

MDA National Dental Indemnity Policy

This Supplementary document details amendments to the MDA National Dental Indemnity Policy V.6 effective **1 July 2023**.

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The amendments documented within this section are effective from 1 July 2023.

The amendments are to:

Section 1 (Important Information)

- amend the notice under section 40 *Insurance Contracts Act 1984* (Cth) regarding claims made insurance.
- explain when run-off cover and when extended reporting period cover may be offered.

Section 2 (The Policy Wording)

- amend the circumstances that constitute a single claim or a single investigation or inquiry under the Policy, clause 13.
- clarify the exclusions in relation to claims against you by employees and contractors, clause 14.14.
- clarify the circumstances in which disputes with current and former partners etc are not covered, clause 14.15.
- clarify the extent of our right to conduct and control proceedings, clause 28.
- replace the definition of excess with a definition of deductible, replace use of the word “excess” with the word “deductible” wherever it appears in the Policy and include provisions making it clear that limits of indemnity are inclusive of the deductible.
- clarify that the definition of field of practice is the field set out in the Certificate of Insurance.
- clarify, in the definition of dental services, the relationship between dental services and field of practice.
- amend the definitions of inquiry and investigation so that proceedings by a professional services review committee falls under the definition of inquiry and not under the definition of investigation.

Amendment to SECTION 1 — Important Information

Page 3 — A claims made policy

The second last paragraph under that heading is replaced with:

Where you give notice in writing to us of any facts that might give rise to a claim against you as soon as reasonably practicable after you become aware of those facts, but before the expiry of the period of insurance, you may have rights under section 40(3) of the *Insurance Contracts Act 1984* (Cth) to be covered in respect of any claim subsequently made against you arising from those facts even though the claim is made against you after the expiry of the period of insurance. These rights arise under the legislation only and are not terms of this contract of insurance.

Page 5 – How much we insure you for

The table on Page 5 is replaced with the following:

How much we insure you for

<p>The total amount we will pay for the aggregate of all claims, legal costs and other matters paid under your Policy during the period of insurance will not exceed the Maximum Limit of Indemnity (which is inclusive of any deductible) set out in the Certificate of Insurance</p>		<p>Maximum Limit of Indemnity (which is inclusive of any deductible)</p>
<p>All claims under the Policy during the period of insurance</p>		<p>\$40 million in the aggregate</p>
<p>Provided that the Maximum Limit of Indemnity (which is inclusive of any deductible) is not exceeded, the following sub-limits (which are inclusive of any deductible) apply during the period of insurance</p>		<p>Sub-limits (which are inclusive of any deductible) as set out below</p>
<p>Limit of indemnity per claim under the Policy for Clause 1 to 6(a) during the period of insurance</p>		<p>\$20,000,000</p>
<p>Clause 6(b) and (c) and 7</p>	<p>legal costs and costs orders arising out of investigations and inquiries (clauses 6(b) and 6(c)); legal costs of seeking an Apprehended Violence Order (clause 6(d)); and legal costs arising out of allegations of sexual misconduct or criminal conduct (clause 7)</p>	<p>\$500,000 in the aggregate</p>
<p>Clause 8</p>	<p>Loss of documents</p>	<p>\$100,000 in the aggregate</p>
<p>Clause 9</p>	<p>Loss of income for attending a hearing at court with respect to a civil liability claim against you</p>	<p>\$20,000 in the aggregate with a maximum of \$2,000 per day for up to 10 days</p>

Amendment to SECTION 2 — Policy Wording

Page 7 – Run-off cover or extended reporting period

Replace the heading and text under the above heading with:

Run-off cover and extended reporting period

Run-off cover is a form of cover generally taken out by professionals when they retire or in the event they stop practising permanently. Run-off cover provides you with cover for claims against you after you retire or permanently cease practice. You should notify in writing the association or body that arranged your cover when you are going to retire or cease practice. In those circumstances, we may offer you run-off cover for up to four consecutive years, as a renewable policy. If you hold run-off cover with us for 4 consecutive years, we may, offer you an endorsement to your Policy giving you an extended reporting period. The extended reporting period allows you to notify us of claims against you or potential claims against you to us after the expiry of the period of insurance, in effect extending the period of insurance.

