

Professional Indemnity Insurance Policy

Supplementary Financial Services Guide (FSG) & Product Disclosure Statement (PDS) including Endorsement to the Policy Wording V.11

This Supplementary document details amendments to the MDA National Professional Indemnity Insurance Policy V.11 effective 1 July 2017.

The amendments are:

- to update the contact information of the Financial Ombudsman Service (FOS);
- to update the contact information for obtaining information and assistance in relation to the Financial Claims Scheme;
- to add cover in clause 6(iii) for legal costs of assistance requested by you in relation to self-reporting to AHPRA and self-referring to a Health Programme under the National Law, regardless of certain exclusions of cover under the policy;
- to make amendments to clause 7 (Sexual misconduct and criminal conduct defence costs) and clause 8 (Communicable disease cover);
- to add cover for civil liability for defamation, for legal costs of defending against defamation claims, and for legal costs of you pursuing defamation allegations against others (clause 10A and related amendments);
- to add to clause 13 (legal costs for employment and credentialing disputes) an exclusion to clarify that there is no cover in relation to an employment dispute arising from personal injury to you or any other person in the course of employment or engagement as a contractor;
- to add to clauses 13(iii) (legal costs for employment and credentialing disputes) and 14 (legal costs of Medical College training disputes) a provision for repayment to us of legal costs paid by us to pursue an allegation, claim, internal dispute or appeal by you if another person becomes liable to pay your legal costs of such pursuit;
- to amend clause 16 (How much we insure you for) to clarify the Sub-Limit of Indemnity that applies to an appeal for which we have consented to pay your legal costs under clause 34 (Appeals);
- to remove reference to the USA and its territories under clause 19.4 and clarify that we provide worldwide cover for civil liability for claims arising from Good Samaritan Acts under clause 2 and for loss of electronic documents under clause 15;
- to amend clauses 26 and 27 (your duty to co-operate) to clarify some ways in which your co-operation may be requested by us or our investigators or legal representatives;
- to reduce from 60 days to 30 days the time for you to comply with a request by MDA National for independent documentation evidencing your gross annual billings (clause 31, proof of billings).

The amendments apply to policies commencing on or after 1 July 2017. This Supplementary FSG, PDS and Endorsement to Policy Wording should be read in conjunction with the "PIIP Combined FSG, PDS and Policy Wording Version 11" which is available from the Download Centre on our website, mdanational.com.au.

Amendment to SECTION 1: Financial Services Guide

1. Page 5 – ‘External Dispute Resolution’

The telephone contact details of the Financial Ombudsman Service (FOS) is updated to 1800 367 287.

Amendments to SECTION 2: Product Disclosure Statement

2. Page 13 – ‘How much we insure you for’

The following bullet point is added immediately after the last bullet point to the third paragraph beginning “Sub-limits of indemnity”:

- “• \$100,000 for the aggregate of all civil liability for defamation claims made against you, legal costs for defending such claims and legal costs of the pursuit of defamation allegations by you (clause 10A) indemnified under the Policy during the period of insurance.”

(See the amendment to Section 3: Policy Wording at 11 below.)

3. Page 21 – ‘Financial Claims Scheme’

The contact details to obtain information about the FCS are updated to fcs.gov.au and 1300 55 88 49.

Amendments to SECTION 3: Policy Wording

4. Page 23 – Clause 5 ‘Legal costs for defence against claims’

In view of the addition of defamation insurance under clause 10A, clause 5 is replaced by:

“Subject to clause 33, we will indemnify you for legal costs that we incur on your behalf for defending you against any claim made against you for civil liability that is covered under any of clauses 1 to 4, 10 or 10A(a) of your Policy.”

5. Page 23 – Clause 6 Assistance with costs of self-reporting under the National Law and self-referral to a Health Program

The heading of clause 6 is replaced by:

“Legal costs for investigations, inquiries and self-referral to a Health Program under the National Law”

The following sub-clause (iii) is added after sub-clause (ii)(c):

- “(iii) notwithstanding exclusions 18.11, 18.12, 18.13, 18.14 and 18.17, costs that we incur on your behalf for reasonable legal assistance requested by you during the period of insurance to apply for referral to a Health Program established under the National Law in respect of an impairment that you have that detrimentally affects your provision of healthcare services as a medical practitioner or your undertaking of clinical training as a medical student.”

6. Page 24 – Clause 7 Legal costs for defence against allegations of sexual misconduct and criminal conduct towards patients

Sub-clauses (i) to (iv) of clause 7 are replaced by:

- “(i) in the case of a civil claim, it has been permanently discontinued or there is a final judgment in your favour; or
- (i) in the case of a criminal proceeding, it has been permanently discontinued or you have been found not guilty or the charges against you have been dropped; or
- (iii) in the case of an investigation or inquiry, it has been permanently discontinued or the outcome is that no finding of professional misconduct has been made against you;”

7. Page 25 - Clause 8 Communicable disease cover

Sub-clause (vi) of clause 8 is replaced by:

“(vi) you have previously received a payment from us, another insurer, a medical defence organisation or a medical indemnity provider as a result of your having been diagnosed as having the same or any other communicable disease.”

