

Bulletin

April 2016

Exciting new developments

In this edition we launch:

Payment by direct debit

From July, payments can be made by direct debit (bank account or credit card) with no additional charge

MIGA Plus

Giving access to a new range of services and products, the first being Business Insurance

Case studies

- Ending the doctor/patient relationship
- Independent contractor agreements: Are your contractual arrangements in order?

Meet MIGA's Claims & Legal Services Team

Insurance renewal

Estimating your Gross Income

Practice insurance

Why it should be on your radar

Midwifery snapshot – Testimonials in advertising

Are you at risk of breaching the law?

MIGA Risk Management Program 2016/17



MIGA Plus Access to new benefits



We are very pleased to introduce MIGA Plus to you. Through MIGA Plus we will offer our members and policyholders access to a range of insurance products and services aligned with their business and day-to-day practice.

MIGA Plus complements the medical indemnity and professional indemnity insurance you have with MIGA, which already provides access to important services such as claims management, 24 hour medico-legal advice and a wide range of risk management and insurance advisory services.

The products and services offered through MIGA Plus will support other aspects of your medical and healthcare practice and will be high quality, competitive and genuinely respond to your needs.

MIGA Plus will eventually mean that we can help you with most of your business related insurance needs, making it easier for you to access quality products with the knowledge that we are sourcing these with your needs in mind.

Our first MIGA Plus offer will be for Business Insurance. This will be of interest to our many clients who own or are part-owners in healthcare businesses and medical practices.

In partnership with Guild Insurance, MIGA Plus Business Insurance can protect you for a range

of day-to-day business insurance matters including cover for:

Damage

Accidental loss or damage to your building, contents and stock through perils such as fire, burst pipes, storm, earthquake and flood

Business interruption

Loss of income, rent and staff wages, if you have to stop or reduce trading due to accidental loss of and damage to your premises and other unforeseen circumstances

Public Liability

Your liability for accidents that happen in connection with your business such as a slip or a fall or damage to someone else's property

Burglary

Repair or replacement of contents and stock if your business is broken into

Tax audit

Professional fees associated with a tax audit of your business

Employee dishonesty

Losses arising from fraudulent or dishonest behaviour by employees

Products Liability

Your liability for damages caused by goods sold or supplied by you

Continued on page 2



Insurance renewals are fast approaching and with this in mind we answer a question frequently raised by doctors, "How do I calculate my Gross Income estimate?" In this edition we outline the types of income that need to be included in your calculation.

MIGA is also introducing direct debit payment arrangements to enable our clients to streamline their renewal. See the article in this Bulletin for more information.

As always the Client Services Team is available to assist you, so if you have any questions, particularly in relation to your insurance or renewal, please don't hesitate to call us on 1800 777 156.

Lesley Veber
Client Services Officer

MIGA Plus Access to new benefits

(continued from front cover)

Management Liability

Liability following a claim for compensation (including legal costs) leading to civil proceedings such as:

- By an employee, ex-employee or job applicant from a defined employment related matter (Employment Practices Liability);
- Shareholders, creditors, competitors and others who have suffered loss following financial difficulties or alleged anticompetitive or unfair trade practice allegations (Directors and Officers cover).

You will have access to a locally-based Account Manager to personally deal with any Business Insurance enquiry you have and help is available to you 24 hours a day, 7 days a week.

Whatever your business structure and needs, large or small, we can assist you through MIGA Plus.

MIGA Plus Business Insurance is available now and can be arranged quickly and easily over the phone by calling the MIGA Plus Business Insurance Team on 1800 835 808.

When your Business Insurance is due for renewal, we encourage you to call the MIGA Plus team at Guild Insurance for a quote. For more information about MIGA Plus Business Insurance visit our website.

Over the balance of the year we will be expanding the products and services offered via MIGA Plus, all with the aim of providing you with a greater range of benefits.

We are very excited about MIGA Plus, so please give us a call to discuss it.

Mandy Anderson
CEO and Managing Director

Reader feedback

We have received some great reader feedback about the 'Stop the clot' article which appeared in the February 2016 issue. Readers expressed concern in relation to a lower than optimal INR contributing to the fatal intracranial haemorrhage.

To clarify: The initiating event to the final hospitalisation of the patient was a brachial artery embolism. The brachial artery embolism was directly related to the cessation of Warfarin. The subsequent complex anticoagulation with Heparin, which led to the intracranial haemorrhage, was because of the sub therapeutic Warfarin.

