

2008/2009
Medical Indemnity Insurance Policy
for doctors and their practice



Medical Insurance Australia Pty Ltd

ABN 99 092 709 629

MIGA

The Medical Insurance Group

Applies 1 July 2008 to 30 June 2009

« attach Schedule here

For ease of accessing your current information, we recommend that upon receipt of your Schedule, simply attach it to the inside front cover of this Policy Wording booklet

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MIGA is committed to service and has voluntarily adopted the general insurance industry 2005 Code of Practice

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Division 1

Insuring Agreements

1.1 Preamble

Medical Insurance Australia will indemnify the Insured for Claims and Claim Costs as set out in Division 1 Section 1 and for Expenses as set out in Division 1 Section 2 if each is listed as included in the Schedule. Medical Insurance Australia will also indemnify the Insured for any automatic extensions in Division 2 and optional extension in Division 3 which are listed as included in the Schedule.

However, the Insured must comply with the conditions set out in Division 4 and Medical Insurance Australia will not indemnify the Insured for the matters excluded by Divisions 5 and 6.

Certain words used in the Policy have the meanings ascribed to them by Division 7.

Any indemnity provided by Medical Insurance Australia to the Insured is provided in consideration of payment of the Premium by the Insured and is subject to the terms and conditions of the Policy and any:

- (a) Aggregate Limit of Indemnity;
- (b) Sub-Limit of Indemnity; and
- (c) Deductible.

Section 1 – Medical Practice

1.2 Indemnity for Claims against Insured

Medical Insurance Australia will indemnify the Insured against legal liability for a Claim first made against the Insured and first notified to Medical Insurance Australia in writing during the Period of Insurance and which arises out of the provision by the Insured of health care treatment, advice or service connected with the Category after the Retroactive Date.

1.3 Indemnity for Claim Costs

Medical Insurance Australia will indemnify the Insured in respect of Claim Costs incurred with the prior written consent of Medical Insurance Australia in the defence or settlement of any Claim covered by the Policy.

1.4 Advances

In respect of the cover provided by Division 1 Section 1, Medical Insurance Australia may advance Claim Costs to the Insured prior to the completion (including any appeal) of any proceedings arising from a Claim covered by Division 1 Section 1 on such terms and conditions as Medical Insurance Australia sees fit. In the event that the Insured is not entitled to indemnity, any Claim Costs advanced to the Insured and any interest chargeable will be repaid by the Insured to Medical Insurance Australia on such terms and conditions as are specified by Medical Insurance Australia.

Section 2 Part A – Specific Expenses

1.5 Specific Expenses

Medical Insurance Australia will indemnify the Insured against Expenses incurred in defending or responding to any of the following matters that arise in connection with Practice after the Retroactive Date, the circumstances of which are first notified to Medical Insurance Australia in writing during the Period of Insurance:

- (a) complaints to or investigations or proceedings by a medical board, medical tribunal or other body responsible for the professional discipline of the Insured, professional college or association, hospital, health service, health authority, Medicare Australia, a health care complaints body or a health care ombudsman;
- (b) coronial inquiries and royal commissions;

(continued on page 2)

Division 1 – Insuring Agreements – continued

- (c) complaints, investigations and proceedings under the *Health Insurance Act 1973* in respect of any allegation of inappropriate practices as defined in that Act;
- (d) criminal investigations and proceedings;
- (e) any action by a government or statutory authority alleging a contravention of or seeking relief under a provision of the *Trade Practices Act 1974* or any equivalent provision in any State or Territory legislation; and
- (f) any threat to the personal safety of the Named Insured, an Employee or any of his or her immediate family that arises from Practice provided to another person by the Insured.

Medical Insurance Australia's liability under paragraph (e) is subject to a Sub-Limit of Indemnity of \$20,000.

Medical Insurance Australia's liability under paragraph (f) is subject to a Sub-Limit of Indemnity of \$20,000.

Note: Under clause 5.10, no indemnity is provided for fines or penalties imposed on the Insured. Under clause 5.19, no indemnity is provided for certain alleged contraventions described in paragraph (e) if proven.

Under Clause 4.9(b), any Sub-Limit of Indemnity applies to each claim and to all claims under the sub-limited paragraph.

1.6 Advances

In respect of the cover provided by clause 1.5, Medical Insurance Australia may advance Expenses to the Insured prior to the completion (including any appeal) of any proceedings or other matters covered by clause 1.5, on such terms and conditions as Medical Insurance Australia sees fit, and having regard to its assessment as to whether the Insured has reasonable prospects of success in relation to the matter. In the event that the Insured is not entitled to indemnity, any Expenses advanced to the Insured and any interest chargeable will be repaid by the Insured to Medical Insurance Australia on such terms and conditions as are specified by Medical Insurance Australia.

