

# Dental Indemnity Policy

## Important Information and Policy Wording







## **Introduction**

This brochure is divided into two sections.

**Section 1** is the important information section. It contains information about the Dental Indemnity Policy.....**2**

**Section 2** is the Policy wording.....**10**

It is important that you read these documents carefully before deciding whether to acquire the Dental Indemnity Policy.

The important information section and Policy wording applies to policies commencing on or after 1 July 2018.

## **SECTION 1: Important Information**

### **Your duty of disclosure and non-disclosure**

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 under the Policy and treat the contract as if it never existed.

### **What makes up the insurance contract?**

The insurance contract is made up of:

- the Policy wording contained within this booklet;
- the Certificate of Insurance we issue to you; and
- any endorsement we issue to you.

You must read all of these documents carefully. They should be kept in a secure place.

### **A claims made policy**

The Dental Indemnity Policy is a claims made contract of insurance. This means that it covers civil liability claims made against you and notified to us during the period of insurance and investigations and inquiries that you first become aware of and notify to us during the period of insurance. Similarly, the cover for legal costs for other matters only applies to matters that you first become aware of and tell us about during the period of insurance.

The Policy does not cover matters you were aware of prior to the commencement of the period of insurance, whether you told us about them on your proposal or not. Such matters may be:

- claims that have already been made or threatened against you;
- investigations or inquiries whether commenced or not; or
- circumstances you are aware of that could give rise to a claim against you or to an investigation or inquiry or other matter in respect of which the Policy provides cover for legal costs.

In relation to civil liability claims against you, if you have a Policy with us and you notify us in writing during your period of insurance of circumstances that may give rise to a claim against you, the fact that you do not give us written notice of a claim against you relating to those circumstances before your Policy has expired will not, of itself, relieve us of liability. However, you must notify us of the claim against you as soon as you become aware of it.

If you notify us of a matter for which you seek indemnity after your Policy has expired or is cancelled, you may not be indemnified by us for that matter. If you want to remain insured it is important that you continue to renew your Policy or obtain alternative insurance. Matters properly notified to us prior to the expiry or cancellation of the Policy and accepted by us as a valid claim will continue to be covered under that Policy.

### **Retroactive cover**

As long as the civil liability claim was first made against you or the investigation, inquiry, allegation or other matter giving rise to legal costs first came to your knowledge during the period of insurance, we will cover you according to the terms of the Policy, even if the incident giving rise to the claim against you, investigation, inquiry, allegation or other matter occurred before the commencement of the period of insurance, provided it occurred after the retroactive date.

The retroactive date of your Dental Indemnity Policy determines how much of your prior practice is covered under your Policy. If your Certificate of Insurance specifies "Unlimited" for the retroactive date, we will cover you irrespective of how long ago the incident occurred. If your Policy shows a specific retroactive date, the Policy will not respond to any matter arising out of an incident that occurred before that date.

## **Subrogation**

We have a right under the Policy to take over all of your rights of recovery in respect of a claim under the Policy and to pursue actions against third parties in your name even if a claim has not actually been paid.

If you surrender any right or settle any claim against you, or by you against another for contribution, indemnity or recovery without our prior written consent then we may be entitled to reduce our liability under the contract of insurance.

## **What does the Policy cover?**

The Dental Indemnity Policy is a contract of insurance. The following is a summary of the insurance only and does not form part of the contract of insurance. All of the features, terms and conditions of this insurance are set out in the Policy wording (Section 2 of this document).

The Policy insures you, and your estate, for civil liability arising out of:

- claims against you in connection with your provision of dental services and Good Samaritan acts (clauses 1 and 2 of the Policy);
- your unintended breach of privacy legislation (clause 3);
- you reporting an incident or a healthcare professional to a hospital, area health authority or professional body, or participating in an investigation of such an incident (clause 4); and
- claims against a practice entity controlled by you, but only when the claim against the practice entity arises directly in connection with the provision of dental services by you (clause 5).

The Policy insures legal costs:

- incurred by us for the defence or settlement of a claim against you covered under the Policy (clause 6(a));
- incurred with our consent for assisting you with investigations by a Professional Registration Board or Professional Services Review Committee (clause 6(b));
- incurred with our consent for assisting you with inquiries arising from the provision of dental services, including an investigative proceeding or hearing by or on behalf of a professional body, health services authority, dental tribunal, Royal Commission, Coroner's Court, Information Commissioner, Privacy Commissioner, Consumer Protection Agency, Anti-Discrimination Board or health or medical benefits fund or the university that you attend or attended as a dental student (clause 6(c));
- of a professional or administrative body which you are ordered to pay as a result of an investigation (clause 6(b));
- which you are ordered to pay as a result of an inquiry (clause 6(c));
- incurred with our consent in seeking an Apprehended Violence Order where there is a threat to you or your immediate family related to the provision of dental services by you (clause 6(d)); and

- for the successful defence of a claim against you, investigation or inquiry which arises out of any alleged sexual misconduct or criminal conduct by you against a patient arising out of your provision of dental services (clause 7).