As noted in our article, cases involving complex medications, complex morbidity and multiple healthcare practitioners highlight the critical need for clear communication.

Thank you to our readers who provided feedback.

You can access the Coronial Case containing all the facts as well as the responses to the Coroner's findings from the RCPA, The Haematology Society of Australia and the RACP at <http://www.coronerscourt.vic.gov.au/home/coroners+written+findings/findings+-+323811+alan+vector+webster>

Keryn Hendrick
Risk Education Manager

Payment by direct debit

Streamline your renewal and payment

Now you can enjoy the convenience of monthly or annual direct debit payments at no extra cost!

You will have recently received information from us advising that from 1 July 2016 MIGA is introducing the option of direct debit arrangements for the payment of your renewal with us. You can streamline your renewal by establishing a direct debit payment from either your bank account or credit card at no additional cost to you. MIGA will not be on-charging credit card fees for this benefit.

The convenient direct debit arrangements available to you are:

- You can arrange to make your payment by an annual direct debit from your nominated bank account or credit card
- If your total annual cost is greater than \$1,000 you have a further option to make your payment by monthly direct debit from your nominated account
- There are no additional costs or charges for payment by the month.

This arrangement provides you with a new level of payment convenience, removing the worry of paying on time and making it easier each year to finalise your renewal.

Being able to pay by monthly direct debit with no additional charge is a benefit not currently offered by any other Medical Defence Organisation.

What are the benefits of establishing a direct debit payment?

- Automatic renewal – once in place your insurance can be automatically renewed each year, and you won't have to worry about late payments, risking cancellation of your cover or worrying about paying on time
- You can spread the cost of your insurance across the year, smoothing your cash flow
- There are no additional costs or charges for payment by the month
- You can still earn points from your credit card reward scheme if you pay by credit card.

Next steps

If you are a Doctor or Eligible Midwife, you can establish a direct debit arrangement prior to your next renewal on 1 July 2016 by completing the Direct Debit Request Form recently provided to you.

For Healthcare insurance clients we will contact you in advance of your next renewal to give you the option to opt in to this new arrangement.

In the past we have offered a Premium Funding arrangement which has enabled members and policyholders to pay by instalments through a third party. This option incurred an additional cost to use it. With our new facility this option will no longer be available as we believe our direct debit facility is a more attractive benefit.

If you have any questions about establishing a direct debit arrangement with MIGA please contact your Client Services Officer on 1800 777 156.

We are pleased to offer this valuable new benefit to our members and policyholders and look forward to many of you taking advantage of this new facility. We encourage you to put it in place to make your next renewal easier and to remove the hassles of paying and making sure it's done on time.

Mandy Anderson

CEO and Managing Director



Professional indemnity insurance for healthcare businesses

Why it should be on your radar

Businesses providing healthcare treatment, advice and services are exposed to risks which arise directly from the provision of those services. When something goes wrong, the result can be significant for the patient involved. Depending on what happens, this can lead to legal action involving the business and often its staff.

As a leading provider of Professional Indemnity Insurance to healthcare businesses and medical practices we have developed a free e-book to help you better understand the risks and to make positive and informed decisions for your business.

The e-book covers:

- The risks your organisation may be exposed to through providing healthcare treatment and advice
- How the risks might emerge
- How you can mitigate them via insurance.

Neil Rankine

Business Development Manager –
Healthcare Companies

**Download your free copy
from our website**





Case Study

Ending the doctor/patient relationship



Key issue

The relationship between a medical practitioner and a patient can breakdown

Key takeaway

When a doctor decides to end the therapeutic relationship with a patient, we recommend a number of steps be followed.

Emma Cocks

Solicitor – Claims & Legal Services

A General Practitioner member recently contacted MIGA for advice in relation to their attempts to end a long standing therapeutic relationship with a patient. The patient was refusing to follow our member's recommendation that they see another General Practitioner. Our member was particularly concerned by the patient's allegation that he was duty bound to continue to see the patient so that the patient was not denied their right to access health care.

The Claims & Legal Services team at MIGA receives many queries from members in relation to this area, mainly in situations where there has been a breakdown in the relationship between a medical practitioner and a patient.

In this case, we advised our member that, as a general rule, there is no legal obligation on a doctor to consult a patient unless in the context of a patient requiring emergency medical

treatment (which creates an ethical rather than legal obligation). Therefore, we were of the view that he was not restricting the patient's right to access health care by choosing to end the therapeutic relationship. However, we further advised that a doctor cannot refuse to consult a patient based on unlawful discrimination (for example, refusing to treat a patient based on reasons of sex, race, marital status, religion or disability).

