are not obliged to (either during the period of insurance, or upon renewal), insure the altered risk. If we do decide to insure the altered risk we can, among other things (to reflect the change in risk), adjust the premium that you are liable to pay and amend the terms of your Policy.

If we decide to increase the premium, you must pay us the increased premium within 30 days of our tax invoice to you.

Failure to notify us of any alteration may result in us exercising our rights including refusing to pay your claim.

Page 28 - Our right to conduct and control proceedings

The text under the above heading is replaced with:

28. You and the insured persons agree that:

- a) we have the right to conduct and control all matters that we agree to indemnify under this Policy, including their investigation, defence, avoidance, reduction, settlement and, subject to Clause 29, any appeal as we see fit; and
- b) we may do so in your name or the insured person's name.

We will not admit liability for or settle any claim against you or an insured person or resolve any investigation involving you or an insured person without your or the insured person's prior consent, provided that the consent is not withheld unreasonably. In determining whether consent has been withheld unreasonably, we can take into account any factor including but not limited to:

- i) the merits and prospects of success;
- ii) whether, even if successful, the outcome is likely to provide a substantial improvement to you or the insured person; and
- iii) costs.

We may, but are not obliged to, seek legal advice.

If you or an insured person refuse to consent to our settling a claim against you or the insured person or resolving an investigation or other matter, our liability to indemnify for defence costs will cease and at our option:

- i) we will settle the claim against you or the insured person, or resolve the investigation or other matter; or
- ii) our liability is then limited to the amount we recommend in settlement and payment of defence costs up to the date we recommended to you or the insured person settlement of the claim against you or the insured person or resolution of the investigation or other matter.

Page 31 and 32 Definitions

The definition of excess is replaced with:

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

The definition of healthcare services is replaced with:

Healthcare services means:

- a) those medical treatments, services or advice provided to patients in the course of your practice, limited to the Professional Services set out in the Certificate of Insurance; or
- b) the rendering of emergency medical assistance to a person where an insured person is in attendance as a bystander and where there is no expectation of payment or other reward.

The definition of obstetric services is replaced with:

Obstetric services means only those medical treatments, routine and non-emergency services, and advice, provided to women during antenatal and postnatal care in the course of your practice, subject to “Obstetrics” being

listed as the Professional Services in the Certificate of Insurance.

The definition of shared care is replaced with:

Shared care means the joint management of a pregnancy between a General Practitioner with a specialist Obstetrician, GP Obstetrician or maternity hospital where:

- a) a plan for such joint management is made within the first trimester; and
- b) evidence exists of referral to a Specialist Obstetrician, GP Obstetrician or Public Hospital antenatal clinic and of continuing shared care arrangements; and
- c) there is no involvement, or intention by the General Practitioner to be involved, with the intrapartum care or conduct of the birth itself.

AMENDMENTS —
EFFECTIVE 1 JULY 2022

The amendments documented within this section are effective from 1 July 2022.

The amendments are to:

- clarify your contractual obligation to notify us of claims against you or an insured person, investigations and loss of documents.
- clarify defence costs cover for alleged breaches of consumer protection legislation, clause 9.
- amend the circumstances in which more than one claim will constitute a single claim, clause 14.
- clarify the circumstances in which exclusion 15.10 regarding obstetric services will not apply.
- to clarify the limited circumstances in which claims against you or an insured person by employees will be covered under the policy, exclusion 15.23.
- to clarify your contractual obligation to notify us of claims against you or an insured person, investigations and loss of documents, clause 18.
- clarify the involvement of midwives and nurses providing any obstetric services.
- to introduce new definitions of obstetric services and shared care.

Amendment to SECTION 1 — Important Information

Page 10– Single claim

The text under the above heading is replaced with:

Single claim

Where an act or omission, any one or more related acts or omissions, or any course of related treatment gives rise to more than one claim or investigation against you or an insured person (whether by one or more claimants), all such claims or investigations will constitute a single claim or single investigation against all those insured under the policy and will be treated as if first made at the time of the earliest claim against you or an insured person by any claimant.

In the case of investigations where acts or omissions substantially in common with one another gives rise to one or more investigation all such investigations 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 arose 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 will constitute a single claim.

Page 10 – Policy conditions

The last paragraph under the above heading is replaced with:

You and the insured person must notify us in writing as soon as practicable after you become aware of any claim against you, investigation, or loss of documents (clause 18).

Amendment to SECTION 3 — Policy Wording

Page 18 - Defence costs for alleged breaches of the Competition and Consumer Act and fair-trading legislation

Clause 9 is replaced by:

Defence costs for alleged breaches of Consumer Protection Legislation

We will indemnify you and the insured persons for defence costs that we incur on your or an insured person’s behalf for a civil liability claim against you or an insured person for breach of a provision of the Competition and Consumer Act 2010 (Cth) or any State or Territory consumer protection legislation, but only when:

- a) the claim against you or the insured person is first made against you or the insured person during the period of insurance; and
- b) you tell us in writing during the period of insurance about the claim that you or the insured person breached the legislation; and
- c) the claim that you or the insured person breached the legislation arises from an act or omission occurring on or after the retroactive date; and
- d) the claim against you or the insured

person arises directly out of your provision of healthcare services; and

- e) the breach does not arise from a malicious act or omission or intentional breach.

