MDA National
Support Protect Promote

Professional Indemnity Insurance Policy

Combined Financial Services Guide, Product Disclosure Statement and Policy Wording

MDA National Insurance Pty Ltd ABN 56 058 271 417 AFS Licence No. 238073

Introduction

This brochure is divided into four sections.

It is important that you read all of these documents carefully before deciding whether to acquire the Professional Indemnity Insurance Policy.

The financial services guide applies to financial services provided on or after the date of issue 10 May 2013.

The product disclosure statement and policy wording applies to policies commencing on or after 1 July 2013.

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) issued by the Australian Securities and Investments Commission 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 offer the following insurance products:

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

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, email, mail, fax, in person 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.

The Commonwealth Government pays us an administration fee to reimburse our 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 may 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;
- meet our legal obligations;
- administer Government Schemes; and
- provide our products to you and improve the delivery of our products and services.

We have adopted the National Privacy Principles set out in the *Privacy Act 1988* (Cth) as required by law and as part of our commitment to client service and the protection of client confidentiality. For further details of our Privacy Policy please visit our website at mdanational.com.au or contact us for a copy.

Marketing information

We are committed to providing you with access to leading products and services. From time to time we may provide you with information on other MDA National Insurance or third party products or services that may be of interest to you. We may also disclose your personal information on a confidential basis to our related entities and to the MDA National Group so that they can also offer you products and services. If you do not wish to receive this information please contact our Member Services team 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 against us

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.

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.

Internal dispute resolution

In our experience, most issues can be resolved with a quick phone call. If you do have a complaint in relation to our products or services, please contact our Complaints Officer by:

Phone: **1800 034 466 (Freecall)**
Fax: **(08) 9415 1492**
Email: **complaintsofficer@mdanational.com.au**
Mail: **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 as outlined below.

External dispute resolution

If you are not satisfied with the outcome of our internal dispute resolution process, you can refer the dispute to the Financial Ombudsman Service Limited (FOS). 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 only review complaints if they have first gone through our internal complaints and dispute resolution process. Please note that the FOS can consider insurance matters only. 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 they can resolve, visit their website at **fos.org.au** or contact our Complaints Officer. Online dispute forms are available on their website.

You can contact the FOS by:

Phone: **1300 780 808 (local call fee applies)**
Mail: **GPO Box 3**
MELBOURNE VIC 3001

Further information and updates

This FSG is issued 10 May 2013 and applies to financial services provided on or after that date. Please check our website for updates.

SECTION 2: Product Disclosure Statement

Your MDA National Insurance Product Disclosure Statement

This Product Disclosure Statement (PDS) is designed to help you make an informed decision about acquiring the 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 of the information in this 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**.

This PDS is issued on 10 May 2013 and applies to policies commencing on or after 1 July 2013.

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 given us all the information relevant to your risk.

A proposal form is included in the application pack or is available by contacting our Member Services team on 1800 011 255 or visiting the Download Centre of our website mdanational.com.au.

Your duty of disclosure

Before you enter into or renew a contract of general insurance with us, you have a duty, under the *Insurance Contracts Act 1984* (Cth), to disclose to us every matter that you know, or could reasonably be expected to know, is relevant to our decision whether to accept the risk of insurance and, if so, on what terms. The duty extends up until the time that we issue a policy to you.

You have the same duty to disclose those matters to us before you renew, extend, vary or reinstate the policy.

Your duty however does not require disclosure of something:

- that diminishes the risk to be undertaken by us;
- that is of common knowledge;
- that we know or in the ordinary course of our business ought to know; or
- when compliance with the duty of disclosure is waived by us.

Non-disclosure

If you fail to comply with your duty of disclosure, we may be entitled to reduce our liability under the contract of insurance in respect of a claim or cancel the contract of insurance.

If your non-disclosure is fraudulent, we may also have the option of avoiding the contract of insurance from its beginning.

What makes up the insurance contract?

The insurance contract is made up of:

- the policy wording contained within this booklet;
- the Certificate of Insurance we issue to you; and
- any endorsement issued to you.

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

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. 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 arising:

- out of your provision of healthcare services including Good Samaritan acts (clauses 1 to 3);
- from your unintended breach of privacy legislation (clause 4);
- out of you reporting an incident or healthcare practitioner to a hospital, area health authority or professional body, or participating in the examination of such an incident (clause 5).

