

MDA National Practice Indemnity Policy

This Supplementary document details amendments to the MDA National Practice Indemnity Policy V.8 effective 1 July 2022.

This Supplementary document details amendments to the MDA National Insurance Practice Indemnity Policy V.8 effective 1 July 2022. It incorporates the amendments set out in the Supplementary document effective 1 July 2021. The amendments effective 1 July 2022 are highlighted in **green**.

The amendments are to:

- remove references to the Australian Financial Complaints Authority (AFCA) as the body to which complaints, not resolved after our internal dispute resolution process, should be referred. The AFCA rules exclude complaints under this Policy.
- update our contact details for when you wish to take advantage of our internal dispute resolution process.
- clarify your contractual obligation to notify us of claims against you or an insured person, investigations and loss of documents.
- clarify defence costs cover for alleged breaches of consumer protection legislation, clause 9.
- amend cover for defence costs for employment disputes to clarify limitations on the cover, Clause 10.
- amend the circumstances in which more than one claim will constitute a single claim, clause 14.
- clarify the circumstances in which exclusion 15.10 regarding obstetric services will not apply.
- to clarify the limited circumstances in which claims against you or an insured person by employees will be covered under the policy, clause 15.23.
- to clarify your contractual obligation to notify us of claims against you or an insured person, investigations and loss of documents, clause 18.
- clarify the consequences of failing to comply with a Policy condition.
- to include a cyber exclusion (and definitions) limited to cover for loss of documents.
- to include a condition (and related exclusion) requiring you to stop a procedure or practice (within 14 days of receipt of notice by us) if we consider that the procedure or practice poses an unreasonable risk of giving rise to a claim against you, investigation or inquiry.
- clarify the involvement of midwives and nurses providing any Obstetric services.
- to introduce new definitions of Obstetric Services and Shared care.

Amendment to SECTION 1 — Product Disclosure Statement

Page 2

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

Page 5 — Internal dispute resolution

The text under the above heading is replaced with:

In our experience, most issues can be resolved with a quick phone call or email to one of our staff.

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

Phone: 1800 011 255 (Freecall)

Fax: (08) 9415 1492

Email: complaintsofficer@mdanational.com.au

In writing: PO Box 445 WEST PERTH
WA 6872

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

Page 5 — External dispute resolution

The heading and text under the above heading is removed.

Amendment to SECTION 1 — Important Information

Page 10– Single Claim

The text under the above heading is replaced with:

Single claim

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

In the case of investigations where acts or omissions substantially in common with one another gives rise to one or more investigation all such investigations will constitute a single matter for which you claim under the Policy and will be deemed to have been first made at the time the earliest investigation arose regardless of whether that time is before or during the period of insurance.

Without limiting the circumstances which constitute a single claim, all claims forming part of a class, group or representative action will constitute a single claim.

Page 10 – Policy conditions

The last paragraph under the above heading is replaced with:

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

Page 14 – Internal dispute resolution

The text under the above heading is replaced with:

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

Page 14 – External dispute resolution

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

Amendment to SECTION 3 — Policy Wording

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

Clause 9 is replaced by:

Defence costs for alleged breaches of Consumer Protection Legislation

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

- a) the claim against you or the insured person is first made against you or the insured person during the period of insurance; and
- b) you tell us in writing during the period of insurance about the claim that you or the insured person breached the legislation; and
- c) the claim that you or the insured person breached the legislation arises from an act or omission occurring on or after the retroactive date; and
- d) the claim against you or the insured person arises directly out of your provision of healthcare services; and
- e) the breach does not arise from a malicious act or omission or intentional breach.

Page 18 – Defence costs for employment disputes

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

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

Page 19 – Clause 11 Loss of Documents

Remove the words:

We will not indemnify you for any costs and expenses incurred in replacing or restoring electronic documents or data as a result of a computer virus or an unauthorised access to your systems where you do not have appropriate back up storage systems and protocols and current security software installed to protect your documents and data.

Replace those words with:

See Exclusion 15.34

Page 20 – Clause 14 Single Claim

Clause 14 is replaced by

Single claim

14. Where:

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

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

Without limiting the circumstances which constitute a single claim, all claims forming part of a class, group or representative action will constitute a single claim.

Where:

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

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

Page 22 – Exclusion 15.10

Exclusion 15.10 is replaced by

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

- (a) a medical practitioner who specialises in obstetrics; or

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

Page 24 – Clause 15.23 Exclusions

Clause 15.23 is replaced with:

15.23 the matter for which you claim under the Policy:

- (a) arises in any way out of a claim against you or an insured person by an employee or contractor of yours, except to the extent that you are covered for legal costs under clause 10; or
- (b) is a matter in respect of which we are prohibited from providing or not authorised to provide cover, including but not limited to workers' compensation.

Page 25 – Exclusions

Add exclusion 15.33

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

Page 25 Exclusions

Add exclusion 15.34

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

For the purposes of this exclusion only:

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

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

Cyber incident means:

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

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

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

Page 25 – Conditions

The following sentence is added under the heading

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

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

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

Clause 18 is replaced by

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

Page 27 Conditions

Add Condition 25A

Stop Notice

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

- a. we consider that the procedure or practice poses an unreasonable risk of giving rise to a claim against you, investigation or inquiry; and
- b. we give you 14 days' notice asking you to stop the procedure or practice.

Page 32 Definitions

The following new definitions have been inserted

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

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

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

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