

# MDA National Professional Indemnity Insurance Policy

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

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

The amendments to Section 2 (the PDS) are:

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

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

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

## Amendment to SECTION 2 — Product Disclosure Statement

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

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

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

\*Provided that the Maximum Limit of Indemnity is not exceeded

## Page 13/14 — a claims made policy

The second last paragraph under this heading is replaced by:

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

## Page 17 — Policy conditions – what you must do

### Examples of what you must do

#### Policy excess

The words under this heading are replaced with:

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

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

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

### Notification of claims facts and circumstances

This heading and the words under it are replaced with:

#### Notification of claims

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

## Amendment to SECTION 3 — Policy Wording

### Page 28 — Words with Special Meanings

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

**Healthcare service** means:

- (a) if **you** are a **medical practitioner**, the following services that **you** personally provide:
  - (i) healthcare treatment, services or advice or a report of those things provided to a patient or in relation to a patient in a professional capacity, including via **telehealth**; or
  - (ii) supervision, training or direction of a healthcare student or **registered healthcare professional** who is undertaking a recognised healthcare training program; or
  - (iii) supervision or direction of a person who is not a **medical practitioner** to assist **you**

in providing healthcare treatment, services or advice to a patient; or

- (iv) supervision, training or direction of a **medical practitioner** whose registration or licence is conditional upon such supervision; or
- (v) a healthcare report or opinion not for the purpose of treatment, prepared by **you** at the request of a third party who is a lawyer, insurer or statutory body; or
- (vi) healthcare advice to a person or organisation in relation to a person's fitness to carry out certain duties or activities; or
- (vii) writing an academic paper or an article in a peer reviewed, refereed healthcare journal; or
- (viii) as part of a professional but non-clinical role in medical education at a recognised institution, healthcare administration or medical research

provided that the activity is of a type that a qualified **medical practitioner** would ordinarily provide within **your field of practice**; or

- (b) if **you** are a **medical student**, the healthcare treatment, services or advice or a report of those things provided to a patient or in relation to a patient in a professional

capacity, provided that the activity is of a type that is appropriate to be conducted by a **medical student** at **your** stage of medical study.

## Page 29 — Words with Special Meanings

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

**Inquiry** means a hearing, **inquiry**, disciplinary or administrative proceeding, investigative process or conciliation:

- (a) in the case of **medical practitioners** and **medical students**, by or on behalf of a professional body, health services authority, medical tribunal, Royal Commission, Coroner's Court, criminal court, health or medical benefits fund, Information Commissioner, Privacy Commissioner, consumer protection agency or Anti-Discrimination Board (or equivalent);
- (b) in the case of **medical students**, by or on behalf of a university that **you** attend; and
- (c) including a notification, warning or intimation of (a) or (b) but not by or on behalf of Ahpra, a professional registration board or professional services review committee.

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

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

proceeding by Ahpra, a professional registration board or professional services review committee, including a notification, warning or intimation of those proceedings but not by or on behalf of an entity referred to in paragraphs (a) and (b) of the definition of “**inquiry**”

### **Page 33 — Clause 6 Overseas Cover (medical practitioners only)**

The reference to clause 26.22 is amended to 26.21

### **Page 33 — Clause 7 Overseas Cover (medical students only)**

The reference to clause 26.22 is amended to 26.21

### **Page 46 – Clause 25 Single claim**

Clause 25 is amended to read:

#### **Single claim**

25. Where:

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

gives rise to more than one **claim against you** (whether by one or more claimants), all such claims will constitute a single **claim against you** and will be deemed to have been first made at the time the earliest claim was made against **you** regardless of whether that time is before or during the **period of insurance**.

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

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

Where:

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

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

### **Page 47 – Clause 26.5 and 26.7 Exclusions**

Clause 26.5 is replaced with the following:

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

Clause 26.7 is replaced with the following:

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

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

### Page 48 – Clause 26.12 Exclusions

Clause 26.12 is amended to read:

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

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

### Page 50 – Clause 26.22 Exclusions

Clause 26.22 is amended to read:

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

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

with respect to healthcare treatment, services or advice or a report of those things provided to a patient or in relation to a patient in a professional capacity via **telehealth**.

Clause 26.24 is replaced with:

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

- (a) is a matter in respect of which **we** are prohibited from providing or not authorised to provide cover, including but not limited to workers' compensation. For the avoidance of doubt, and without limiting the operation of this exclusion, **we** will not, for example, cover **you** or make a payment with respect to any workers' compensation claim by **you** or against **you**; or
- (b) arises in any way out of a **claim against you** for personal injury or property damage by an employee or contractor of yours (or of a practice entity controlled by **you**), in the course of their employment or engagement.

## Page 51 – Clause 27.2 Exclusions

Clause 27.2 is replaced with:

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

## Page 52 – Clause 33 Conditions

Clause 33 is replaced with:

**You have to notify us of a claim against you**

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


## Page 54 – Clause 39 Prevention of Loss

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

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



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