The policy insures legal costs incurred:

- by us for the defence of a claim covered under the policy (clause 6(a));
- by us for assisting you with an investigation by a Professional Registration Board or Professional Services Review Committee arising from the provision of healthcare services by you (clause 6(b));
- by a professional or administrative body which you are ordered to pay as a result of an investigation or inquiry (clauses 6(b) and 6(c));
- by us for assisting you with inquiries arising from the provision of healthcare services by you such as inquiries by a professional body, health services authority, medical tribunal, Royal Commission, Coroner's Court, criminal court, health or medical benefits fund, the Australian Information Commissioner or Anti-Discrimination Board (or equivalent) or, if you are a medical student, a university that you attend (clause 6(c)); and
- for the successful defence of a claim, investigation or inquiry which arises out of alleged criminal conduct or sexual misconduct by you against a patient arising out of your provision of healthcare services (clauses 7 to 10).

The policy also provides a payment to you if you test seropositive for HIV, Hepatitis B or Hepatitis C. This benefit is payable only once and only for one communicable disease (clauses 11 to 13).

Medical practitioners only

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

- against a practice entity controlled by you but only when the claim arises directly in connection with the provision of healthcare services by you (clause 14); or
- out of your provision of healthcare services as part of your involvement in a clinical trial or research project (but not when you are acting as a sponsor) (clause 15).

If you are a medical practitioner (but not if you are a student), the policy also insures legal costs incurred with our consent in:

- seeking an Apprehended Violence Order where there is a threat to the personal safety of you or your immediate family related to the provision of healthcare services by you (clause 16(a));

- defending alleged breaches of the *Competition and Consumer Act 2010* (Cth) or the *Trade Practices Act 1974* (Cth) or equivalent State or Territory fair trading legislation arising directly out of the provision of healthcare services by you (clause 16(b));
- relation to certain employment disputes (clause 16(c)); and
- relation to you pursuing or defending an internal complaint or appeal arising directly out of your involvement with a training program approved by a medical college (clause 16(d)).

Finally, if you are a medical practitioner (but not if you are a student), the policy indemnifies you for the reasonable cost of replacement or restoration of certain lost or damaged documents (clause 17 and 18, inclusive).

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 only applies if you first test seropositive during the period of insurance after the Communicable Disease Commencement Date.

The policy does not cover matters you were aware of (or reasonably should have been aware of) prior to the commencement of the period of insurance, whether you told us about them on your proposal or not.

Such matters may be:

- claims that have already been made or threatened against you; or
- circumstances you are aware of (or reasonably should have been aware of) that could give rise to a claim against you or to an investigation or inquiry or other matter in respect of which the policy provides cover for legal costs; or
- investigations or inquiries whether commenced or not.

In relation to civil liability claims against you, if you have a policy with us and you notify us in writing during your period of insurance of circumstances that may give rise to a claim against you, the fact that you do not give us written notice of a claim relating to those circumstances before your policy has expired will not, of itself, relieve us of liability. However, you must notify us of the claim as soon as you become aware of it.

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

Retroactive cover

With limited exceptions, your policy will contain a retroactive date which is specified on the Certificate of Insurance. The policy coverage is limited to incidents that occur on or after the retroactive date.

So, if you have a retroactive date of 1 July 2003, your policy will not cover a claim against you or an investigation or inquiry arising from an incident that occurred prior to this date, even if you first learn about the claim, investigation or inquiry and report it to us during the period of insurance.

For example, if you are a student undertaking a student elective in May 2013 and ask for a policy retroactive date of 1 July 2013, the policy will not respond to a claim, investigation or inquiry arising from your participation in that elective prior to 1 July 2013, even if you first learn about the claim, investigation or inquiry during the period of insurance.

It is important that you consider your retroactive cover needs carefully. Everyone's circumstances are unique, but as a guide you may require retroactive cover:

- for any periods where you practised and did not have medical indemnity insurance; or
- for any periods where you practised and did not have indemnity from your employer or under a Government indemnity scheme; or
- if you were previously insured by a claims made policy; or
- if you are a student, from a date prior to the commencement of your first elective, scholarship or clinical placement.

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.