Page 14 — Extended reporting period

Clause 11 is replaced with:

11. The extended reporting period will commence on the commencement date for the extended reporting period set out in the Certificate of Insurance and expire on the first to occur of:

- a) you providing any dental service in Australia after the commencement of the extended reporting period set out in the Certificate of Insurance, whether or not for reward; or
- b) the Policy being cancelled; (including the extended reporting period); or
- c) the limit of indemnity (which is inclusive of any deductible) being reached.

Page 15 – Clause 12 - How much we insure you for

Remove the words:

12. The Maximum Limit of Indemnity and, provided the Maximum Limit of Indemnity is not exceeded, the sub-limits of indemnity are set out in the following table.

Replace those words with:

12. The Maximum Limit of Indemnity (which is inclusive of any deductible) and, provided the Maximum Limit of Indemnity is not exceeded, the sub-limits of indemnity (which are inclusive of any deductible) are set out in the following table:

The table on page 15 is replaced with the following:

The total amount we will pay for the aggregate of all claims, legal costs and other matters paid under your Policy during the period of insurance will not exceed the Maximum Limit of Indemnity (which is inclusive of any deductible) set out in the Certificate of Insurance		Maximum Limit of Indemnity (which is inclusive of any deductible)
All claims under the Policy during the period of insurance		\$40 million in the aggregate
Provided that the Maximum Limit of Indemnity (which is inclusive of any deductible) is not exceeded, the following sub-limits (which are inclusive of any deductible) apply during the period of insurance		Sub-limits (which are inclusive of any deductible) as set out below
Limit of indemnity per claim under the Policy for Clause 1 to 6(a) during the period of insurance		\$20,000,000
Clause 6(b) and (c) and 7	legal costs and costs orders arising out of investigations and inquiries (clauses 6(b) and 6(c)); legal costs of seeking an Apprehended Violence Order (clause 6(d)); and legal costs arising out of allegations of sexual misconduct or criminal conduct (clause 7)	\$500,000 in the aggregate
Clause 8	Loss of documents	\$100,000 in the aggregate
Clause 9	Loss of income for attending a hearing at court with respect to a civil liability claim against you	\$20,000 in the aggregate with a maximum of \$2,000 per day for up to 10 days

Page 16 – A new heading of Single claim is added and clause 13 is replaced with the following

13. 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 against you will constitute a single claim against you.

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

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.

All claims under the Policy (including those constituting a single claim against you and a single matter for which you claim under the Policy):

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

- d) forming part of a class, group or representative action; or
- e) (with respect to investigations and inquiries) which arise from any acts or omissions which are substantially in common with each other

will constitute a single claim under the Policy and will be deemed (including for the purpose of determining the applicable limits of indemnity) to have been first made at the earliest of either the time the earliest claim was made against you, or the time the investigation or inquiry first arose, regardless of whether that time is before or during the period of insurance.

Where more than one limit applies to claims constituting a single claim under the Policy, the amount payable, in the aggregate, shall not exceed the highest of those applicable limits.

Where more than one deductible applies to claims constituting a single claim under the Policy, the highest applicable deductible is to apply once.

Page 18 – Exclusions

Clause 14.14 is replaced with:

14.14 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; or
- b) arises in any way out of a dispute with a former, current or proposed employee or contractor of yours or of a practice entity controlled by you, except to the extent that the claim

against you arises directly out of your provision of dental services limited to dental care provided to that person as a patient;

Page 18 – Exclusions

Clause 14.15 is replaced with:

14.15 the matter for which you claim under the Policy, arises in any way out of:

- a) your credentialling with a hospital or health service; or
- b) a dispute between you and a current, former or prospective: partner, co-owner, director, employer, or principal (other than a claim against you for professional negligence);

Page 19 – Exclusions

Clause 14.23 is replaced with:

14.23 the claim against you, investigation, inquiry or other matter arises out of:

- a) proceedings in or a judgment or order:
 - i) by a court, tribunal or other body outside of Australia; or
 - ii) by a court, tribunal or other body which apply the laws of a country other than Australia; or
 - iii) based on, derived from or to enforce a judgment or order by a court, tribunal or other body referred to in (i) or (ii); or
- b) acts or omissions which occur or are alleged to occur outside the Commonwealth of Australia or its territories or protectorates with the exception of loss of documents cover under clause 8.