There are a number of reasons why a doctor may choose to end the doctor/patient relationship, including a loss of mutual trust, a patient becoming violent or aggressive, boundary violations, repeated failure by the patient to attend appointments or non-compliance with treatment recommendations. In many situations, doctors have tried various strategies and have ultimately reached the conclusion that it is no longer practicable to continue the therapeutic relationship.

The Medical Board's 'Good Medical Practice: A Code of Conduct for Doctors in Australia' specifically discusses the obligations a doctor has to a patient when ending a professional relationship. Section 3.13 states:

'In some circumstances, the relationship between a doctor and patient may become ineffective or compromised, and you may need to end it. Good medical practice involves ensuring that the patient is adequately informed of your decision and facilitating arrangements for the continuing care of the patient, including passing on relevant clinical information.'

We recommend a number of steps be followed in the event that a doctor decides to end the therapeutic relationship with a patient, including:

- 1. Good communication is vital** – Do not assume that a patient will pick up on hints or suggestions to see another practitioner. Be clear in communicating that you need to end the doctor/patient relationship
- 2. Document any patient non-compliance** – Do not expect to be able to defend the termination of the relationship based on memory. All events of non-compliance should be recorded at the time the doctor becomes aware of the non-compliance
- 3. Do not delegate to staff** – This is not a time to delegate to staff the message of ending a doctor/ patient relationship. The best way to ensure that the termination process is done correctly is for the doctor to do it directly
- 4. Write a letter to the patient** – Inform the patient of the decision to end the relationship but do so in a non accusatory manner, using language that reflects concern about the patient's wellbeing
- 5. Be careful about referral** – As a general rule, it is best to refer the patient to an appropriate medical college, professional association or the Yellow Pages for a list of practising doctors
- 6. Consider informing other parties** – In some situations, it may be appropriate for a doctor to inform other parties (such as the patient's referring doctor or specialist) that they are no longer involved in the patient's ongoing care and treatment. The doctor should also inform their own practice partners, practice manager and support staff of the decision to end the relationship.

The letter to the patient should be short and courteous and include the following details as a minimum:

- The reason(s) for ending the relationship
- The effective date of termination
- Suggestions for continued care through local medical groups, nearby hospitals or community resources
- An offer to transfer a copy of the patient's medical record by enclosing an authorisation document with the letter to be returned to the practice with the patient's signature. It may be appropriate to do so at no cost, if a fee is normally incurred
- A reminder to the patient about what follow up or ongoing medical care is required and say that this is now the patient's responsibility and that both should be pursued.

The doctor should document that a letter has been sent to the patient and keep a copy of the letter in the patient's file.

The Claims & Legal Services team at MIGA is always here to assist you and we encourage you to contact us for advice if you have any queries in relation to this area.





Case Study

Independent contractor agreements

Are your contractual arrangements in order?



Key issue

It is becoming increasingly common for doctors to be engaged as employees or independent contractors

Key takeaway

An agreement formalises your working arrangements and you should review and understand its terms, as these will be binding.

Belinda Cullinan

Solicitor – Claims & Legal Services

Being a principal in your own medical practice is becoming increasingly rare. In its place many practitioners are either engaged as employed doctors or independent contractors by corporate entities providing medical services to the public.

An independent contractor is a person, business or corporation that enters into a written or oral agreement to provide goods or services to another entity that is not their employer and where their payment depends on fulfilling their contractual conditions. Distinct from an employment arrangement, independent contractors are not afforded the various legislative entitlements which employees receive such as maximum weekly hours, paid parental leave, annual leave, personal leave, long service leave, public holiday and redundancy pay, workers' compensation cover and superannuation payments.

Disputes

In recent times we have seen an increase in disputes around the terms of independent contractor agreements, including disputes which have arisen in the absence of a formal agreement.

You might be faced with a scenario where a contractor leaves your practice without providing any notice, 'sets up' in direct competition and solicits your patients. Conversely, you may be a contractor who has been rostered to work excessive hours in a day and night practice. These are just a couple of examples.

Disputes such as these can have significant financial and personal consequences no matter who you are in the contractual relationship. With a robust agreement and independent legal advice many of the pitfalls which can arise in the absence of a clearly-worded contract can be avoided.

Is the contract right for you?

While independent contractor arrangements are treated as distinct from employment contracts, the requirements are sometimes analogous, stipulating hours of work and how they will be worked across the week, conditions concerning taking of leave etc.