Part B – General Expenses

1.7 General Expenses

Medical Insurance Australia will indemnify the Named Insured against Expenses incurred in relation to any of the following matters that arise from Practice after the Retroactive Date, the circumstances of which are first notified to Medical Insurance Australia in writing during the Period of Insurance:

- (a) complaints and proceedings brought against the Named Insured by a person who provides services to the Insured in the course of Practice (including past, present and prospective Employees);
- (b) complaints or proceedings pursued or defended by the Named Insured in relation to a contract entered into by the Named Insured for the provision of services as a visiting medical practitioner; and
- (c) complaints or proceedings pursued or defended by the Named Insured in relation to a contract of employment entered into by the Named Insured,

including those alleging discrimination, harassment or breach of equal opportunity law.

Medical Insurance Australia's liability under clause 1.7(b) is subject to a Sub-Limit of Indemnity of \$75,000.

Medical Insurance Australia's liability under clause 1.7(c) is subject to a Sub-Limit of Indemnity of \$20,000 and a Deductible of \$1,000, inclusive of costs and expenses.

Note: Clause 4.13 explains the effect of a costs-inclusive Deductible.

Under Clause 4.9(b), any Sub-Limit of Indemnity applies to each claim and to all claims under the sub-limited paragraph.

1.8 Advances

In respect of the cover provided by clause 1.7, Medical Insurance Australia may advance Expenses to the Named Insured prior to the completion (including any appeal) of any proceedings or other matters covered by clause 1.7, on such terms and conditions as Medical Insurance Australia sees fit, and having regard to its assessment as to whether the Insured has reasonable prospects of success in relation to the matter. In the event that the Named Insured is not entitled to indemnity any Expenses advanced to the Named Insured and any interest chargeable will be repaid by the Named Insured to Medical Insurance Australia on such terms and conditions as are specified by Medical Insurance Australia.

Conditions Applicable to Section 2

1.9 Preconditions to cover

Medical Insurance Australia will not be liable to meet any Expenses under Division 1 Section 2 in relation to any matter instigated by the Insured (including an appeal or the defence of an appeal against a judgment or decision of a court or tribunal) unless:

- (a) in the case of an appeal or response to an appeal, the Insured has given Medical Insurance Australia 7 days' written notice prior to first making the appeal or lodging any defence or response to the appeal;
- (b) in any other case, the Insured has given Medical Insurance Australia 28 days' written notice prior to first taking any steps in the proceedings or issuing any process; and
- (c) in each case, Medical Insurance Australia has formed the opinion that there are reasonable prospects of success in relation to the matter.

If Medical Insurance Australia has not formed an opinion as required by paragraph (c) prior to the time on which an appeal must be made, a defence lodged, a response made to an appeal or the time by which the first steps in proceedings or the issue of process must be done then Medical Insurance Australia will not be taken to have formed a favourable view unless it does so subsequently.

1.10 Criminal convictions

If the Insured is found guilty of, or admits, any crime then the cover provided by Division 1 Section 2 will not apply to that Insured (including in relation to any appeal) and any moneys advanced by Medical Insurance Australia under this provision will immediately become due and payable to Medical Insurance Australia.

1.11 Representation

Medical Insurance Australia may, at its absolute discretion, direct that the Insured retain a lawyer, nominated by Medical Insurance Australia, to act on behalf of the Insured in relation to circumstances that may give rise to an entitlement to indemnity under Division 1 Section 2, in which event the Insured will retain the nominated lawyer to act on its behalf and will provide all information, documents and assistance reasonably required by the lawyer.

1.12 Reasonable prospects of success

Medical Insurance Australia may, at its absolute discretion, elect not to indemnify the Insured for the whole or part of its Expenses if the Expenses relate to a matter that may give rise to an entitlement to indemnity under Division 1 Section 2 and which Medical Insurance Australia believes the Insured is more likely than not to be unsuccessful in pursuing or defending. In the event that Medical Insurance Australia makes such an election, Medical Insurance Australia will indemnify the Insured for its Expenses that relate to such matter up to the date of the election but if the Insured successfully pursues or defends the matter Medical Insurance Australia will indemnify the Insured for such part of its Expenses as is reasonable having regard to the Expenses incurred, the outcome sought by the Insured and the actual outcome of the matter.

Division 2

Automatic Extensions

2.1 Preamble

Unless otherwise expressly provided, for each clause in this Division that is listed as included in the Schedule, Medical Insurance Australia agrees to provide indemnity against:

- (a) legal liability for any Claim first made against the Insured and first notified to Medical Insurance Australia in writing during the Period of Insurance that arises from Practice (or an act or advice referred to in clause 2.2) after the Retroactive Date; and
- (b) Expenses incurred in defending or responding to any matter referred to in clause 1.5 or clause 1.7 that arises in connection with Practice (or an act or advice referred to in clause 2.2) after the Retroactive Date, the circumstances of which are first notified to Medical Insurance Australia in writing during the Period of Insurance.