If you are a dental practitioner (but not if you are a dental student) the Policy also insures you:

- for the reasonable cost of replacement or restoration of certain lost or damaged documents (clause 8); and
- if you are entitled to indemnity under clause 1 for your loss of income for attending a hearing at court (clause 9).

### How much we insure you for

<b>The total amount we will pay for the aggregate of all claims under the Policy during the period of insurance will not exceed the Maximum Limit of Indemnity set out in the Certificate of Insurance</b>	<b>Maximum Limit of Indemnity</b>
All claims under the Policy during the period of insurance	\$40,000,000 in the aggregate
<b>Provided that the Maximum Limit of Indemnity is not exceeded, the following sub-limits apply for the Period of Insurance</b>	<b>Sub-limits of indemnity as set out below</b>
Limit of indemnity per claim under the Policy for Clauses 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

## **What we do not insure you for**

The Policy will not provide insurance cover in certain circumstances. Clauses 14 and 15 of the Policy Wording set out what the Policy does not cover. Please ensure that you read the Policy exclusions carefully in order to understand what is not covered.

## **Policy conditions**

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, or circumstances that could give rise to such or any other matter that might give rise to a claim under the Policy (clause 17).

## **General terms & definitions**

There are some general terms and definitions that apply to all of the insuring clauses. These are set out in clauses 27 to 37 (inclusive) of the Policy Wording.

For example, when a claim against you includes both allegations that are indemnified under the Policy and allegations that are not indemnified, we may reduce the amount that we pay for legal costs to an amount that we regard as attributable to the allegations for which we provide indemnity (clause 27).

We also have the right to conduct and control any proceedings (clause 28).

## **Cooling off period**

You have a cooling off period that allows you to cancel your Policy within 21 days of it being issued.

You must cancel the Policy in writing. We will refund the whole of the premium (including any Government taxes and charges) that you have paid.

However, your cooling off right does not apply if you make a claim under your Policy prior to your request to cancel it.

## **Cancellation**

You may cancel your Policy at any time by telling us in writing. We will refund the premium for the unexpired period of insurance on a pro-rata basis less an amount equal to 45 days' premium, unless you have made a claim under the Policy or notified a potential claim under the Policy in which case we will not make any refund (clause 32).



We may cancel the Policy by giving you three business days' written notice (clause 33) if:

- you failed to disclose or misrepresented to us any information that you knew (or could reasonably be expected to have known) 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.

### **Run-off cover or 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 is provided through an extended reporting period which allows you to notify 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. You should notify the association or body that arranged your cover when you are going to retire or cease practice. We may offer you an endorsement to your current Policy giving you an extended reporting period.

### **Privacy**

The protection of your personal information is important to us. We collect your personal information to ensure that we are able to provide you with appropriate products and services. We collect, handle, store and disclose personal and sensitive information in order to:

- decide whether to issue a Policy;
- determine the terms and conditions of the Policy;
- analyse data;
- handle claims against you;
- handle your claims under the Policy;
- meet our legal obligations; and
- provide our products to you and improve the delivery of our products and services.

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](http://mdanational.com.au) or contact us to obtain a copy.

## **What to do if you want to make a complaint against us**

If you have a complaint relating to our product or services. In the first instance please contact our authorised representative (the dental association from whom you accessed our product or services). In the event you are not satisfied by the response you receive to your complaint you may access our internal dispute resolution process which is described below.

### **MDA National Insurance internal dispute resolution**

We are committed to dealing openly with all of our policyholders and will endeavour to resolve any complaint quickly, efficiently and fairly. We view complaint resolution as an important part of our continuous improvement process.

A complaint is an expression of dissatisfaction made to us, relating to our products and services or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected.