Before entering into a contract of any type, it is important to review its terms. Once entered into, the terms will be binding and direct the relationship between the parties to the contract.

It is important to satisfy yourself that you understand the impact of each term and seek advice on any areas of concern. It is best to talk to the person you are contracting with to ensure there is clarity. This will help safeguard against unforeseen problems which may arise in the future.

Some of the key contractual terms which need to be clearly expressed and understood in the contract include:

- Services delivered by each party
- Notice periods
- Ownership of medical records
- Restrictions on practice post termination (restraint of trade)
- Leave entitlements
- Basis of remuneration.

Restrictions on practice post termination

These are also known as 'restraint of trade' or 'non-compete' clauses. After a contract is terminated, either by reaching the end date or in accordance with its terms, regard should be given to any term in the contract which imposes ongoing restrictions on where the contractor can practise medicine.

This type of clause can create issues from the contractor's perspective depending on the radius in which the contractor is prevented from practising and the period of time in which they are required to honour the 'non-compete' clause.

Before entering into a contract it is important to understand the effect of any 'restraint of trade' clause and assess from a practical perspective the impact should the agreement come to an end. A breach of this clause can result in significant financial and emotional cost and also expensive and time consuming litigation.

Other considerations

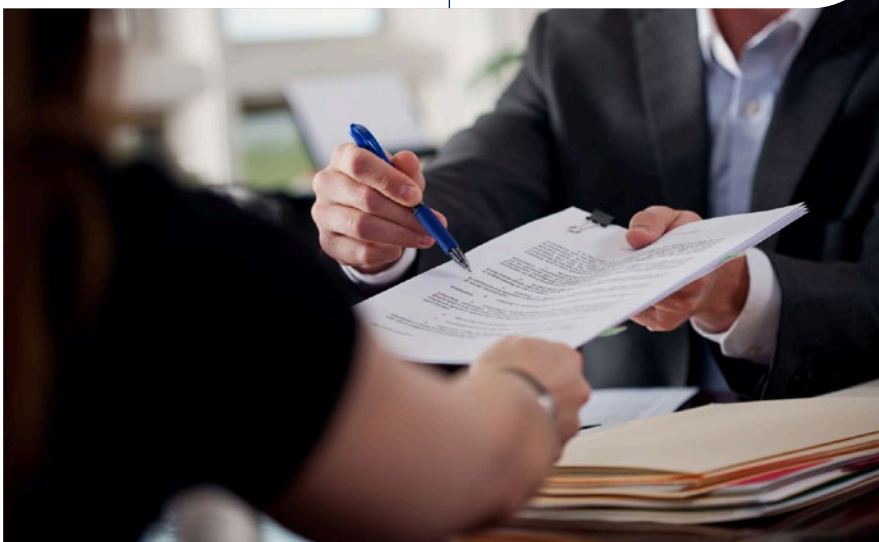
Make sure before you enter into a contract you have done your homework on the other party. You will want to be sure that there is going to be enough work to keep you busy and to meet your financial needs.

Another issue some of our members have raised is the tension between the commercial needs of the practice in terms of billings and patient 'turnover' and a practitioner's view and capacity to provide for quality health care. If you are engaged as an independent contractor, medico-legal liability may primarily rest with you as the doctor.

Summary

There are many considerations to be taken into account when entering into a contractual arrangement.

If you are unsure about the terms of an agreement or whether certain conduct may be in breach of an agreement, please contact one of the solicitors in the Claims & Legal Services Department.





Practice Manager and owner breakfasts

eCommunications and IT Reliance – exploring practice medico-legal risks

We have had fantastic attendance at our 2015/2016 Practice Manager/Owner breakfasts with over 150 practice managers and business owners attending our 'eCommunications and IT reliance' breakfasts so far. There are only two breakfasts remaining so don't miss your chance to attend.

Remaining breakfast dates:

Online 26 May 2016 Australia wide

Adelaide 2 June 2016 Book quickly, places filling fast!

Feedback from attendees has been very positive with many compliments about the value of the subject and the knowledge and expertise of the presenters. To book a place at one of the two remaining breakfasts call Jane Clark on 1800 777 156.

We will continue the program into 2016/17 with a new topic based on claims data we are currently gathering. Keep a look out for our new topic and breakfast dates in the June Bulletin.

Our aim is to continue to raise awareness and provide advice in relation to the issues facing healthcare businesses and medical practices so that your practice can take a proactive approach to managing them.

We look forward to seeing you at a breakfast soon.