2.2 Good Samaritan Acts and Gratuitous Advice

- (a) Medical Insurance Australia agrees to indemnify the Named Insured against legal liability for any Claim and against Expenses incurred in relation to:
 - (i) Gratuitous Advice given within the Commonwealth of Australia;
 - (ii) Gratuitous Advice given outside the Commonwealth of Australia, where the Named Insured is outside the Commonwealth of Australia for the purpose of Practice for no more than 120 days during the Period of Insurance; or
 - (iii) a Good Samaritan Act occurring anywhere in the world.
- (b) Medical Insurance Australia agrees to indemnify any Employee against legal liability for any Claim and against Expenses incurred in the course of his or her employment in relation to a Good Samaritan Act which occurs:
 - (i) within the Commonwealth of Australia; or
 - (ii) outside the Commonwealth of Australia, where the Employee is accompanying the Named Insured, who is outside the Commonwealth of Australia for the purpose of Practice for no more than 120 days during the Period of Insurance.

Note: Employees are covered for Good Samaritan Acts occurring anywhere in the world except the United States of America.

2.3 Vicarious liability for other Insureds

Medical Insurance Australia agrees to indemnify the Named Insured and any Insured Entity against legal liability for any Claim in respect of which they are vicariously liable for any act, error or omission committed or alleged to have been committed by another Insured in the course of Practice.

2.4 Vicarious liability for employed medical practitioners

Medical Insurance Australia agrees to indemnify the Named Insured and any Insured Entity against legal liability for any Claim in respect of which they are vicariously liable for any act, error or omission of a medical practitioner employed by the Named Insured or an Insured Entity in the course of providing health care treatment, advice or service:

- (a) that he or she is employed to undertake and for which he or she is registered, if required by law to be registered by a medical board; and
- (b) that is within the Category of the Named Insured or that, in the opinion of Medical Insurance Australia, is in a lower risk Category,

and where the employed medical practitioner provided the Named Insured with written evidence of insurance covering that treatment, advice or service when he or she was first employed and subsequently when any material change to his or her practice occurred and when his or her insurance was due for renewal.

Note: Employed medical practitioners are not insured parties under the Policy.

2.5 Vicarious liability for contractors

Medical Insurance Australia agrees to indemnify the Named Insured and any Insured Entity against legal liability for any Claim in respect of which they are vicariously liable for any act, error or omission committed or alleged to have been committed by a contractor in the course of providing health care treatment, advice or service:

- (a) that he or she is contracted to undertake and for which he or she is registered or licensed, if required by law; and
- (b) that is within the Category of the Named Insured or that, in the opinion of Medical Insurance Australia, is in a lower risk Category,

and where the contractor provided the Named Insured with written evidence of insurance covering that treatment, advice or service at the time his or her contract commenced and subsequently when any material change to his or her practice occurred and when his or her insurance was due for renewal.

For the purposes of this clause a **contractor** means a person who was not an Employee at the time of the act, error or omission but who provided health care treatment, advice or service in the course of Practice charged for and billed by or on behalf of the Named Insured or an Insured Entity.

Note: Contractors are not insured parties under the Policy.

2.6 Vicarious liability for supervision, training or mentoring

Medical Insurance Australia agrees to indemnify the Named Insured and any Insured Entity against legal liability for any Claim in respect of which the Named Insured is vicariously liable for any act, error or omission committed or alleged to have been committed by a non-employed health care professional under direct supervision, training or mentoring by the Named Insured in the course of providing health care treatment, advice or service in the Category.

For the purposes of this clause a **non-employed health care professional** means a person who, at the time of the act, error or omission:

- (a) was a registered medical practitioner, a registered nurse, a registered nurse practitioner or a midwife, respectively, who was neither employed by nor working under a written contract for services with the Named Insured or an Insured Entity; and
- (b) was required by a college, training institution, medical board or nurses board to be directly supervised, trained or mentored by the Named Insured for the purpose of obtaining, retaining or regaining a recognised professional medical or nursing qualification, award or registration.

Note: Non-employed health care professionals are not insured parties under the Policy.

2.7 Vicarious liability for locums

Medical Insurance Australia agrees to indemnify the Named Insured and any Insured Entity against legal liability for any Claim in respect of which they are vicariously liable for any act, error or omission committed or alleged to have been committed by a locum in the course of providing health care treatment, advice or service:

- (a) that he or she is contracted to undertake in place of the Named Insured and for which he or she is registered, if required by law to be registered by a medical board; and
- (b) that is within the Category of Practice of the Named Insured or that, in the opinion of Medical Insurance Australia, is in a lower risk category of practice,

and where the locum provided the Named Insured with written evidence of insurance covering that treatment, advice or service at the time his or her contract commenced and subsequently when any material change to his or her practice occurred and when his or her insurance was due for renewal.