In our experience, most issues can be resolved with a quick phone call. If you do have a complaint in relation to our products or services, please contact the MDA National Complaints Officer by:

**Phone:** 1800 034 466 (Freecall)  
**Fax:** (08) 9415 1492  
**Email:** [complaintsofficer@mdanational.com.au](mailto:complaintsofficer@mdanational.com.au)  
**In writing:** PO Box 445  
WEST PERTH WA 6872

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

### **Financial claims scheme**

This Policy may be a 'protected policy' under the Federal Government's Financial Claims Scheme (FCS) which is administered by the Australian Prudential Regulation Authority (APRA). The FCS is intended to protect certain policyholders in the extremely unlikely event of an insurer becoming insolvent. A person entitled to claim under a protected policy may be entitled to payment under the FCS although access to the scheme is subject to eligibility criteria. Information about the FCS can be obtained from ARPA at [fcs.gov.au](http://fcs.gov.au) or calling the FCS info line on 1300 558 849.

## **SECTION 1: Important Information**

## SECTION 2: Policy Wording

This Dental Indemnity Policy is issued by MDA National Insurance Pty Ltd ABN 56 058 271 417, AFS Licence No. 238073.

When issuing this Policy we have relied on the information you have given us in your proposal. You must tell us without delay if any of this information is incorrect or if it changes.

Please read the Policy and Certificate of Insurance carefully and keep it in a safe place. When reading this Policy, please note the use of specially defined words which are listed at the end of the Policy.

### What we insure you for

#### Civil Liability

1. We will indemnify you for civil liability for a claim against you arising directly out of your provision of dental services, but only when:
  - (a) the claim against you is first made during the period of insurance; and
  - (b) you tell us about the claim against you in writing during the period of insurance; and
  - (c) the claim against you arises from an act or omission occurring on or after the retroactive date and not within any non-practising period.

#### Good Samaritan acts

2. We will indemnify you for civil liability for a claim against you when that claim arises directly from your provision of emergency medical treatment where you are in attendance as a bystander and there is no expectation of payment or other reward, but only when:
  - (a) the claim against you is first made during the period of insurance; and
  - (b) you tell us about the claim against you in writing during the period of insurance; and
  - (c) the claim against you arises from an act or omission occurring on or after the retroactive date.

This clause only applies to acts necessary to stabilise the patient or to prepare the patient for transfer.

**Breach of privacy**

3. We will indemnify you for civil liability for a claim against you arising out of your unintended breach of the *Privacy Act 1988* (Cth) or equivalent State or Territory legislation in connection with your provision of dental services, but only when:
  - (a) the claim against you is first made during the period of insurance; and
  - (b) you tell us about the claim against you in writing during the period of insurance; and
  - (c) the claim against you arises from an act or omission occurring on or after the retroactive date and not within any non-practising period.

**Liability for reports about others**

4. We will indemnify you for any civil liability claim against you (including a claim for defamation) that arises directly out of you, in good faith and in the public interest, reporting an incident or a healthcare professional to a hospital, area health authority or professional body or participating in the investigation of such an incident, but only when:
  - (a) the claim against you is first made during the period of insurance; and
  - (b) you tell us about the claim against you in writing during the period of insurance; and
  - (c) the claim against you arises from a report made on or after the retroactive date.

**Your practice entity**

5. We will indemnify a practice entity controlled by you for civil liability for a claim made against that practice entity, but only when:
  - (a) the claim against the practice entity arises directly from dental services provided by you personally; and
  - (b) the claim against the practice entity would be covered under this Policy if made against you; and
  - (c) the practice entity complies with the terms and conditions of the Policy that you must comply with; and
  - (d) the claim is first made against the practice entity during the period of insurance; and

- (e) you tell us about the claim against the practice entity in writing during the period of insurance; and
- (f) the claim against the practice entity arises from an act or omission occurring on or after the retroactive date and not within any non-practising period.

If the practice entity is not 100% owned by you, then our indemnity is limited to the same proportion of liability as your ownership of the entity.

### **Legal costs**

6. Subject to clause 28, we will indemnify you for:

- (a) legal costs that we incur on your behalf for any claim against you covered by this Policy under clauses 1 to 5; and
- (b) legal costs (up to the sub-limit stated in the Certificate of Insurance) that we incur on your behalf for any investigation and any legal costs of a professional registration board or professional services review committee that you are ordered to pay as a result of an investigation which finds against you; and
- (c) legal costs and costs orders (up to the sub-limit stated in the Certificate of Insurance) that we incur on your behalf:
  - (i) for any inquiry arising from the provision of dental services by you and any legal costs that you are ordered to pay as a result of a finding against you in such an inquiry;
  - (ii) in defending an allegation of academic misconduct made against you by the University that you attend or attended as a dental student.

but, in each case in (b) and (c), only if you first become aware of the investigation or inquiry and you tell us about it in writing during the period of insurance and the investigation or inquiry relates to an act or omission that occurred on or after the retroactive date; and

- (d) legal costs (up to the sub-limit stated in the Certificate of Insurance) incurred by you with our consent in seeking an Apprehended Violence Order or equivalent relief where there is a threat to the personal safety of you or a member of your immediate family and the threat is related to the provision (or non-provision) of dental services by you on or after the retroactive date, but only if you first become aware of the threat and tell us about it, in writing, during the period of insurance.