Neil Rankine

Business Development Manager – Healthcare Companies

Understanding your risks

The Risk Management Program for 2016/17 will soon commence. To make it even easier for you to complete the Program we have bundled some of the activities into groupings of 10 Point Activities as follows:

Participation provides you with the ideal opportunity to understand your risks and reduce the chance of a claim or complaint. In addition, by completing education activities you can earn CPD points and a 10% premium discount¹.

Doctors

10 POINTS

Complete 1 activity

MIGA Conference: Hypothetical & Workshop

Practice Review: Self-Assessment & Action Plan

(3 to choose from)

Workshop & Action Plan

Ophthalmology Clinical Practice Review: Audit, Seminar & Action Plan

5 POINTS

Complete 2 activities

Workshop

Questionnaire

Doctors' Health Assessment

(1 per Program Year)

External Accredited Activity

(1 per Program Year)

Midwives

10 POINTS

Complete 1 activity

Workshop & Action Plan

Practice Review: Self-Assessment & Action Plan

5 POINTS

Complete 2 activities

Workshop

(2 per Program Year)

Questionnaire

(2 per Program Year)

External Accredited Activity

(1 per Program Year)

For more details refer to the Program Brochure and if you need assistance or advice please call the Risk Management Department.

Liz Fitzgerald

National Manager – Risk Services

¹ The Terms and Conditions for the premium discount allocation can be found on the website or in the Risk Management Booklet 2016/2017 distributed at renewal or around May 2016.



Sticks and stones A legal perspective

NEW HYPOTHETICAL

Our new Conference hypothetical for 2016/17 will explore the issues and answer your questions on bullying and harassment, in the workplace, from a legal, ethical and professional perspective. Moderated by Professor Guy Maddern with an expert panel it is sure to be as entertaining as it is educational!

More information about the Hypothetical is available online.

Insurance renewal for doctors Estimating your Gross Income

Soon you will receive your insurance renewal which will be based on your current practice information held by us on file. For the majority of members their practice details change little year on year, but you will need to review and, if necessary, update your Gross Income estimate.

We are often asked by members what should be included in calculating their Gross Income estimate. Gross Income means the total of all billings generated by you from all areas of practice for which you require medical indemnity cover for the Policy Period. This includes payments to you by:

- Individuals
- Commonwealth Department of Veterans Affairs
- Workers compensation schemes and third party and/or vehicle insurers
- Medicare
- Any income earned from medical practise overseas that is covered by the Policy whether retained by you or otherwise
- Income derived from any other sources (such as professional fees, incentive payments, etc).

The calculation should exclude apportionment of any expenses and/or tax (it is 'gross' – i.e. before expenses and tax are deducted).

Any income you generate from work which is indemnified by your employer (and for which you do not need insurance) can be excluded from the calculation.

Gross Income is defined by the Federal Government and the same definition applies to all medical indemnity insurers.

If you have any questions or require clarification in estimating your Gross Income for the coming year, please call your Client Services Officer as they are here to help.

Please remember that you can update your details at any time via the Change of Details Form in the Client Area of our website.

On receipt of your Renewal Package if you have any questions or need assistance, please do not hesitate to contact your Client Services Officer on 1800 777 156.

Carolyn Norris

National Manager – Client Services

Meet MIGA's in-house solicitors

Many of our clients will have dealt with members of our Claims & Legal Services team either in relation to an incident or in seeking medico-legal advice. The team services our members and policyholders nationally from offices in South Australia and New South Wales.

Led by Cheryl McDonald, the team has vast experience in managing claims for compensation and providing our clients not only with advice but support and guidance on all types of medico-legal matters.

We understand that the medico-legal process can be a world away from medical practise and that support, guidance and advice are the key to assisting our clients through matters that fortunately they do not encounter on a routine basis.

If you are in need of medico-legal advice we encourage you to contact one of the solicitors in our Claims and Legal Services Department. Their advice is free for clients and it is a service you can access as often as necessary. We encourage you to seek advice early as swift, appropriate action may help prevent a matter from escalating.

You can contact our solicitors by calling our direct line for claims and medico-legal advice and support – 1800 839 280.



Cheryl McDonald
National Manager –
Claims & Legal Services



Anthony Mennillo
Manager –
Claims & Legal Services



Mark Helier
Solicitor –
Claims & Legal Services



Marie-Claire Elder
Senior Solicitor –
Claims & Legal Services



Timothy Bowen
Senior Solicitor –
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Ellie Theodore
Solicitor –
Claims & Legal Services



Emma Cocks
Solicitor –
Claims & Legal Services



Belinda Cullinan
Solicitor –
Claims & Legal Services

Midwifery snapshot

Testimonials in advertising – Are you at risk of breaching of the law?