For the purposes of this clause a **locum** means a registered medical practitioner working under a written contract for services with the Named Insured or an Insured Entity, whose services were charged for and billed by or on behalf of the Named Insured or an Insured Entity and who temporarily performed those services for not more than a continuous period of 6 weeks in any case and for not more than 12 weeks in any 12 month period.

Note: Locums are not insured parties under the Policy.

2.8 Practice outside the Commonwealth of Australia

- (a) Where the Named Insured is outside the Commonwealth of Australia for the purpose of Practice for no more than 120 days during the Period of Insurance, Medical Insurance Australia will indemnify the Named Insured and any Employee who accompanies the Named Insured against legal liability for any Claim which arises from that Practice.
- (b) Where the Named Insured is outside the Commonwealth of Australia for the purpose of Practice for no more than 120 days during the Period of Insurance, Medical Insurance Australia will indemnify the Named Insured only against Expenses incurred in defending complaints to or investigations or proceedings by a medical board, medical tribunal or other body responsible for his or her professional discipline which arises from that Practice.
- (c) Medical Insurance Australia will indemnify the Named Insured and any Employee who accompanies the Named Insured against legal liability for any Claim which arises from the Named Insured's Practice as a team doctor with an Australian sporting team or cultural group that is travelling, competing or performing in the United States of America for no more than 120 days during the Period of Insurance but only in relation to a Claim that is:
 - (i) made by a member of that team or group who is a citizen or a resident of the Commonwealth of Australia; and
 - (ii) brought and maintained in Australia and determined in accordance with the law of a State or Territory or the Commonwealth of Australia.

Note: Cover under paragraphs (a) and (b) excludes Practice in the United States of America. Cover under paragraph (c) for team doctors and their accompanying Employees extends to the United States of America.

2.9 Volunteer Practice

Medical Insurance Australia agrees to indemnify the Named Insured against legal liability for any Claim in respect of Practice by the Named Insured as an unpaid volunteer in the course of any amateur sporting activity, school or community based event, charity work, aid program or disaster response work.

Note: Reimbursement of reasonable incidental expenses for travel, meals and accommodation will not affect cover under this clause.

2.10 Liability for restricting ability to practise

Medical Insurance Australia agrees to indemnify the Named Insured against legal liability for any Claim and against Expenses arising directly from any act, error or omission committed or alleged to have been committed by the Named Insured:

- (a) in the course of directly supervising, training or mentoring a registered medical practitioner who:
 - (i) does not provide health care treatment, advice or service other than within the Category; and
 - (ii) is required by a college, training institution or medical board to be directly supervised, trained or mentored by the Named Insured for the purpose of obtaining, retaining or regaining a recognised professional medical qualification, award or registration; and
- (b) which has the effect of restricting the ability of the registered medical practitioner to provide health care treatment, advice or service in the future.

Medical Insurance Australia's liability under this clause is subject to a Sub-Limit of Indemnity of \$100,000.

Note: Under Clause 4.9(b), any Sub-Limit of Indemnity applies to each claim and all claims under the Policy.

2.11 Medical research and clinical trials

- (a) Subject to paragraph (b), Medical Insurance Australia agrees to indemnify the Named Insured and any Employee acting under the direct control and supervision of the Named Insured against any Claim arising solely out of the Named Insured's role in any medical research or clinical trial as an investigator or co-investigator if:
 - (i) the Named Insured's role in the medical research or clinical trial commenced on or after 1 July 2007; and

- (ii) the medical research or clinical trial is:
 - (A) approved by a properly constituted human research ethics committee approved and registered by the National Health and Medical Research Council;
 - (B) conducted in accordance with the requirements of that ethics committee; and
 - (C) in a field of practice within the Category, or a lower risk Category as determined by Medical Insurance Australia, for which the Named Insured is qualified.
- (b) If the medical research or clinical trial is sponsored by a third party not associated with the Insured (the sponsor), then paragraph (a) only applies if:
 - (i) the Named Insured has an entitlement to indemnity from the sponsor against Claims and Expenses; and
 - (ii) the Named Insured has a liability in excess of its entitlement to indemnity from the sponsor.

2.12 Loss of Documents

Medical Insurance Australia agrees to pay the reasonable costs incurred by the Insured in replacing or restoring Documents in the possession of the Insured if the Documents are destroyed, damaged, lost or mislaid and after diligent search and inquiry cannot be located, on condition that:

- (a) the loss occurs or the Insured first becomes aware of the loss within the Period of Insurance and it is first notified to Medical Insurance Australia in writing within the Period of Insurance;
- (b) the Insured notifies Medical Insurance Australia within 14 days after the date on which the Insured first becomes aware of the fact that the Documents have been destroyed, damaged, lost or mislaid;
- (c) any claim under this clause will be properly supported by accounts and invoices approved by Medical Insurance Australia or a person acting on its behalf;
- (d) for the purposes of this clause, Documents in the possession of the Insured will include those in the possession of a person to whom the Insured entrusted, lodged or deposited the documents in the ordinary course of business; and
- (e) the Documents were at all times within the Commonwealth of Australia prior to their destruction, damage or loss.