**Legal costs for defence against allegations of sexual misconduct and criminal conduct towards patients**

7. We will indemnify you for reasonable legal costs incurred by you with our consent, or incurred by us on your behalf, for the successful defence of any claim against you, criminal proceedings, investigation or inquiry, arising out of alleged sexual misconduct or criminal conduct by you against a patient arising directly out of your provision of dental services to the patient, if and when:
- (i) in the case of a civil liability claim against you, it has been permanently discontinued, or there is a final judgment in your favour; or
  - (ii) 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;

but only if:

- (a) you first become aware of the claim against you, criminal proceeding, investigation or inquiry during the period of insurance; and
- (b) you tell us about the claim against you, criminal proceeding, investigation or inquiry during the period of insurance; and
- (c) the claim against you, investigation or inquiry arises from an act or omission occurring on or after the retroactive date and not within any non-practising period; and
- (d) all appeal rights of any party in relation to the allegations made against you have been exhausted.

We may at our absolute discretion agree to advance the legal costs under this clause to you as they are incurred and prior to the finalisation of any claim against you, criminal proceeding, investigation or inquiry. We may in our absolute discretion cease to advance legal costs to you at any time and take steps to recover from you any legal costs already paid under this clause.

If we do advance legal costs to you, and we subsequently determine that we have no liability to pay those legal costs under this clause, then you must repay those legal costs to us.

If we do not advance legal costs and you are eligible for indemnity under this clause, you must provide evidence of the legal costs incurred by you. We will indemnify you only for the reasonable costs incurred by you in conducting your defence.

### **Loss of documents (dental practitioners only)**

8. If you are a dental practitioner, in the event of any loss of documents which in the ordinary course of your providing dental services were in your possession or the possession of those to whom the documents were entrusted by you, we will indemnify you for the reasonable costs and expenses incurred by you in replacing or restoring those documents, but only when:
- (a) the loss of documents occurred, or you first become aware of, the loss of documents during the period of insurance; and
  - (b) you notify us about the loss of documents in writing during the period of insurance; and
  - (c) we have agreed to the costs of replacement or restoration before they are incurred.

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.

### **Loss of income (dental practitioners only)**

9. If you are a dental practitioner, we will reimburse you for your personal income forgone by you as a result of you attending a hearing at court if and only if it is with respect to a matter for which you are indemnified under clause 1 of this Policy and;
- (a) lawyers instructed by us on your behalf confirm in writing that your attendance is required;
  - (b) you are unable to work on the relevant day due to your attendance at Court;
  - (c) you furnish to us evidence, satisfactory to us, of your loss of income and that the loss of income resulted from your attendance at a hearing at court;
  - (d) the claim against you was made after 1 July 2018.

### **Extended reporting period**

10. If your Certificate of Insurance is endorsed with an extended reporting period, then you will be entitled to an extended reporting period during which any notification to us in respect of an act or omission that occurred or is alleged to have occurred prior to the end of the period of insurance and on or after the retroactive date will be deemed to have been first notified to us during the period of insurance.
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; or
- (d) the final distribution of your estate following your death.

### How much we insure you for

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.

The total amount we will pay for the aggregate of all claims under the Policy during the period of insurance will not exceed the Maximum Limit of Indemnity set out in the Certificate of Insurance	Maximum Limit of Indemnity
All claims under the Policy during the period of insurance	\$40,000,000 in the aggregate
Provided that the Maximum Limit of Indemnity is not exceeded, the following sub-limits apply for the Period of Insurance	Sub-limits of indemnity as set out below
Limit of indemnity per claim under the Policy for Clauses 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

13. For the purpose of determining which one period of insurance applies, where:
- (a) an act or omission;
  - (b) one or more related acts or omissions;
  - (c) any course of related treatment;
  - (d) any acts or omissions which are substantially in common with each other;
  - (e) any courses of treatment which are substantially in common with each other; or
  - (f) the same or similar underlying cause or source

gives rise to more than one claim against you, all such claims will constitute a single claim against you and will be treated as if first made at the time of the earliest claim against you by any claimant.