You may also apply for additional retroactive cover for non-continuous periods. If we agree to provide this, your Certificate of Insurance will specify the additional retroactive periods.

What we do not insure you for

The policy will not provide insurance cover in certain circumstances. Clauses 21 to 24 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 25 to 34 of the policy wording. For example, you must pay any premium on or before the date when it is due (clause 25). You must also notify us in writing as soon as practicable after you become aware of any claim, investigation or inquiry, or circumstances or any other matter that could give rise to such (clause 26).

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 wording.

For example, when a claim, investigation, inquiry or other matter includes both allegations that are indemnified under the policy and allegations that are not indemnified, we may reduce the amount of legal costs that we pay to an amount that we regard as attributable to the allegations that we provide indemnity for (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, investigation, inquiry or other matter without your prior consent, which is not to be withheld unreasonably. However, if you unreasonably do not consent to our settling a claim 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 and to pursue actions against third parties in your name even if a claim has not actually been paid.

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

How much we insure you for

The maximum amount we will indemnify you for is $20,000,000 in the aggregate for all matters for which you seek indemnity under the policy. The maximum amount of our indemnity includes legal costs. The following sub limits apply:

- $500,000 in the aggregate for legal costs and costs orders arising out of investigations and inquiries (clauses 6(b) and 6(c)) and allegations of sexual misconduct and criminal matters (clauses 7 to 10);
- $100,000 for medical practitioners, or $50,000 for medical students, for communicable disease cover, payable once only under this or any other policy that we may issue to you (clause 11);

The following sub limits apply to the automatic additional covers for medical practitioners:

- $150,000 in the aggregate for legal costs arising out of each one of the following:
  - seeking an Apprehended Violence Order (clause 16(a));
  - 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 (clause 16(b)); and
  - pursuing or defending of an internal complaint in relation to your involvement in training with a Medical College (clause 16(d)); and
- $100,000 in the aggregate for legal costs arising out of certain employment disputes (clause 16(c)); and
- $100,000 for replacement of loss of documents (clauses 17 and 18).

Your Certificate of Insurance will reflect these amounts.

Policy excess

Most policies issued by us to medical practitioners and medical students do not specify an excess. However if an excess is to apply, it will be detailed in your Certificate of Insurance and you must pay us the applicable amount for each and every matter for which you seek indemnity under the policy.

Single claim

Where the same act or omission or one or more related acts or omissions give rise to more than one claim, investigation or inquiry against you or your practice entity (whether by one or more claimants), all such claims, investigations or inquiries will constitute a single claim under the policy and will be treated as if first made at the earlier of the time the earliest claim by any claimant was made or the first investigation or inquiry arose.

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, 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 depending on the risk covered. We use a system of rating factors to calculate this component including:

- your specialty 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 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 will be required to complete specified risk management activities in order to remain eligible for payments under the PSS. 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** or contact our Member Services team on 1800 011 255.

Paying your insurance premium

Your premium is an annual premium. Subject to a minimum premium, you can choose to pay quarterly. If you choose to pay quarterly 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 refer to the Frequently Asked Questions (FAQ) section of our website mdanational.com.au or 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 3 months or more

If you are planning to take a continuous break of 3 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, the claim or your legal costs in relation to the investigation or inquiry or other matter may only be covered if you have a current insurance policy at the time the claim is notified.

Run-off cover

Run-off cover is a form of cover generally taken out by professionals when they retire, or in the event they stop practising for a significant period of time, as professional negligence claims can be made against a medical practitioner years after the healthcare services are provided.

Run-off Indemnity covers claims 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 17 to 19 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 advice 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. 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.

We will refund the premium for the unexpired period of insurance on a pro-rata basis less an amount equal to 45 days' premium. However, we will not make any refund where:

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

Cancellation of your membership subscription will also be refunded on a pro rata basis less an amount equal to 45 days' subscription.

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 this policy, including the provision to pay the premium or a premium instalment;
- you fail to comply with any provision of this policy which requires you to notify us; or
- you make a fraudulent claim under the policy.

Refunds

A premium refund may be due to you if your policy is cancelled or amended during the year. 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.