Medical Insurance Australia's liability under this clause is subject to a Sub-Limit of Indemnity of \$100,000.

Note: Under Clause 4.9(b), any Sub-Limit of Indemnity applies to each claim and to all claims under the sub-limited clause.

2.13 Advice and advisory assistance

Medical Insurance Australia will provide to the Insured advice and advisory assistance in respect of any cover provided to the Insured under the Policy. Where the Named Insured is in Australia and requires emergency medico-legal assistance, the advice and advisory assistance will be made available 24 hours a day.

2.14 Severability and non-imputation

Medical Insurance Australia agrees that where the Policy insures more than one person, any conduct on the part of any person which would allow Medical Insurance Australia to refuse or reduce its liability to indemnify an Insured will not prejudice the right of another Insured to indemnity under the Policy on condition that the other Insured:

- (a) is entirely innocent of and had no prior knowledge of the matter which entitled Medical Insurance Australia to refuse or reduce its liability; and
- (b) as soon as practicable, upon first becoming aware of any such matter, had provided written notice to Medical Insurance Australia of all known facts in relation to that matter.

2.15 Continuous cover

- (a) If:
 - (i) a Claim could have first been notified to Medical Insurance Australia under an earlier medical indemnity insurance policy issued by Medical Insurance Australia;
 - (ii) the Insured provides Medical Insurance Australia with written notice of the Claim during the Period of Insurance; and
 (continued on page 8)

- (iii) Medical Insurance Australia has been the insurer of the Insured under a medical indemnity insurance policy continuously between the date on which the Claim could have first been notified and the date on which the notification was in fact given,

Medical Insurance Australia will treat the notification of the Claim as a notification under the Policy during the Period of Insurance.

(b) If:

- (i) a Claim could have first been notified to MDASA under medical indemnity cover provided to the Insured after 1 July 2000 and before 1 July 2003;
- (ii) the Insured provides Medical Insurance Australia with written notice of the Claim during the Period of Insurance; and
- (iii) the Insured was a financial member of MDASA continuously between the date on which the Claim could have first been notified to MDASA and the date on which the notification was given to Medical Insurance Australia,

Medical Insurance Australia will treat the notification of the Claim as a notification under the Policy during the Period of Insurance.

(c) The terms and conditions of the Policy (including any limits of indemnity and deductible) applicable to a Claim notified under:

- (i) paragraph (a) will be the terms and conditions applicable to the Medical Insurance Australia medical indemnity insurance policy under which the notification could have first been given; and
- (ii) paragraph (b) will be the terms and conditions of this Policy.

2.16 ROCS prescribed events

The Policy expires if any of the circumstances prescribed under the Commonwealth run-off cover scheme (**ROCS**) contained in the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*, as amended from time to time and any regulations made under it, occur and, if Medical Insurance Australia was the last provider of medical indemnity cover to the Named Insured, Medical Insurance Australia will provide medical indemnity cover as required by section 26A of the Act for no additional premium.

2.17 ROCS Gap cover

If, during the Period of Insurance, the Named Insured:

- (a) notifies Medical Insurance Australia that the Named Insured has ceased, or intends to cease, private medical practice for a period of more than 12 months (other than on an occasional and gratuitous basis); and
- (b) is not entitled to cover under clause 2.16 and is aged less than 65 years,

Medical Insurance Australia will, in accordance with the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*:

- offer to provide cover under the Policy until the end of the Period of Insurance in respect of the Named Insured;
- offer to provide to the Named Insured annually renewable medical indemnity cover for claims that may be made against the Named Insured after the Period of Insurance in respect of prior acts or omissions; and
- if each offer is accepted, will make a further offer of medical indemnity cover for the run-off of the Named Insured's liability so that the total period during which the cover may be renewed is 3 years, starting from the end of the Period of Insurance.

Where the Named Insured has continuously held medical indemnity insurance with Medical Insurance Australia for at least 5 years immediately prior to ceasing private medical practice, Medical Insurance Australia will provide any cover under this clause at a cost of no more than \$50 per annum (plus statutory charges).

Note: Medical indemnity cover provided to the Named Insured as a Medical Student by Medical Insurance Australia or MDASA does not accrue to the calculation of a continuous period of medical indemnity cover.

2.18 Out of pocket expenses cover

Medical Insurance Australia agrees to indemnify the Named Insured against any personal out of pocket expenses incurred with the prior written consent of Medical Insurance Australia, including travel, meal and accommodation expenses, that the Named Insured reasonably incurs in responding to a Claim or a matter referred to in clause 1.5 for which Medical Insurance Australia has agreed to provide indemnity under the Policy.