### **What we exclude from the Policy**

14. We will not indemnify you under this Policy when:
- 14.1 and to the extent that you are entitled to indemnity under any other contract of insurance, any indemnity arrangement or scheme (such as an indemnity provided by your employer or a discretionary indemnity scheme provided by a professional defence organisation or mutual fund), whether current or not, any law or any contract or other arrangement, that in each case is not a contract of insurance entered into by you or, if it is such a contract, is required to be effected by or under a law in Australia or any State or Territory in Australia;
  - 14.2 the matter for which you seek indemnity is one that you knew about before this Policy began, or that a reasonable person in your professional position would have known about before this Policy began, or the matter arises from any act or omission that you knew before this Policy began, or that a reasonable person in your professional position would have thought before this Policy began, might result in a matter that might be covered under this Policy;
  - 14.3 the matter for which you seek indemnity arises from circumstances which you notified to us or to another insurer or other indemnity provider before the period of insurance;
  - 14.4 the claim against you, investigation or inquiry arises in any way out of a practice or procedure not associated with your field of practice except where the claim against you, investigation or inquiry relates to Good Samaritan acts described in clause 2;

- 14.5 the claim against you arises from an act or omission of an employee, contractor or any other person when that act or omission was:
- (a) outside the terms and conditions of his or her employment or contract; or
  - (b) outside the boundaries of his or her training and/or qualifications; or
  - (c) not under your supervision.
- 14.6 the claim against you, investigation or inquiry arises because of your continuing use of a procedure or practice in the provision of dental services 14 days after you have received notice from us under clause 19 asking you to stop using the procedure or practice;
- 14.7 the matter for which you seek indemnity arises in any way from an act or omission by you when you were not registered, were prohibited from practising or you acted outside of, or did not comply with, the terms, limitations or requirements of your registration;
- 14.8 the matter for which you seek indemnity 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;
- 14.9 the claim against you arises in any way from any activity in connection with or sponsorship of a clinical trial or research project. This exclusion does not apply to your provision of dental services to a participant in a clinical trial or research project provided that the clinical trial or research project has been approved by a properly constituted Ethics Committee in accordance with National Health and Medical Research Council Guidelines and has been conducted in accordance with any conditions or approvals made by such Ethics Committee;
- 14.10 the claim against you or inquiry arises in any way out of the provision of dental services by you while intoxicated or otherwise impaired by the use of an intoxicant or drug except for the reasonable refusal to provide dental services because of the influence of such intoxicant or drug;
- 14.11 the claim against you or inquiry arises in any way as a result of the transmission of a disease from you or from someone for whom you are vicariously liable to a patient when, at the time of transmission, you knew or reasonably should have known that the infected person was carrying the disease;
- 14.12 the matter for which you seek indemnity arises in any way out of any actual or alleged sexual harassment, sexual misconduct, criminal conduct or unlawful discrimination except to the extent that you are indemnified for your legal costs under clause 7;

- 14.13 the matter for which you seek indemnity arises in any way out of any wilful violation or breach of any statute or regulation or out of any act committed with dishonest, malicious or criminal intent;
- 14.14 a person makes a claim against you because, and only because, that person is or was an employee or agent of you or a practice entity controlled by you or because you or a practice entity controlled by you did not employ that person;
- 14.15 the claim against you, investigation or inquiry arises in any way out of a dispute between you and a current, former or prospective partner or co-owner in your practice entity other than a claim of professional negligence;
- 14.16 and in respect of a legal obligation:
- (a) to refund any fee charged to or in respect of a patient; or
  - (b) to pay a fine or a civil or criminal penalty; or
  - (c) to pay punitive, aggravated or exemplary damages.
- 14.17 the claim against you arises in any way out of the development, manufacture, storage, supply or endorsement of any good or product. This exclusion does not apply to the manufacture or supply of a product by you as an intrinsic part of you providing dental services to a patient;
- 14.18 the claim against you or inquiry arises in any way out of the unlawful sale, supply, use or application of any substance;
- 14.19 the matter for which you seek indemnity arises in any way out of the ownership, use, lease or occupation or state of any premises or anything done or omitted to be done in respect of the state of any premises;
- 14.20 the matter for which you seek indemnity arises in any way out of or in connection with an actual or threatened pollution of the environment (including exposure to asbestos) or a requirement for you to deal with that pollution exposure. This exclusion does not apply to the provision of dental services to any patient who has symptoms, whether actual or alleged, as a result of any exposure to pollution including asbestos whether directly or indirectly;
- 14.21 the claim against you arises out of or is connected with any contractual liability, warranty or guarantee unless you would have been otherwise liable in the absence of the contractual liability, warranty or guarantee;
- 14.22 the matter for which you claim under the Policy arises out of or is connected with acts of terrorism, war, invasions, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, insurrection, military or usurped power. This exclusion does not apply to any healthcare procedure performed as a result of or in an attempt to prevent any injuries arising out of any terrorism, war or warlike situation;