MIGA continues to receive enquiries from clients that relate to issues with advertising. Often these are triggered by complaints from patients or colleagues.

Websites and social media have become a significant part of business advertising and it is important that you satisfy yourself that you understand the regulations set down under the National Law and that you are not in breach of it.

The Health Practitioner Regulation National Law expressly states in section 133(1):

"A person must not advertise a regulated health service, or a business that provides a regulated health service, in a way that... (c) uses testimonials or purported testimonials about the service or business..."

AHPRA's Guidelines for Advertising Regulated Health Services (May 2014) states:

"The National Law does not define 'testimonial', so the word has its ordinary meaning of a positive statement about a person or thing. In the context of the National Law, a testimonial includes recommendations or statements about the clinical aspects of a regulated health service."

The National Law ban on using testimonials means it is not acceptable to use testimonials in your own advertising, such as on your Facebook page, in a print, radio or television advertisement, or on your website. This means that:

1. You cannot use or quote testimonials on a site or in social media that is advertising a regulated health service, including patients posting comments about a practitioner on the practitioner's business website, and
2. You cannot use testimonials in advertising a regulated health service to promote a practitioner or service.

Health practitioners should therefore not encourage patients to leave testimonials on

websites health practitioners control that advertise their own regulated health services, and should remove any testimonials that are posted there.

Case studies and Birth Stories

Case studies (written by the midwife) and birth stories (written by clients) can provide valuable messages and insights for potential and current clients. If you incorporate these into your advertising (website, Facebook) it is recommended that you review the entries for any possible breaches of the National Law.

How AHPRA deals with breaches and penalties

The Nursing and Midwifery Board will issue an escalating series of written warnings to the midwife, initially reminding them of their obligations in relation to advertising. If no corrective action is taken, the Board may ultimately take legal action against them for non-compliance with the Board's standards. This may include limiting, suspending or cancelling a midwife's registration and their ability to practise.

A registered health practitioner, or a business providing a regulated health service, whose advertising breaches the National Law, may be liable to pay a \$5,000 penalty (for an individual) or \$10,000 (for a corporation).

Next steps

So if anything you do in your practice constitutes 'advertising', we recommend that you:

- Make yourself familiar with the guidelines
- Review all your advertising (particularly websites)
- Satisfy yourself that you comply
- Call a solicitor in MIGA's Claims & Legal Services team if you aren't sure or would like guidance.

Liz Fitzgerald

National Manager – Risk Services

¹ <http://www.nursingmidwiferyboard.gov.au/Codes-Guidelines-Statements/Codes-Guidelines/Guidelines-for-advertising-regulated-health-services.aspx>

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first choice for
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National General Enquiries and Client Service

Free Call 1800 777 156
Facsimile 1800 839 284

National Claims and Legal Services

(Office hrs and 24hr emergency legal support)

Free Call 1800 839 280
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Letters to the Editor

We encourage clients to contact us with their views by email to mandy.anderson@miga.com.au or follow the links on our website at miga.com.au.

Note: Insurance policies available through MIGA are issued by Medical Insurance Australia Pty Ltd (AFSL 255906). The terms and conditions of the insurance provided by Medical Insurance Australia Pty Ltd are fully contained in the Policy Wording and any applicable endorsements. This document does not form part of the Policy Wording. MIGA has not taken into account your personal objectives or situation. Before you make any decisions about our policies, please read our Product Disclosure Statement and consider your own needs. Call MIGA for a copy or access the document via our website at www.miga.com.au

Midwives insurance renewal

In early May all midwives will receive a Change of Details Form that will enable you to update your details prior to renewal of your insurance on 1 July 2016. The Change of Details Form will contain pre-populated personal and practice details from our database at the time of printing.

You will also be provided the opportunity to streamline your renewal by establishing a direct debit payment from either your bank account or credit card at no additional cost to you.

If your annual invoice is above \$1,000 you can also pay by monthly instalments at no extra charge.

Refer to our article on page 3 of this Bulletin for more details.

We encourage you to review the Change of Details Form and direct debit payment option and update us with any changes by completing and returning the Forms. If you require any assistance please don't hesitate to contact either Ros Hoffmann or Lynda Slessor on 1800 777 156.

Carolyn Norris

National Manager – Client Services