This exclusion does not apply to Good Samaritan acts described in clause 2.

Page 20 Clause 17 Conditions – When you have to notify us

Clause 17 is replaced with:

17. 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 22 – Alteration of Risk

Clause 25 is replaced with:

25. You must give us notice as soon as practicable of any material alteration in the risk during the period of insurance, including without limitation:

- a) any change in the nature or extent of your practice or the services you provide;
- b) the provision of services which differs from your field of practice;
- c) your registration ceases or in any way changes including, without limitation, the imposition of any conditions; or
- d) you retire.

We may, but are not obliged to (either during the period of insurance, or upon renewal), insure the altered risk. If we do decide to insure the altered risk we can, among other things, (to reflect the change in risk) adjust the premium that you are liable to pay and amend the terms of your Policy.

If we decide to increase the premium, you must pay us the increased premium within 30 days of our tax invoice to you.

Page 22 – Refund of professional fees

Clause 26 is replaced with

26. If you receive a demand to refund professional fees, from a patient or in relation to a patient, you agree to pay us the amount that we request comprising some or all of the fees that you received in relation to that patient but only when:

- a) there are reasonable grounds for us believing the dental treatment or services provided were of an unsatisfactory clinical or professional standard; and
- b) we request you to do so in writing.

In assessing the amount you may have to pay us, we will take into account the particular services provided to that patient deemed to be unsatisfactory.

We may request you either refund the patient directly or contribute towards any remedial treatment provided to that patient.

Page 22 – Our right to the conduct and control of proceedings

Clause 28 is replaced with:

28. You agree that:

- a) we have the right to conduct and control all matters that we agree to cover under your Policy, including their investigation, defence, pursuit, avoidance, reduction, settlement and, subject to clause 29, any appeal as we see fit; and
- b) we may do so in your name.

We will not admit liability for or settle any claim against you, or resolve any investigation, inquiry or other matter without your prior consent, provided that your consent is not withheld unreasonably. In determining whether your consent has been withheld unreasonably, we can take into account any factor including but not limited to:

- i) the merits and prospects of success;
- ii) whether, even if successful, the outcome is likely to provide a substantial improvement to you; and
- iii) costs.

We may, but are not obliged to, seek legal advice.

If you do not consent to our settling a claim against you, or otherwise resolving an investigation, inquiry or other matter, your entitlement to cover for legal costs will cease and at our option:

- c) we will settle the claim against you, or resolve the investigation, inquiry or other matter; or
- d) our liability is limited to the amount we recommend in settlement and payment of legal costs up to the date that we recommended to you settlement of the claim against you or resolution of the investigation, inquiry or other matter.

Page 26 – Definitions

The definition of Excess is replaced with Deductible as follows;

Deductible means the amount set out in the Certificate of Insurance that must be paid to us or at our direction before we will cover you.

The definition of Field of practice is replaced with:

Field of practice means the field of practice set out in the Certificate of Insurance.

The definition of Dental services is amended by replacing the words:

“in each case within the field of practice;” at the end of paragraph (a) with the words:

“in each case provided that the activity is of a type that a qualified dental practitioner would ordinarily provide within your field of practice”;

The definition of Inquiry is replaced with:

Inquiry means a hearing, inquiry or disciplinary proceeding, investigative process or conciliation by or on behalf of:

- a) a professional body, a Professional Services Review Committee, health services authority, dental tribunal, Royal Commission, Coroner’s Court or health or medical benefits fund, the Information Commissioner, Privacy Commission, consumer protection agency or Anti-Discrimination Board (or equivalent), but not before a Professional Registration Board; or
- b) by the University that you attend or attended as a dental student; and
- c) includes a notification, warning or intimation of (a) or (b).

The definition of Investigation is replaced with:

Investigation means an investigation or disciplinary proceeding by a Professional Registration Board, including a notification, warning or intimation of those proceedings, but not by or on behalf of an entity referred to in the definition of “inquiry”.

AMENDMENTS —
EFFECTIVE 1 JULY 2022

The amendments documented within this section are effective from 1 July 2022.