- 14.23 the claim against you, investigation, inquiry or other matter arises out of:
- (a) a judgment or order:
    - (i) by a court in the United States of America or its territories; or
    - (ii) by a court elsewhere exercising jurisdiction under a Local, State or Federal Law of the United States of America; or
    - (iii) based on, derived from or to enforce a judgment or order by a court referred to in (i) or (ii); or
  - (b) acts or omissions (other than loss of documents described in clause 8) which occur within the territorial limits of the United States of America or its territories.

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

- 14.24 the claim against you, investigation, inquiry or other matter arises from any act or omission occurring or allegedly occurring outside the Commonwealth of Australia or its territories or protectorates unless we have agreed in writing to extend cover and then only to the jurisdictions and for the period of time specified by us in writing. This exclusion does not apply to Good Samaritan acts described in clause 2 or to loss of documents described in clause 8;
- 14.25 you have, without our consent, admitted liability with respect to any matter for which you claim or may be entitled to claim under the Policy;
- 14.26 the claim against you arises from an actual or alleged contravention of any provision of the *Competition and Consumer Act 2010* (Cth) or the *Trade Practices Act 1974* (Cth) or any equivalent State or Territory fair trading legislation. This exclusion does not apply to cover for civil liability for a claim against you provided under clause 1 or the legal costs cover provided under clause 6;
- 14.27 the claim against you, investigation, inquiry or other matter arises out of the provision of elective dental treatment by you to a member of your immediate family, but this exclusion does not apply to emergency dental treatment provided by you.

### Fraudulent claims

15. We may reject a fraudulent claim for indemnity or any part of a claim that is fraudulent.

## **Conditions**

### **Payment of premium**

16. You must pay the premium, or any instalment of premium, on or before the date when it is due.

### **When you have to notify us**

17. You must notify us in writing as soon as practicable after you become aware of:
  - (a) any claim against you, investigation or inquiry; or
  - (b) any circumstance that might lead to a claim against you, or by you against another, or to an investigation or inquiry involving you; or
  - (c) any other matter which might give rise to a claim for indemnity under this Policy.
18. If you seek indemnity under this Policy you must tell us about any other insurance or other entitlement to indemnity that may indemnify you including the identity of the other insurer or indemnifier, the policy number and any other information that we may reasonably require.

### **Stop notice**

19. You must stop using a procedure or practice in providing dental services if:
  - (a) we consider that the practice or procedure 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 using the procedure or practice.

### **Your duty to co-operate**

20. 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 dental practice;
  - (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.

21. Your duty to co-operate includes, but is not limited to:
- (a) providing dental 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) co-operating 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 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 purposes 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 against you, an investigation or inquiry or an allegation pursued by you; and
  - (j) complying with our requests for information, including for evidence of hours of practice and financial information.
22. You agree to waive any legal professional privilege to the extent only that the privilege would otherwise prevent any legal representative appointed by us from disclosing information to us.

### **Prevention of loss**

23. You must not, without our prior written consent:
- (a) admit liability for; or
  - (b) do or not do anything which may compromise our ability to defend or pursue or assist you in an investigation or inquiry with respect to; or
  - (c) offer or make any payment or settlement of; any matter in respect of which we may be liable to indemnify you.
24. You must use all reasonable measures to avoid or reduce any liability under this Policy.

### **Alteration of risk**

25. You must give us notice as soon as practicable of any material alteration of the risk during the period of insurance including without limitation any material change in your field of practice, the nature or extent of the dental services provided by you, or the risk category you have previously declared. We will be entitled to exercise rights including but not limited to adjusting the premium that you are liable to pay and/or amending the terms of your Policy to reflect the change in the risk.

### **Refund of professional fees**

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 refund the patient rather than paying us.

## **General terms**

### **Allocation of legal costs**

27. If a claim against you, investigation, inquiry or other matter includes both allegations in relation to which you are entitled to indemnity under this Policy and allegations in relation to which you are not entitled to indemnity under this Policy, we will pay only that proportion of legal costs which are attributable to the covered allegations. We will determine in our absolute discretion the allocation of legal cost between the covered allegations and the uncovered allegations and will inform you of our determination in writing. In determining the allocation of legal costs, we will have regard to the proportion which that part of the claim against you, investigation, inquiry or other matter consisting of covered allegations bears to the whole of the claim, investigation, inquiry or other matter.