Medical Insurance Australia's liability under this clause is subject to a Sub-Limit of Indemnity of \$10,000.

Note: This clause does not provide cover for any loss of earnings.

Under Clause 4.9(b), any Sub-Limit of Indemnity applies to each claim and to all claims under the sub-limited clause.

2.19 Run-off cover

(a) Subject to paragraph (b), Medical Insurance Australia agrees to indemnify the Insured against legal liability for Claims and against Expenses which would otherwise be covered by the Policy, but which are not covered by the Policy solely because they arise from health care treatment, advice or service that is not within the Category, if:

- (i) the Named Insured was previously indemnified by Medical Insurance Australia for that health care treatment, advice or service under a contract of insurance;
- (ii) the Named Insured has held continuously medical indemnity insurance cover with Medical Insurance Australia for a period of at least 2 years; and
- (iii) the Category is principally for private practice.

(b) Medical Insurance Australia may require the payment of an additional premium for the cover provided by paragraph (a), based on the Insured's claims and practice history, in which case no cover is provided by paragraph (a) until such additional premium has been paid to Medical Insurance Australia.

Note: Under clause 4.16, the Insured may be entitled to a rebate of Premium in the event of a change to a lower risk Category.

2.20 Public Patients

Medical Insurance Australia agrees to indemnify the Insured in connection with Practice provided to a Public Patient that is not otherwise excluded by the Policy.

Note: Under clause 4.18, it is a condition of the Policy that the Named Insured comply with any request by Medical Insurance Australia to declare his or her Gross Income, distinguishing between Gross Income derived from Practice provided to Public Patients and Gross Income derived from Practice provided to other persons.

The Named Insured must provide to Medical Insurance Australia prior to the commencement date of the Policy any information Medical Insurance Australia reasonably requires as to whether the Named Insured must maintain his or her own insurance for health care treatment, advice or service provided to a Public Patient.

Under clause 5.27, no indemnity is provided if the Insured is entitled to indemnity from another source.

Division 3

Optional extension of cover

3.1 Innocent partner cover

Unless otherwise expressly provided, if this clause is listed as included in the Schedule and any additional premium is paid, Medical Insurance Australia agrees to provide indemnity against legal liability for any Claim first made against the Named Insured and first notified to Medical Insurance Australia in writing during the Period of Insurance and which arises from Practice after the Retroactive Date where:

- (a) the Claim does not arise from the provision of health care treatment, advice or service by the Named Insured but arises in connection with the practice of a medical profession by the Named Insured;
- (b) the Claim arises from health care treatment, advice or service first provided on or after the Retroactive Date by another person or entity (the *other party*):
 - (i) with whom the Named Insured is jointly and severally liable solely by reason of a partnership with the other party; and
 - (ii) in the conduct of the partnership; and
- (c) the Named Insured has obtained annually written evidence of current medical indemnity insurance covering the liability of the other party in respect of the provision of health care treatment, advice or service in the conduct of the partnership.

Medical Insurance Australia's liability under this clause is subject to a Sub-Limit of Indemnity equal to the lesser of:

- the Named Insured's total liability for the Claim and Claim Costs divided by the number of partners in the partnership; and
- the Aggregate Limit of Indemnity.

For the purposes of this clause a *partnership* means a partnership within the meaning of the *Partnership Act* in the State or Territory in which the partnership is formed.

Note: Under Clause 4.9(b), any Sub-Limit of Indemnity applies to each claim and to all claims under the sub-limited clause.

Division 4

Conditions

Claims conditions

4.1 Claim notification

The Insured must provide written notice of each Claim and each intention to seek indemnity under any other cover provided by the Policy by providing particulars of the Claim or matter in respect of which indemnity is sought to Medical Insurance Australia as soon as possible and, in any event, during the Period of Insurance.

Note: The Insurance Contracts Act 1984 provides that if, after the end of the Period of Insurance, a claim is made against the Insured which arises from facts that the Insured notified to Medical Insurance Australia:

- in writing;
- as soon as reasonably practicable after the Insured became aware of them; and
- before the end of the Period of Insurance

then Medical Insurance Australia will provide cover in accordance with the terms and conditions of the Policy in respect of the claim against the Insured even if the claim was made after the end of the Period of Insurance.

Medical Insurance Australia continues to encourage all Insureds to notify any circumstance or incident which has the potential to lead to a claim as soon as they become aware of the circumstance or incident.

This note is for information purposes only and does not form part of the Policy.

4.2 Other insurance and Public Patients

In the event of:

- (a) a Claim;
- (b) the Insured incurring Expenses; or
- (c) circumstances which might give rise to an entitlement to indemnity under the Policy,

the Insured will provide written notice to Medical Insurance Australia of any other insurance or indemnity under which the Insured is entitled to a benefit in respect of the event referred to above.