If any of the following occur you must notify us 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 notification form which is available on our website **mdanational.com.au**, by fax to 1300 011 235 or by mail to any of our offices in the following circumstances:

- a claim has been made or intimated against you or against your practice entity in connection with the provision of healthcare services by you;
- 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 certain employment disputes or alleged breaches of fair trading legislation;
- you lose documents or data relating to your provision of healthcare services; or
- you test seropositive for HIV, Hepatitis B or Hepatitis C.

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 policy period, you may not be entitled to indemnity under the policy. 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@mdnational.com.au.

Incidents or circumstances that may give rise to a claim

If at any time during the period of insurance you become aware of a matter that you believe may result in a claim against you, you should let us know as soon as you can. Don't 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.

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;
(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; or
    (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**.

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 against 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 APRA at **apra.gov.au** or by calling the APRA hotline on 1300 131 060.

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 this policy we have relied on the information you have given us in your proposal. You must tell us without delay if any of this information is incorrect or if it changes.

Please read the policy and Certificate of Insurance carefully and keep it 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 any civil liability claim arising directly out of your provision of healthcare services but only when:
   (a) the claim is first made against you during the period of insurance; and
   (b) you tell us about the claim in writing during the period of insurance; and
   (c) the claim arises from an act or omission occurring on or after the retroactive date or within any additional retroactive period specified in the Certificate of Insurance.
2. Notwithstanding exclusion 21.4, when we have separately agreed in writing to do so, we will indemnify you under clause 1 for the provision of healthcare services to a public patient in a public hospital.

Good Samaritan acts

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

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

Breach of privacy

4. We will indemnify you for any civil liability claim arising from 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 is first made against you during the period of insurance; and
   (b) you tell us about the claim in writing during the period of insurance; and
   (c) the claim arises from an act or omission occurring on or after the retroactive date or within any additional retroactive period specified in the Certificate of Insurance.

Liability for reports about others

5. We will indemnify you for any civil liability claim (including a claim for defamation) that arises 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, professional body or participating in the examination of such an incident, or registered healthcare professional but only when:
   (a) the claim is first made against you during the period of insurance; and
   (b) you tell us about the claim in writing during the period of insurance; and
   (c) the claim arises from a report made on or after the retroactive date or within any additional retroactive period specified in the Certificate of Insurance.

Legal costs for a claim, investigation or inquiry

6. Subject to clause 36 we will indemnify you for:
   (a) legal costs that we incur on your behalf for the defence of any claim against you covered by this policy under clauses 1 to 5; and
   (b) legal costs that we incur on your behalf for assisting you with any investigation and any legal costs of a professional registration board or professional services review committee that you are ordered to pay as a result of an investigation which finds against you (up to the sub limit stated in the Certificate of Insurance); and
   (c) legal costs that we incur on your behalf for any inquiry arising from the provision of healthcare services by you and any legal costs of a professional or administrative body that you are ordered to pay as a result of such an inquiry which finds against you (up to the sub limit stated in the Certificate of Insurance);

but only when:

(d) you first become aware of the claim, investigation or inquiry and tell us about it in writing during the period of insurance; and

(e) only if the claim, investigation or inquiry relates to an act or omission occurring on or after the retroactive date or within any additional retroactive period specified in the Certificate of Insurance.

Legal costs for defending allegations of sexual misconduct and criminal matters

7. Notwithstanding exclusions 21.12 and 21.14, we will indemnify you (up to the sub limit stated in the Certificate of Insurance) for reasonable legal costs for the successful defence of any claim, investigation or inquiry which arises out of any alleged criminal conduct or sexual misconduct by you against a patient arising out of your provision of healthcare services, if and when:

   (a) (i) in the case of a criminal proceeding you have been found not guilty or the charges against you are dropped; or

   (ii) the outcome of an investigation is that no finding of professional misconduct has been made against you; or

   (iii) in the case of a civil claim, there is a final judgment in your favour; or

   (iv) the claim, investigation or inquiry has been permanently discontinued;

   but only if:

   (b) you first become aware of the claim, investigation or inquiry and you tell us about it in writing during the period of insurance; and

   (c) the claim, investigation or inquiry arises from an act or omission occurring on or after the retroactive date or within any additional retroactive period specified in the Certificate of Insurance; and

   (d) all appeal rights of any party in relation to those allegations have been exhausted.

8. We may at our absolute discretion agree to advance the legal costs referred to in clause 7 to you as they are incurred and prior to the finalisation of any claim, investigation or inquiry. We may in our absolute discretion cease to advance legal costs to you at any time and take steps to recover from you any costs paid in your defence.

