

Professional Indemnity Insurance Policy

Supplementary Financial Services Guide & Product Disclosure Statement including Endorsement to the Policy Wording V.10

This Supplementary document is dated 28 December 2015 and details amendments to the MDA National Professional Indemnity Insurance Policy V.10. It incorporates the amendments set out in the Supplementary Product Disclosure Statement dated 1 July 2014, 1 July 2015 and additional amendments commencing on 28 December 2015 (shown in green).

The amendments are:

- To update the Financial Services Guide (FSG) to refer to the enhancements to privacy protection in the *Privacy Amendment (Enhancing Privacy Protection) Act 2012* (Cth).
- To clarify the explanation of retroactive cover in the Product Disclosure Statement (PDS).
- To amend the 'Your duty of disclosure' and 'Non-disclosure' wording in the PDS in accordance with Schedule 1 of the *Insurance Contracts Amendment Regulation 2015*.
- To amend the sub-limits for investigations and inquiries (clauses 6(b), 6(c) and clause 7).
- To amend sub-limits for Apprehended Violence Orders, breach of competition, consumer, trade practices and fair trading legislation, Medical College disputes and loss of documents, (clause 16(a), 16(b), 16(d) and clause 17).
- To amend the sub limit for legal costs of pursuing unpaid moneys under contracts of employment or engagement as an independent contractor (clause 16(e)).

- To refer to the sub limits under how much we insure you for (clause 19).
- To add a condition requiring the insured to attend risk management meetings at our request (clause 29(c)).
- To amend the cancellation clause to clarify the process for cancellation where the premium is paid by quarterly instalments (clause 40).
- To clarify that cancellation can be made within the cooling off period with full refund of premium (clause 40).
- To amend the definition of legal costs to meet the expanded cover for legal costs under clause 16 and to clarify that application fees payable for an appeal under the Medical College disputes cover (clause 16(d) is not included in legal costs (clause 45)).
- To amend the definition of medical practitioner to include final year medical students who are provisionally registered as medical practitioners (clause 45).

The amendments apply to policies commencing on or after 28 December 2015. This Supplementary FSG, PDS and Endorsement to Policy Wording should be read in conjunction with the Combined Financial Services Guide, Product Disclosure Statement and Policy Wording V.10 which is available from the Downloads section of our website mdanational.com.au.

Amendments to the Financial Services Guide

1. Page 4 - 'How do we safeguard your personal information?'

The last paragraph is amended to read:

"As part of our commitment to client service and the protection of client confidentiality we have adopted the Australian Privacy Principles set out in the *Privacy Act 1988* (Cth) as amended. You can download our Privacy Policy from our website at mdanational.com.au or contact our Member Services team on 1800 011 255 to obtain a copy."

Amendments to the Product Disclosure Statement

1. Page 6 and 7 - 'Your duty of disclosure' and 'Non-disclosure'

The whole section is replaced with:

"Before you enter into an insurance contract, you have a duty to tell us anything that you know, or could reasonably be expected to know, may affect our decision to insure you and on what terms. You have this duty until we agree to insure you. You have the same duty before you renew, extend, vary or reinstate an insurance contract.

You do not need to tell us anything that:

- reduces the risk we insure you for; or
- is common knowledge; or
- we know or should know as an insurer; or
- we waive your duty to tell us about.

If you do not tell us something

If you do not tell us anything you are required to, we may cancel your contract or reduce the amount we will pay you if you make a claim, or both. If your failure to tell us is fraudulent, we may refuse to pay a claim and treat the contract as if it never existed."

2. Page 10 - Retroactive Cover

The whole section is replaced with:

"Retroactive cover provides cover for your prior practice in respect of matters that you first become aware of during the period of insurance. The retroactive date of your Professional Indemnity Insurance Policy determines how much of your prior practice is covered under your policy.

Your Certificate of Insurance will (with limited exceptions) include a retroactive date. The policy will not cover you for incidents that occurred prior to this date. Due to the nature of healthcare services, it is not unusual for claims, investigations or inquiries to arise months or years after the incident giving rise to them occurred. As your policy is a claims made policy, such matters may be covered, but only if the incident giving rise to them occurred on or after the retroactive date shown on your Certificate of Insurance. In some instances, we may issue a policy without a retroactive date, in which case your policy can respond to properly notified matters irrespective of the date of the incident.

MDA National Insurance is obliged to make an offer of insurance to you, which covers you for any claims arising from prior incidents that are not otherwise covered by any insurance. Therefore, it is very important that you select a retroactive date which provides you with adequate retroactive cover.

Prior to 1997, all Medical Indemnity insurance was provided on a claims incurred basis. Claims incurred policies covered every claim which arose from an incident which occurred in the period of insurance of the policy, even if the claim came to light after the policy expired. These policies were gradually phased out from 1997 until 2003, after which all policies became claims made. Claims made policies only cover claims which are notified during the current period of insurance and which arise from incidents occurring after the retroactive date of the policy. If you practised prior to 1 July 2003, it is important to find out when your last claims incurred policy expired.

To illustrate, if your policy has a retroactive date of 1 July 2003, your policy will not cover a claim or any other matter arising from an incident that occurred before 1 July 2003, even if you first learn of the claim, investigation or inquiry and report it to us during the current period of insurance.

Everyone's circumstances are unique, but as a guide the following may assist you in making a decision on your retroactive cover needs. Please contact our Member Services team on 1800 011 255 if you require further clarification.