The amendments are to:

Section 1 (Important Information)

- to further clarify your rights under s 40(3) of the *Insurance Contracts Act 1984* (Cth)
- to clarify the Policy condition and your contractual obligation to notify us of claims against you, investigations, inquiries and other matters, at clause 17 of Policy Wording

Section 2 (the Policy Wording)

- to outline the circumstances that constitute a single claim, clause 13
- to amend the Policy to set out the circumstances in which claims against you, investigations or 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 14.4.
- to simplify the exclusions in relation to claims against you by employees, clause 14.14.
- to clarify your contractual obligation to notify us of claims against you, investigations, inquiries and other matters, clause 17.
- to clarify the circumstances in which you may be required to pay an amount equivalent to the fees you received, clause 26

Amendment to SECTION 1 — Important Information

Page 3 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 6 Policy Conditions

The words on page 6 under this heading are replaced by:

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 16 to 26 (inclusive) of the Policy Wording. For example, you must pay the premium when it is due (clause 16). You must also notify us in writing as soon as practicable after you become aware of any claim against you, investigation or inquiry. (clause 17).

Amendment to SECTION 2 — Policy Wording

Page 16 – A new heading of Single claim is added and Clause 13 is replaced with the following

Single Claim

Where

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

Page 16 Clause 14.4 Exclusions

Clause 14.4 is replaced by:

14.4 the claim against you, investigation or inquiry, arises in any way out of a practice or procedure not within your field of practice, except where the claim against you, investigation or inquiry relates to Good Samaritan acts described in clause 2. 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 18 Clause 14.14 Exclusions

Clause 14.14 is replaced by 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; 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 20 Clause 17 Conditions – When you have to notify us

Clause 17 is replaced by

17. 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 22 – Clause 26 Conditions - Refund of professional fees

Clause 26 is replaced by

26. When:

- (a) there are reasonable grounds for us believing the dental services provided to a patient were of an unsatisfactory clinical or professional standard; and
- (b) we request you to do so in writing you must, as directed by us, pay to the patient or to us the amount we request, up to the amount of the fees that you received in relation to that patient. The amount we request may be for the purposes of a refund or contributing towards the cost of remedial treatment provided to the patient.

The amendments documented within this section are effective from 1 July 2021.

The amendments are to:

- update our contact details for when you wish to take advantage of our internal dispute resolution process.
- Amend the extended reporting period provision so that the final distribution of your estate following your death will no longer be one of the possible dates by which the extended reporting period expires. The effect of the amendment is to avoid any doubt that if after your death a claim is made against your estate and the Policy and extended reporting period requirements are satisfied, we will act on behalf of the estate to defend the claim.
- Outline the circumstances that constitute a single claim or a single investigation or inquiry under the Policy.
- clarify the consequences of not complying with Policy conditions.
- clarify the definition of Excess.
- include a cyber exclusion (and definitions) limited to cover for loss of documents.

Amendment to SECTION 1 — Important Information

Page 6 – A new heading of Single claim is added.

If more than one claim is made against you and those claims arise from related acts or omissions, then the amount we indemnify you for is limited to the indemnity applicable at the time the first claim was made against you.

If more than one investigation or inquiry is commenced against you and those investigations or inquiries arise from related acts or omissions, then the amount we indemnify you for is limited to the indemnity applicable at the time of the first investigation or inquiry.

See clause 13 of the Policy Wording for details.

Page 8 — MDA National Insurance internal dispute resolution

The telephone number under the above heading is replaced with:

Phone: 1800 011 255 (Freecall)

Amendment to SECTION 2 — Policy Wording

Page 14 — Extended reporting period

Clause 11 is replaced with:

11. The extended reporting period will commence on the commencement date for the extended reporting period set out in the Certificate of Insurance and expire on the first to occur of:
 - (a) you providing any dental service in Australia after the commencement of the extended reporting period set out in the Certificate of Insurance, whether or not for reward; or
 - (b) us cancelling the Policy (including the extended reporting period); or
 - (c) the limit of indemnity being reached.

Page 14 – Clause 8 Loss of Documents (dental practitioners only)

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 14.28

Page 16 – A new heading of Single claim is added and Clause 13 is replaced with the following

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 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 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 19 – Exclusions

Add exclusion 14.28:

the matter for which you claim under clause 8 (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 20 – Conditions

The following wording 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:

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

Page 26 – Definitions

The definition of Excess is amended as follows;

Excess – means the amount set out in the Certificate of Insurance that must be paid to us or at our direction before we will indemnify you.

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