Note: Under clause 5.27, no indemnity is provided if the Insured is entitled to indemnity from another source.

4.3 Admission or limitation of liability

The Insured must not admit liability for, compromise or assume any contractual liability or agree to reduce or limit the liability of any other party in relation to any Claim or circumstances in respect of which an entitlement to indemnity under the Policy may arise or has arisen without the prior written consent of Medical Insurance Australia, which consent will not be withheld unreasonably. This provision does not apply to any apology or expression of regret that an applicable statute specifies will not constitute an admission of liability.

4.4 Conduct of Claims

- (a) Medical Insurance Australia may, at any time and in the name of the Insured, take over the conduct of any Claim.
- (b) Medical Insurance Australia will take into consideration the views of the Named Insured in relation to the conduct of any Claim but Medical Insurance Australia will have full discretion in the conduct and settlement of any Claim.
- (c) If the Insured does not agree with a proposal by Medical Insurance Australia to settle a Claim, then the Insured will be entitled to conduct the defence of the Claim but Medical Insurance Australia will not be liable to indemnify the Insured for any amount greater than the amount of money for which Medical Insurance Australia could have settled the Claim, plus the Claim Costs to the date on which the Insured elected to contest the Claim, less the Deductible.

4.5 Subrogation

- (a) Medical Insurance Australia may, in the name of the Insured, pursue a right of contribution or indemnity that the Insured may have against any other person whether or not Medical Insurance Australia has paid any or all of a claim or other amounts covered by the Policy.

(continued on page 12)

- (b) The Insured must not, without the prior written consent of Medical Insurance Australia, engage in any conduct that has the effect of excluding, restricting or modifying any right of recovery that Medical Insurance Australia may have against another party.

4.6 Contesting Claims

Unless a Senior Counsel, instructed by agreement between the Insured and Medical Insurance Australia or, in the absence of such agreement, by Medical Insurance Australia, advises that a Claim should be contested, Medical Insurance Australia will not require the Insured to contest the Claim. The Senior Counsel will be instructed to provide the requested advice based on the economics of the Claim, the damages and costs likely to be recovered, the likely costs of the defence of the Claim and the prospects of successfully defending the Claim. The cost of the advice provided by the Senior Counsel will be part of the Claim Costs.

4.7 Claims co-operation – mitigation

The Insured will do, and allow to be done, everything reasonably practicable to reduce or avoid liability in respect of a Claim or circumstances which may give rise to an entitlement to indemnity under the Policy.

4.8 Claims co-operation – assistance

The Insured will provide Medical Insurance Australia, or any party that Medical Insurance Australia nominates, with all information, documents and assistance reasonably required by Medical Insurance Australia:

- (a) in relation to the investigation, defence or settlement of a Claim or circumstances which may give rise to an entitlement to indemnity under the Policy;
- (b) in relation to the pursuit of a subrogated right by Medical Insurance Australia; and
- (c) in order for Medical Insurance Australia to ascertain its liability to indemnify the Insured under the Policy,

and Medical Insurance Australia will not indemnify the Insured for the costs of complying with this condition except to the extent that such costs are:

- if cover under Division 1 Section 1 is listed as included in the Schedule, Claim Costs; or
- if cover under Division 1 Section 2 Part A or B is listed as included in the Schedule, Expenses.

General conditions

4.9 Limit of indemnity

- (a) Medical Insurance Australia's liability to the Insured for any one and all Claims, Claim Costs and Expenses (including any automatic extensions and optional extensions) under the Policy will not exceed the Aggregate Limit of Indemnity. Any payment by Medical Insurance Australia to a party in respect of a matter that might give rise to a Claim is taken to be a payment made to settle a Claim.
- (b) Medical Insurance Australia's liability to the Insured for any one and all Claims, Claim Costs and Expenses (including any automatic extensions and optional extensions) under the Policy to which a Sub-Limit of Indemnity applies will not exceed the Sub-Limit of Indemnity.

Note: Medical Insurance Australia's liability to the Insured may also be limited by operation of another clause such as clause 3.1 or clause 4.10.

4.10 Insured Entities and multiple policies

- (a) An Insured Entity and its Employees are only covered by the Policy if the entitlement to indemnity of the Insured Entity and its Employees arises directly from Practice by the Named Insured.
- (b) Where an Insured has an entitlement to indemnity under more than one policy issued by Medical Insurance Australia, Medical Insurance Australia's liability to the Insured under all policies will not exceed the Aggregate Limit of Indemnity specified in this Policy.

4.11 Deductible

Medical Insurance Australia will only indemnify the Insured for that part of a Claim, Claim Costs or Expenses (including any indemnity under any automatic extension or optional extension) that exceeds the Deductible.