9. If we do advance legal costs pursuant to clause 8, and we subsequently determine that we have no liability to pay those legal costs under clause 7, then you must repay those legal costs to us.

10. If we do not advance legal costs and you are eligible for indemnity under clause 7, you must provide evidence of the legal costs incurred by you. We will indemnify you only for reasonable costs incurred in conducting your defence.

Communicable disease cover

11. We will pay the amount specified in the Certificate of Insurance for communicable disease cover if the insured first tests seropositive for a communicable disease during the period of insurance provided that:
    (a) the insured tested seronegative on or after the Communicable Disease Commencement Date; and
    (b) the serology testing (both negative and positive) is conducted by an accredited or approved pathology laboratory in Australia; and
    (c) we have not made a payment to the insured for communicable disease cover under this or any other policy.
12. The Communicable Disease Commencement Date is the date 3 months after the inception of the first policy we issue to you that provides communicable disease cover and will remain that date for as long as you continuously renew your policy with us.
13. Communicable disease cover is only payable once and only for one communicable disease.

Automatic additional cover for medical practitioners

Your practice entity (medical practitioners only)

14. If you are a medical practitioner, we will indemnify a practice entity controlled by you for any civil liability claim, and for legal costs that we incur for the defence of any claim against that practice entity, but only when:
    (a) the claim arises directly in connection with the provision of healthcare services by you personally; and
    (b) the claim would be covered under this policy if made against you; and
    (c) the practice entity complies with the terms and conditions of the policy that you must comply with; and
    (d) the claim is first made against the practice entity during the period of insurance; and
    (e) you tell us about the claim in writing during the period of insurance; and
    (f) the claim arises from an act or omission occurring on or after the retroactive date or within any additional retroactive period specified in the Certificate of Insurance.

    If the practice entity is not 100% owned by you, then our indemnity is limited to the same proportion of liability as your ownership of the entity.

Clinical trials cover (medical practitioners only)

15. If you are a medical practitioner, we will indemnify you for any civil liability claim and for legal costs that we incur for the defence of any claim that arises directly out of the provision of healthcare services by you as part of your involvement in a clinical trial or research project, but only when:

    (a) the claim does not arise from you acting in the capacity of a sponsor in the trial; and

    (b) the clinical trial or research project has approval from an ethics committee in accordance with the National Health and Medical Research Council guidelines; and

    (c) the clinical trial or research project has been conducted in accordance with any conditions or approval made by the Ethics Committee; and

    (d) the claim is first made against you and notified to us in writing during the period of insurance; and

    (e) the claim arises from the provision of healthcare services occurring on or after the retroactive date or within any additional retroactive period specified in the Certificate of Insurance.

Legal costs for other matters (medical practitioners only)

16. Subject to clause 36, if you are a medical practitioner, we will indemnify you (up to the sub limit stated in the Certificate of Insurance) for:

    (a) legal costs incurred by you with our consent 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 you first become aware of the threat and tell us about it in writing, during the period of insurance and only if the threat is related to the provision (or non provision) of healthcare services by you occurring on or after the retroactive date or within any additional retroactive period specified in the Certificate of Insurance; and

    (b) legal costs incurred by you with our consent defending any allegation that you breached a provision of the *Competition and Consumer Act 2010* (Cth) or the *Trade Practices Act 1974* (Cth) or any equivalent State or Territory fair trading legislation but only if the alleged breach arises directly from the provision of healthcare services by you and only when you first become aware of the allegation and tell us about it in writing, during the period of insurance and only if the allegation relates to an act, omission or event occurring on or after the retroactive date or within any additional retroactive period specified in the Certificate of Insurance; and

(c) legal costs incurred by you with our consent (notwithstanding exclusions 21.20 and 22.2):

(i) defending any allegation made against you by your former, current or proposed employee or contracted staff member 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 including a complaint under anti-discrimination or equal opportunity legislation; or

(ii) pursuing or defending any allegation against your former, current or proposed employer that relates to or arises from the contract or proposed contract under which you were, are or will be employed to provide healthcare services in your field of practice including a complaint under anti-discrimination or equal opportunity legislation; or