### **Our right to the conduct and control of proceedings**

28. You agree that:
- (a) we have the right to conduct and control all matters that we agree to indemnify under this 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.



However we will not admit liability for or settle any claim against you, investigation, inquiry or other matter against you without your prior consent, which is not to be withheld unreasonably. In determining whether your consent has been withheld unreasonably, we can take into account any factor including the merits and prospects of success and costs and 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 indemnity for legal costs will cease and our liability is limited to the amount we recommend in settlement and/or payment of your legal costs up to the date that we recommended settlement of the claim against you, or resolution of the investigation, inquiry or other matter to you.

### Appeals

29. If you are dissatisfied with the decision made by a court, board, tribunal or other decision making body in a matter in which we have indemnified you or advanced legal costs to you under this Policy, and you want to appeal against that decision, you must request our written approval within 14 days after the decision is handed down or within such shorter period as would be reasonable having regard to the time limit for an appeal to be filed. You must do so in writing, setting out your reasons for wanting to appeal. We will inform you in writing whether we consent or not to pay your legal costs of the appeal.

We will not pay or incur, or continue to pay or incur, legal costs of you pursuing any appeal if we, in our absolute discretion, consider that such appeal does not have reasonable prospects of success, or for any other reason, including but not limited to legal costs, should not be pursued. We may, but are not obliged to, seek legal advice as to the merits and prospect of success of such appeal. Our decision to pay your legal costs of any appeal is final and in our complete discretion. If you decide to appeal without our consent, we will not pay any additional legal costs associated with the appeal or any further amount which may be an outcome of the appeal.

If your appeal is successful and you are entitled to a payment or refund of legal costs paid by us and/or any money that we paid the claimant, 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 you have incurred in the appeal.

The amount payable under the Policy in respect of any appeal is included in the relevant sublimit.

### Subrogation

30. You agree not to surrender any right to, or settle any claim for, contribution, indemnity or recovery, without our consent.
31. If we make a payment under this Policy, we are subrogated to all your rights of contribution and indemnity or recovery.

## **Cancellation**

32. 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, we will refund your premium in full. If you cancel outside the 21 day cooling off period, we will refund the premium for the unexpired period of insurance on a pro-rata basis, less an amount equal to 45 days' premium unless you have made a claim or notified a potential claim under this Policy in which case we will not make any refund.

If you have paid your premium in full, we will deduct this cancellation fee from the refund. If you are paying the premium in instalments, you are still liable to pay the cancellation fee. We will issue any refund directly to your nominated bank account.

Within 30 days of cancellation you must pay to us any cancellation fee and any outstanding premium owing at the date of cancellation, failing which we may recover those amounts from you as a debt.

33. We may cancel this Policy by giving you three business days' written notice if:
- (a) you failed to disclose or misrepresented to us any information that you knew (or could reasonably be expected to have known) was relevant to our decision to insure you and on what terms; or
  - (b) you fail to comply with your duty of utmost good faith to us; or
  - (c) you fail to comply with a provision of this Policy including the provision to pay the premium; or
  - (d) you are paying your premium by instalments and at least one instalment remains unpaid for over one month; or
  - (e) you fail to comply with any provision of this Policy which requires you to notify us (including your obligation to notify us of any change in the dental services provided by you); or
  - (f) you make a fraudulent claim under the Policy.

Within 30 days of cancellation you must pay to us any outstanding premium owing at the date of cancellation, failing which we may recover the outstanding premium from you as a debt.

## **Governing law**

34. Any dispute that arises between you and us under this Policy will be subject to the law and jurisdiction of Western Australia.

## **Interpretation**

35. The headings in this Policy are included for descriptive purposes only and do not form part of this Policy for the purposes of construction or interpretation.
36. Under this Policy the masculine includes the feminine and the singular includes the plural and vice versa.

## Definitions

37. In this Policy:

**Claim against you** means:

- (a) a demand for, or an assertion of a right to, compensation, damages or injunctive relief from you; or
- (b) an intimidation of an intention to seek compensation, damages or injunctive relief from you.

**Certificate of Insurance** means the Certificate of Insurance for this Policy.

**Claimant's costs** means legal costs, disbursements and related expenses you have to pay to the person making the claim against you.

**Criminal conduct** means conduct that is or could be in breach of a criminal law, regardless of whether or not a criminal charge has been brought in relation to the conduct and whether or not you have been convicted of the charge.