Page 20 – Clause 14 Single claim

Clause 14 is replaced by

Single claim

14. 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 or an insured person (whether by one or more claimants), all such claims will constitute a single claim against all those insured under the policy and will be treated as if first made at the time of the earliest claim against you or an insured person 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.

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 all such investigations 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 arose regardless of whether that time is before or during the period of insurance.

Page 22 – Exclusion 15.10

Exclusion 15.10 is replaced by

15.10 the matter for which you or an insured person claim under the Policy arises in any way from the provision of Obstetric services by someone other than the following, if employed or contracted by you:

- a) a medical practitioner who specialises in obstetrics; or
- b) a general practitioner engaged in shared care, or
- c) a nurse or midwife providing antenatal or postnatal care under the guidance of a person described in paragraphs (a) or (b) or otherwise acting within the nurse or midwife's scope of practice.

Page 24 – Clause 15.23 Exclusions

Exclusion 15.23 is replaced with:

15.23 the matter for which you claim under the Policy:

- a) arises in any way out of a claim against you or an insured person by an employee or contractor of yours, except to the extent that you are covered for legal costs under clause 10; or
- b) 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.

Page 25 Clause 18 Conditions - When you have to notify us

Clause 18 is replaced by

18. You and the insured person must notify us in writing as soon as practicable after you become aware of any claim against you, investigation, or loss of documents.

Page 32 Definitions

The following new definitions have been inserted

Obstetric services means medical treatments, routine and non-emergency services and advice provided to women during antenatal and postnatal care in the course of your practice as declared in your proposal, accepted by us and set out in the Certificate of Insurance as Professional Services or in any endorsement.

Shared care means the joint management of a pregnancy with a specialist Obstetrician, GP Obstetrician or maternity hospital where:

- an intent for a shared care arrangement is made at the initial consultation; and
- evidence exists of referral to a Specialist Obstetrician, GP Obstetrician or Public Health antenatal clinic and of continuing shared care arrangements; and
- there is no involvement, or intention by the General Practitioner to be involved with the induction or delivery.

THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY

The amendments documented within this section are effective from 1 July 2021.

The amendments are to:

- remove references to the Australian Financial Complaints Authority (AFCA) as the body to which complaints, not resolved after our internal dispute resolution process, should be referred. The AFCA rules exclude complaints under this Policy.
- update our contact details for when you wish to take advantage of our internal dispute resolution process.
- amend cover for defence costs for employment disputes to clarify limitations on the cover, Clause 10.
- clarify the consequences of failing to comply with a Policy condition.
- to include a cyber exclusion (and definitions) limited to cover for loss of documents.
- to include a condition (and related exclusion) requiring you to stop a procedure or practice (within 14 days of receipt of notice by us) if we consider that the procedure or practice poses an unreasonable risk of giving rise to a claim against you, investigation or inquiry.

Amendment to SECTION 1 — Financial Services Guide

Page 2

The words “and external” are removed from the last bullet point under the heading: SECTION 1: Financial Services Guide

Page 5 — Internal dispute resolution

The text under the above heading is replaced with:

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 they will refer your matter to their supervisor or manager. If the matter is not resolved at this level or you do not take up a matter directly with staff, please contact our Complaints Officer by:

Phone: 1800 011 255 (Freecall)

Fax: (08) 9415 1492

Email: complaintsofficer@mdanational.com.au

In writing: PO Box 445 WEST PERTH
WA 6872

We will respond to you with a decision within 15 days.

Page 5 — External dispute resolution

The heading and text under the above heading is removed.

Amendment to SECTION 2 — Important Information

Page 14 — Internal dispute resolution

The text under the above heading is replaced with:

For information about our dispute resolution process please refer to Section 1 page 5:

Page 14 — External dispute resolution

The heading and the text under the above heading is removed.

Amendment to SECTION 3 — Policy Wording

Page 18 - Defence costs for employment disputes

The following sentence is added at the end of Clause 10:

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.

Page 19 – Clause 11 Loss of Documents

Remove the words:

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.

Replace those words with:

See Exclusion 15.34

Page 25 – Exclusions

Add exclusion 15.33

the matter for which you claim under the policy arises because of your continuing a procedure or practice in the provision of healthcare services 14 days after you have received notice from us under clause 25A asking you to stop the procedure or practice.

Page 25 Exclusions

Add exclusion 15.34

the matter for which you claim under clause 11 (Loss of documents) of the Policy arises in any way out of cyber loss.

For the purposes of this exclusion only:

Cyber loss means any loss, damage, liability, claim, cost or expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any cyber act or cyber incident including, but not limited to, any action taken in controlling, preventing, suppressing or remediating any cyber act or cyber incident.

Cyber act means an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any computer system.

Cyber incident means:

- a) any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any computer system; or
- b) any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any computer system.

Computer System means any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility.

Data means information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a computer system.

Page 25 – Conditions

The following sentence is added under the heading

You must comply with the following conditions. If you fail to do so, subject to the Insurance Contracts Act, we can do any one or more of the following:

- i) refuse to pay (either in whole or in part) any claim you make under the Policy;
- ii) not provide you with assistance (or withdraw assistance) and
- iii) cancel your Policy.

Page 27 Conditions

Add Condition 25A

Stop Notice

25A You must stop a procedure or practice in providing healthcare services if:

- a) we consider that the procedure or practice 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 the procedure or practice.

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