(iii) pursuing or defending any allegation that relates to or arises from a contract or proposed contract under which you were, are or will be engaged as an independent contractor to provide healthcare services in your field of practice including a complaint under anti-discrimination or equal opportunity legislation;

but only when you first become aware of the allegation and tell us about it in writing, during the period of insurance and only if the allegation relates to an act, omission or event occurring on or after the retroactive date or within any additional retroactive period specified in the Certificate of Insurance; and

(d) legal costs incurred by you with our consent pursuing or defending 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 which you first become aware of and tell us about in writing, during the period of insurance and only if the complaint or appeal relates to an act, omission or event occurring on or after the retroactive date or within any additional retroactive period specified in the Certificate of Insurance.

Loss of Documents (medical practitioners only)

17. If you are a medical practitioner, in the event of any loss of documents related to your provision of healthcare services which were in your possession or in the possession of those to whom the documents were entrusted by you in the ordinary course of your provision of healthcare services (only if you have taken reasonable steps to ensure that they will take care of the documents), we will indemnify you for reasonable costs and expenses incurred by you in replacing or restoring those documents up to the sub limit stated in the Certificate of Insurance provided that:

    (a) 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 restitution before they are incurred.

18. 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 system where you do not have appropriate back up storage systems and protocols and current security software installed to protect your documents and data from such risks.

How much we insure you for

19. The total amount (including legal costs and claimant's costs) payable by us for all claims under this policy will not exceed the amount set out as the maximum amount of our indemnity in the Certificate of Insurance and applies after you have paid any applicable excess set out in the Certificate of Insurance. If an excess applies, you must pay the applicable amount in respect of each claim made under the policy.

20. Where the same act or omission or one or more related acts or omissions give rise to more than one claim (whether by one or more claimants), investigation or inquiry, all such claims, investigations and inquiries will constitute a single claim under the policy and will be treated as if first made at the earlier of the time the earliest claim by any claimant was made or the first investigation or inquiry arose.

Exclusions

What we exclude from the policy

21. We will not indemnify you under this policy when:

21.1 and to the extent that you are entitled to indemnity 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;

21.2 the matter for which you seek indemnity is one that you knew about before this policy began, or that a reasonable person in your professional position would have known about before this policy began, or the matter arises from any act or omission that you knew before this policy began, or that a reasonable person in your professional position would have thought before this policy began might result in a matter that may be covered by this policy;

21.3 the matter for which you seek indemnity arises from circumstances which you notified to us, to another insurer, Medical Defence Organisation or indemnity provider before the period of insurance;

21.4 the claim arises in any way out of the 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 2;

21.5 the claim arises out of the provision of elective medical treatment by you on or after 1 July 2004 to a member of your immediate family;

21.6 the matter for which you seek indemnity 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;

21.7 the claim, investigation or inquiry arises in any way out of a practice or procedure not associated with your field of practice except where the claim, investigation or inquiry relates to the provision of emergency medical assistance by you where you are in attendance as a bystander and where you have no expectation of payment or other reward;

21.8 the claim, investigation or inquiry 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 28 asking you to stop using the procedure or practice;

21.9 the matter for which you seek indemnity 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 5;

21.10 the claim arises in any way from any activity in connection with a clinical trial or research project including, but not limited to:

(a) claims against you in any way relating to sponsoring, initiating or administering the trial;

(b) claims arising from adverse outcomes where you did not provide healthcare services;

(c) claims relating to the trial protocol;

(d) claims relating to the oversight of the trial or any act or omission in the capacity of a member of an Ethics Committee;

except to the extent that you are indemnified under clause 15;

21.11 the claim 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;

21.12 the matter for which you seek indemnity arises in any way out of any actual or alleged sexual harassment, sexual misconduct or criminal conduct except to the extent that you are indemnified for your legal costs under clause 7;

21.13 the claim or inquiry arises in any way out of the provision of healthcare services by a person while intoxicated or otherwise impaired by the use of an intoxicant or drug except for the reasonable refusal to provide healthcare services because of the influence of such intoxicant or drug;

21.14 the matter for which you seek indemnity 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;

21.15 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; or

(c) to pay punitive, aggravated or exemplary damages; or

(d) in relation to matters for which you seek indemnity under clauses 16(b) and/or 16(c), to pay any other party any amount for legal costs;