You may require retroactive cover from the first date on which:

- you practised privately in Australia and did not have medical indemnity cover from any source including a Medical Defence organisation; or
- you practised in the public hospital system or a corporate setting and did not have indemnity from your employer or under a Government indemnity scheme; or
- you held a claims made medical indemnity insurance policy; or
- your last claims incurred medical indemnity cover expired.
- if you are a recent graduate, the date that you commenced your internship; or
- if you are a student, the commencement of medical degree.

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."

3. Page 11 - Policy Conditions

The following sentence is inserted at the end of the paragraph:

"You must meet and cooperate with us for the purposes of discussing your risk management practices if we request such a meeting (clause 29(c))."

4. Page 11 and 12 - How much we insure you for

The entire section is replaced with:

"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:

- \$1,000,000 in the aggregate, for legal costs and costs orders arising out of all investigations and inquiries (clauses 6(b) and 6(c)) and successfully defended claims, investigations and inquiries into alleged sexual misconduct and criminal matters under clauses 7-10, with \$500,000 being the maximum amount payable in relation to any one claim, investigation or inquiry.
- \$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:

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

Your Certificate of Insurance will reflect these amounts.

The following additional sub limit applies to the automatic additional cover for medical practitioners under clauses 16(c)(ii) and (iii) in respect of your legal costs of pursuing claims for unpaid remuneration and other monies relating to or arising from a contract employing you or engaging you as an independent contractor to provide healthcare services (clause 16(e)):

- Provided the aggregate sub limit of \$100,000 for certain employment disputes (clause 16(c)) is not exceeded, the maximum amount of legal costs we will indemnify you for in respect of each claim is the amount of unpaid remuneration and other monies you claim."

5. Page 15 and 16 - Cancellation

The entire section is replaced with:

"You may cancel your policy at any time by telling us in writing.

If you cancel after the 21 day cooling off period, and you have paid the total annual premium, we will refund the premium and membership subscription for the unexpired period of insurance on a pro rata basis less a cancellation fee equal to 45 days' premium and subscription.

If you are paying by quarterly instalments, you will be required to pay us the cancellation fee equal to 45 days' premium and subscription less any refund that may be due to you.

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.

For the avoidance of doubt, cancellation, including refunds of your membership subscription will be treated similarly.

We may cancel the policy by giving you three 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."

Amendments to the Policy Wording

1. Page 25 - Clause 16 - Legal costs for other matters (medical practitioners only)

The following clause (e) is inserted in clause 16:

"(e) For legal costs under clauses 16(c)(ii) or 16(c)(iii) for you pursuing an allegation of unpaid remuneration and other monies under a contract of employment or contract of engagement as an independent contractor, the amount we will pay for each allegation is further limited to the amount of unpaid remuneration and other monies you pursue, provided that the sub limit stated in the Certificate of Insurance is not exceeded."

2. Page 26 - Clause 19 - How much we insure you for

Clause 19 is amended to read:

"19. The maximum amount (including legal costs and claimant's costs) payable by us for the aggregate of all matters for which you seek indemnity under this policy will not exceed the "maximum amount of our indemnity" in the Certificate of Insurance, which applies after any applicable excess is paid by you and is further limited by the sub limits shown in the Certificate of Insurance. If an excess applies, you must pay the applicable amount in respect of each claim made under the policy."

3. Page 31 and 32 - Clause 29 - Your duty to co-operate

Clause 29 is amended to read:

“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; and
- (c) attend any risk management meetings that we request in writing and co-operate fully with us by providing us with all information concerning your risk management.”

4. Page 34 - Clause 40 - Cancellation

Clause 40 is amended to read:

“40. You may cancel this policy at any time by notifying us in writing. If you cancel the policy within the cooling off period of 21 days after it was issued to you, your premium will be refunded in full with no cancellation fee deducted. If you cancel the policy outside the cooling off period, a cancellation fee applies which is equivalent to 45 days’ premium.

If you have paid your premium in full, we will deduct this cancellation fee from the refund. If you are paying the premium in quarterly instalments, you are still liable to pay the cancellation fee.

We will issue any refund directly to your nominated bank account or if instructed by you, donate the amount to a registered charity identified within our Corporate Social Responsibility program.

There will be no refund of premium where the total premium paid is less than \$20, or where you have notified a claim or potential claim under this policy.”

5. Page 36 - Clause 45 - Definition of Legal costs

The definition of legal costs is amended to read:

“Legal costs means lawyers’ costs and disbursements reasonably and necessarily incurred for matters covered under clauses 6, 7, 14, 15 and 16 of this policy, including for:

- (a) defending you; or
- (b) attending or assisting in an investigation or inquiry; or
- (c) prosecuting any proceedings for indemnity, contribution, recovery or other remedy; or
- (d) investigating, avoiding, reducing or settling such matter.

Legal costs does not include:

- (e) travel expenses or personal expenses incurred by you; and
- (f) any fee payable for lodgment of an appeal under the by-laws of a medical college.”

6. Page 37 - Clause 45 - Definition of Medical practitioner

The definition of Medical practitioner is amended to read:

“**Medical practitioner** means:

- (a) an individual registered or licensed or provisionally registered; or
- (b) a final year medical student who has made an application for provisional registration

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.”

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Dated 1 July 2014. This Supplementary FSG, PDS and endorsement to Policy Wording has been issued by MDA National Insurance Pty Ltd
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