8. Page 26 - Defamation claims and allegations (medical practitioners only)

The following heading and clause 10A are inserted between clauses 10 and 11:

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

10A. If you are a medical practitioner, we will indemnify you for:

- (a) civil liability for a claim arising from defamation by you in the course of your provision of healthcare services, but only when:
 - (i) the claim is first made against you during the period of insurance; and
 - (ii) you tell us about the claim in writing during the period of insurance; and
 - (iii) the defamation occurred on or after the later of 1 July 2017 or the retroactive date and not within any non-practising period; and
 - (iv) you did not engage in the defamation with dishonest or malicious intent, or knowingly or deliberately in contravention of any law, rule, regulation or order of a court or tribunal of Australia or a place where the defamation occurred, or with reckless disregard for the consequences of causing loss, damage or injury to another person; and
 - (v) the claim is not a claim for which you are entitled to indemnity under clause 4 (Liability for reports about others);
- (b) legal costs incurred by us on your behalf in pursuing a defamation allegation against a person who is not a registered healthcare professional or a medical student that arises from defamation of you as a medical practitioner or directly in relation to the healthcare services that you provide, but only when:
 - (i) you first become aware of the alleged defamation during the period of insurance; and
 - (ii) you tell us about the alleged defamation in writing during the period of insurance; and
 - (iii) the alleged defamation occurred on or after the later of 1 July 2017 or the retroactive date and not within any non-practising period.
- (c) In respect of indemnity under sub-clause (b) for a defamation allegation made by you:
 - (i) The excess for any defamation allegation by you against another is \$20,000 and applies to each separate pursuit of one or more defamation allegations;
 - (ii) We will not pay or incur, or continue to pay or incur, legal costs of you pursuing any defamation allegation if we, in our absolute discretion, consider that your allegation does not have reasonable prospects of success. In determining prospects of success, we may, but are not obliged to, seek appropriate legal advice as to the merits and prospects of success of your allegation, taking into account both the legal issues and the legal costs.
 - (iii) If your defamation allegation is successful and you are entitled to payment or refund of legal costs paid by us, 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 reasonably paid or incurred by you and not paid or incurred by us to pursue your defamation allegation.

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

9. Page 28 - Clause 13 Legal costs for employment and credentialing disputes (medical practitioners only)

The following paragraph is added to the end of clause 13:

"If your allegation or claim is successful and you are entitled to payment or refund of legal costs paid by us, 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 reasonably paid or incurred by you and not paid or incurred by us to pursue your allegation or claim."

10. Page 28 - Exclusion of cover for personal injury in employment, staff contract and credentialing disputes

The following exclusion is added to the end of clause 13:

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

11. Page 29 - Clause 14 Legal costs for Medical College training disputes (medical practitioners only)

The following paragraph is added to the end of clause 14:

"If your internal complaint or appeal is successful and you are entitled to payment or refund of legal costs paid by us, 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 reasonably paid or incurred by you and not paid or incurred by us to pursue your internal complaint or appeal."

12. Page 29 - Clause 16 'How much we insure you for' - Appeals under clause 34

Sub-clauses 16(b) is replaced by:

"(b) for the aggregate of:

- (i) all legal costs for investigations, inquiries and claims of sexual misconduct or criminal conduct under clauses 6 and 7;
- (ii) all legal costs for defamation claims made against you or defamation allegations made by you under clause 10A;
- (iii) all legal costs of Apprehended Violence Orders under clause 11;
- (iv) all legal costs of defending breach of competition, consumer or fair trading legislation claims under clause 12;
- (v) all legal costs of employment disputes and credentialing disputes under clause 13;
- (vi) all legal costs of medical college training disputes under clause 14;

including in each case in (i) to (vi) above, the legal costs of any appeal against a decision that we consent to pay under clause 34;

(vii) all claims for loss of documents under clause 15;

that in each case in (i) to (vii) above, are indemnified under your Policy during the period of insurance will not exceed the applicable Sub-Limit of Indemnity set out in the Certificate of Insurance;"

13. Page 31 – Clause 18.9 - Exclusion relating to defamation

In view of the addition of defamation insurance under clause 10A, Exclusion 18.9 is replaced by:

“18.9 the matter for which you claim indemnity or payment arises in any way out of or in connection with defamation or any allegation of defamation, except to the extent that we agree to indemnify you under clause 4 or 10A.”

14. Page 34 - Clause 19.4 - Exclusion of cover for matters arising outside Australia

The following words are deleted from the end of clause 19.4: “occurring in either case within the territorial limits of the United States of America or its territories”.

15. Page 36 - Conditions 26 and 27 Your duty to co-operate

The following is added immediately after condition 27:

“Your duty to co-operate includes but is not limited to:

- (a) providing medical records, treatment notes, billing records, tax returns and other financial documents;
- (b) providing information and identifying and locating witnesses;
- (c) permitting our investigators and legal representatives access to your practice records;
- (d) attending meetings in person or by telephone with us or our investigators or legal representatives or experts engaged by or for us, for the purpose of being interviewed or providing information or evidence in oral or written form;
- (e) cooperating with our investigators and legal representatives in the preparation, defence or conduct of legal proceedings;

- (f) refraining from direct communication with any court, tribunal or other decision-making body and any other party involved in a claim made against you, an investigation or inquiry, or an allegation made by you without, or contrary to, approval or advice from us or our legal representatives;
- (g) attending court, investigations, inquiries and other hearings for the purpose of giving evidence or assisting our legal representatives;
- (h) undergoing medical and other examinations;
- (i) seeking our consent, or advice from our legal representatives, in relation to and before communicating with other persons or entities involved in a claim made against you, an investigation or inquiry, or an allegation pursued by you;
- (j) complying with our requests for information, including for evidence of gross annual billings and other financial information.”

16. Page 36 - Condition 31 Proof of billings

Clause 31 is replaced by:

“31. If we request it, you must provide us with independent evidence (such as an accountant’s report) of your gross annual billings for the period of insurance within 30 days after our request. If your gross annual billings vary from the range shown for your field of practice, we will be entitled to adjust the premium that you are liable to pay to us. If you do not provide the evidence within 30 days after our request, we may cancel your policy.”

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Dated 1 July 2017. This Supplementary FSG, PDS and endorsement to Policy Wording has been issued by MDA National Insurance Pty Ltd
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