21.16 the claim arises in any way out of the development, manufacture, storage, supply or endorsement of any good or product. This exclusion does not apply to the manufacture or supply of a product by you as an intrinsic part of you providing healthcare services to your patients;

21.17 the claim or inquiry arises in any way out of the unlawful sale, supply, use or administration of any substance;

21.18 the matter for which you seek indemnity arises in any way out of the ownership, use or occupation or state of any premises or anything done or omitted to be done in respect of the state of any premises;

21.19 the matter for which you seek indemnity 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. This exclusion does not apply to the provision of healthcare services to any patient who has symptoms, whether actual or alleged, as a result of any exposure to pollution including asbestos whether directly or indirectly;

21.20 the claim arises out of or is connected with any contractual liability, warranty or guarantee unless you would have been otherwise liable in the absence of the contractual liability, warranty or guarantee, except to the extent you are indemnified under clause 16(c);

21.21 the claim, investigation, inquiry or other matter 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 any injuries arising out of any terrorism, war or warlike situation;

21.22 the claim, investigation, inquiry or other matter 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 as described in clause 3;

21.23 you have admitted liability for the claim, or settled or agreed to settle the claim without our consent.

22. In addition to clause 21, if you are a medical practitioner, we will not indemnify you under this policy when:

    22.1 the claim 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;

    22.2 a person makes a claim 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 16(c);

    22.3 the claim, investigation or inquiry 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 of professional negligence;

    22.4 the claim, investigation, inquiry or other matter 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 as described in clause 3 or to loss of electronic documents or data under clause 17 where the loss occurs within the territorial limits of the United States of America or its territories.

23. In addition to clause 21, if you are a medical student, we will not indemnify you under this policy when:

    23.1 the claim, investigation or inquiry arises in any way out of the provision of healthcare services by you where you are acting outside the terms and guidelines of your university elective or scholarship placement except where the claim, investigation or inquiry relates to the provision of emergency medical assistance by you where you are in attendance as a bystander and where you have no expectation of payment or other reward;

    23.2 the claim, investigation or inquiry arises in any way out of the provision of healthcare services by you when you are not under the supervision of a medical practitioner except where the claim, investigation or inquiry relates to the provision of emergency medical assistance by you where you are in attendance as a bystander and where you have no expectation of payment or other reward;

    23.3 the matter for which you seek indemnity arises in any way out of the provision of healthcare services by you in respect of which you represented or held yourself out as a medical practitioner.

Fraudulent claims

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

Conditions

Payment of premium

25. 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 or incident

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

    (a) any claim, investigation or inquiry; or

    (b) any circumstance that might lead to a claim against you or to an investigation or inquiry involving you; or

    (c) any other matter which might give rise to a claim for indemnity under this policy.

Other insurance

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

Stop notice

28. 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, 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

29. 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.

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 or potential claim; or

    (b) do or not do anything which may compromise our ability to defend a claim or potential claim; or

    (c) make any payment or settlement, or offer of payment or settlement of any claim or potential claim;

    in respect of which we may be liable to indemnify you.

32. You must use all reasonable measures to avoid or reduce any liability under this 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 may adjust the premium that you are liable to pay and/or amend the terms of this 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 60 days of the request. If your gross annual billings vary from the range shown in your field of practice, we will be entitled to adjust the premium that you are liable to pay us. If you do not provide the evidence when we request it, we may cancel the policy.

General terms

Allocation of legal costs

35. If a claim, investigation, or inquiry or other matter includes both allegations in relation to which you are entitled to indemnity under this policy and allegations in relation to which you are not entitled to indemnity under this policy, we will pay only that proportion of 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, investigation, inquiry or other matter consisting of covered allegations bears to the whole of the claim, 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 this policy, including their investigation, pursuit, 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, 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 may seek appropriate legal advice on the merits and prospects of success of any defence, taking into account both the legal issues and the costs.

    We will not pursue any claim or matter under this policy (whether under clause 16 or otherwise) if we in our absolute discretion consider the claim or matter does not have reasonable prospects of success. In determining prospects of success, we may, but are not obliged to, seek appropriate legal advice on the merits and prospects of success, taking into account both the legal issues and the associated legal costs.