**Dental practitioner** means:

- (a) an individual who is a dentist, dental specialist, dental hygienist, dental prosthetist, dental therapist, oral health therapist or other individual who, in each case, is registered as a dental practitioner under the Health Practitioner Regulation National Law as enacted in a State or Territory of Australia and practises as a dental practitioner in Australia; or
- (b) an individual who is qualified to practise as a dental practitioner according to the Dental Board of Australia's published list of approved qualifications from overseas jurisdictions and is undergoing examination, assessment, evidence of registration, clinical experience or clinical training with the objective of becoming registered to practise in Australia as a dental practitioner.

**Dental services** means:

- (a) if you are a dental practitioner, the following services that you personally provide:
    - (i) dental care in the course of the practice of dentistry as defined under the current Guidelines for Scope of Practice issued by the Dental Board of Australia; or
    - (ii) supervision, training and mentoring of others in the provision of dental care; or
    - (iii) a report or opinion or advice in relation to dental care services, procedures or practices for the purposes of insurance, legal process, an investigation or inquiry or in relation to a person's fitness to carry out certain duties or activities; or
    - (iv) publication of an academic paper or an article in a peer-reviewed, refereed dentistry journal; or
    - (v) performance of a professional but non-clinical role in dental education at a recognised institution, healthcare administration or healthcare research;
- in each case within the field of practice; or

- (b) if you are a dental student, clinical activities undertaken under supervision by a registered dental practitioner and in the course of the program of study.

**Documents** means any written, printed or reproduced material, or any electronic document or data used in connection with your practice providing dental services, but does not include any currency, negotiable instrument, cheque, stamp or coupon, or any document evidencing title to or constituting a form of security.

**Dental Student** means an individual who is a dental student enrolled in, and has not yet graduated from, a program of study for the purpose of becoming a dental practitioner that is:

- (a) accredited by the accreditation authority for the dental profession in Australia; and
- (b) approved by the Dental Board of Australia under the Health Practitioner Regulation National law in force in each Australian State or Territory.

**Excess** means the amount you must pay to us for each claim made and notified under the Policy, as set out in the Certificate of Insurance.

**Field of practice** means the dental services within the field of practice identified in the Certificate of Insurance, that you are qualified and trained to provide and do ordinarily provide in the course of your practice and any other field of practice notified to us that we have agreed in writing to cover under the Policy.

**Healthcare professional** means a healthcare practitioner or an individual who practises a healthcare related vocation and who is registered under a law of Australia or any State or Territory of Australia to practise that vocation.

**Immediate family** means your current or former spouse, de facto or domestic partner, your children or the children of your current or former spouse, de facto or domestic partner, your brother, your sister or your parents.

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

- (a) a professional body, 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 Professional Services Review Committee; 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).

**Insured** means the person named in the Certificate of Insurance.

**Investigation** means an investigation or disciplinary or administrative proceeding by 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 the definition of "inquiry".

**Legal costs** means lawyers' costs and disbursements reasonably and necessarily incurred for the matters covered under 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 remedies; or
- (d) investigating, avoiding, reducing or settling any such matter.

Legal costs do not include travel expenses or personal expenses incurred by you.

**Loss of Documents** means:

- (a) the loss of, damage to or destruction of physical documents; or
- (b) the deletion, corruption or modification of electronic documents or data.

**Non-practising period** means any period commencing after the retroactive date that is set out in the Certificate of Insurance or was declared by you to us and has been accepted by us as a period during which you did not practise as a dental practitioner or engage in providing any dental services in Australia.

**Period of insurance** means the period of insurance set out in the Certificate of Insurance.

**Policy** means this Policy wording, the Certificate of Insurance and any endorsements.

**Proposal** means all documents comprising your application for or renewal of this Policy including any pre-renewal questionnaire.

**Retroactive date** means the date specified as "retroactive date" in the Policy. (If "Unlimited" is specified, no retroactive date applies.)

**We, our** and **us** means MDA National Insurance Pty Ltd ABN 56 058 271 417, AFS Licence No. 238073 being the insurer named in the Certificate of Insurance.

**You** and **your** means:

- (a) the insured; and
- (b) the executor or administrator of the insured's estate.







**Freecall: 1800 011 255**

**Member Services Fax: 1300 011 244**

**Claims Fax: 1300 011 235**

**Email: [peaceofmind@mdanational.com.au](mailto:peaceofmind@mdanational.com.au)**

**Web: [mdanational.com.au](http://mdanational.com.au)**



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