    If you do not consent to our settling a claim, 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 the payment of legal costs up to the date that we recommended settlement of the claim 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 represented you or advanced legal costs to you under this policy, and you want to appeal against that decision, you must request our written approval within 7 business days after the decision is handed down. You must do so in writing, setting out your reasons for wanting to appeal. We will inform you in writing within 10 business days after we receive your request whether we consent or not to pay your legal costs of the appeal.

    Our decision to pay your legal costs of any appeal is final and in our complete discretion. Prior to providing our decision we may but are not obliged to seek legal advice on the merits and prospects of success of any such action, taking into account both the legal issues and the associated legal costs.

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 due to us and you must forward that payment or refund to us less any legal fees and expenses you have incurred in the appeal.

Subrogation

38. You agree not to surrender any right to, or settle any claim for, contribution, indemnity or recovery, without our consent.

39. If we make a payment under this policy, we are subrogated to all your rights of contribution and indemnity or recovery.

Cancellation

40. You may cancel this policy at any time by notifying us in writing. We will refund the premium for the unexpired period of insurance on a pro-rata basis less an amount equal to 45 days' premium, unless the total annual premium payable is $20 or less, or you have made a claim or notified a potential claim under this policy in which case we will not make any refund. If the total refund is less than $5 we will, as instructed by you, 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.

41. We may cancel this policy by giving you 3 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 this 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 this 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.

Governing law

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

Interpretation

43. The headings in this policy are included for descriptive purposes only and do not form part of this policy for the purposes of construction or interpretation.

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

Definitions

45. In this policy:

Additional retroactive period means the period set out in the Certificate of Insurance as the additional retroactive period.

Certificate of Insurance means the Certificate of Insurance to this policy.

Claim means:

(a) a demand for, or an assertion of a right to compensation, damages or injunctive relief from you; or

(b) an intimation of an intention to seek compensation, damages or injunctive relief from you.

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

Communicable Disease means HIV, Hepatitis B or Hepatitis C viruses.

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 the conduct.

Excess means the amount you must pay to us for each claim made and notified under the policy, as set out in the Certificate of Insurance.

Field of practice means the field of practice in which you ordinarily provide healthcare services as set out in the Certificate of Insurance and any other field of practice notified to us for which we have agreed in writing to extend cover.

Healthcare services:

(a) ***If you are a medical practitioner***, means the following services that you 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;

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***, means 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 your current or former spouse, de facto or domestic partner, your children or the children of your current or former spouse, de facto or domestic partner, your brother, your sister or your parents.

Inquiry means a hearing, inquiry, disciplinary or administrative proceeding established to investigate by a professional body, health services authority, medical tribunal, Royal Commission, Coroner's Court, criminal court, health or medical benefits fund, the Australian Information Commissioner or Anti-Discrimination Board (or equivalent) and, in the case of medical students, by a university that you attend but not by a Professional Registration Board or Professional Services Review Committee.

Insured means the person named in the Certificate of Insurance.

Investigation means an investigation or disciplinary or administrative proceeding by a Professional Registration Board or Professional Services Review Committee.

Legal costs means lawyers' costs and disbursements reasonably and necessarily incurred in:

(a) defending any proceedings; or

(b) attending or assisting in an investigation or inquiry; or

(c) prosecuting any proceedings for indemnity, contribution or recovery; or

(d) investigating, avoiding, reducing or settling any claim.

Legal costs does not include travel expenses or personal expenses incurred by you.

Loss of documents means:

(a) the loss of, damage to or destruction of physical documents; or

(b) the deletion, corruption or modification of any electronic document or data.

Medical practitioner means an individual registered or licensed as a medical practitioner under a law of Australia or any State or Territory of Australia that provides for the registration or licensing of medical practitioners and includes an individual provisionally registered as such.

Medical student means an individual registered or licensed as a medical student under a law of Australia or any State or Territory of Australia that provides for the registration or licensing of medical students.

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

Policy means this policy wording, the Certificate of Insurance and any endorsements.

Proposal means all documents comprising your application for, or renewal of, this policy 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 Australia or any State or Territory of Australia to practice that vocation.

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

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

You and **your** means:

(a) the insured; and
(b) the executor or administrator of the insured'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 policyholder:

(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 a 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-observance 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 on 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 reasons for its refusal.

MDA National

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Claims Fax: 1300 011 235
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