4.12 Deductible – repayment

If Medical Insurance Australia pays an amount pursuant to an entitlement to indemnity under the Policy that includes a part of or all of the Deductible, or if Medical Insurance Australia believes that such a payment may be necessary to dispose of a Claim, the Named Insured will pay the Deductible, or equivalent part thereof, to Medical Insurance Australia upon request or within 14 days of request.

4.13 Deductible – costs inclusive

If the Policy states that a Deductible is inclusive of costs and expenses, the Named Insured will indemnify Medical Insurance Australia for Medical Insurance Australia's reasonable Claim Costs or Expenses, up to the amount of the Deductible, but the Named Insured will not indemnify Medical Insurance Australia for any costs incurred in determining Medical Insurance Australia's liability to indemnify the Insured.

4.14 Multiple Claims

All Claims arising from a single act, error or omission or from a series of causally connected or interrelated acts, errors or omissions will be deemed to be one Claim to which one Deductible and Aggregate Limit of Indemnity or Sub-Limit of Indemnity will apply. All Expenses for which Medical Insurance Australia may indemnify the Insured under Division 1 Section 2 Parts A or B of the Policy and which arise from a single act, error or omission or from a series of causally connected or interrelated acts, errors or omissions will be deemed to be Expenses to which one Deductible and Aggregate Limit of Indemnity or Sub-Limit of Indemnity will apply.

4.15 Material change in risk

The Insured will provide immediate notice to Medical Insurance Australia of any temporary or permanent material change to the Named Insured or to Practice during the Period of Insurance including, but not limited to:

- (a) the Named Insured or an Insured Entity becoming insolvent under administration or becoming an externally-administered body corporate, resolving or being ordered to be wound-up, or being deregistered within the meaning of those terms in the *Corporations Act 2001*;
- (b) change to the State or Territory in which Practice is conducted;
- (c) change in the Category;
- (d) de-registration, suspension or restriction of the Named Insured's registration with a medical board;
- (e) the Named Insured being required to maintain their own insurance for health care treatment, advice or service provided to a Public Patient,

and the Insured will immediately notify Medical Insurance Australia if during or after the Period of Insurance, the Named Insured:

- permanently retires from private medical practice;
- ceases (temporarily or permanently) practice as a medical practitioner because of maternity, permanent disability or death; or
- ceases (temporarily or permanently) providing medical services for payment in the course of private medical practice but continues providing medical services free of charge.

4.16 Material change in risk – adjustment of Premium

(a) In the event of change notifiable under clause 4.15 that, in the opinion of Medical Insurance Australia, decreases the risk insured by the Policy, Medical Insurance Australia may agree to rebate part of the Premium having regard to:

- (i) Medical Insurance Australia's customary short term rates; and
- (ii) the continuing run-off cover provided under the Policy for Claims arising from circumstances occurring prior to the date of the event.

(continued on page 14)

- (b) Paragraph (a)(ii) does not apply to a change in the Category if the Named Insured has held continuously medical indemnity insurance cover with Medical Insurance Australia for a period of 2 years.

4.17 Cancellation – Medical Insurance Australia

Medical Insurance Australia may cancel the Policy as permitted by the *Insurance Contracts Act 1984*, in which event Medical Insurance Australia may agree to rebate part of the Premium having regard to Medical Insurance Australia's customary short term rates.

4.18 Gross Income / sessions declaration

- (a) At any time during the Period of Insurance and within 90 days after the expiry of the Period of Insurance Medical Insurance Australia may send to the Named Insured a written notice requiring a declaration of the Named Insured's Gross Income or sessions (as the case may be) for the Period of Insurance, distinguishing between Gross Income derived from Practice provided to Public Patients and Gross Income derived from other Practice.
- (b) Within 90 days of receipt of a notice referred to in paragraph (a), the Named Insured must provide Medical Insurance Australia with the written declaration required by the notice.
- (c) Medical Insurance Australia may, at its discretion and at its cost, require an audit of the declaration referred to in paragraph (b), in which case the Insured will provide all information and assistance reasonably required for the purpose of the audit. If the Named Insured does not provide the declaration, the information or the assistance required, Medical Insurance Australia may, at its discretion and at the Insured's cost, audit the Named Insured's Gross Income or sessions (as the case may be) for the Period of Insurance.
- (d) Medical Insurance Australia may adjust the Premium based on a comparison of the Named Insured's declaration provided under this clause with the estimated Gross Income or sessions disclosed by the Named Insured in the renewal or application form for the Policy. If the Premium is adjusted, the Insured will pay to Medical Insurance Australia the amount of any increase in the Premium and Medical Insurance Australia will pay to the Insured the amount of any decrease in the Premium, unless the adjustment of the Premium is less than \$50 (exclusive of administrative fees, duties and taxes) in which case neither the Insured nor Medical Insurance Australia will be liable to pay to the other the adjustment.

4.19 Practice review

Medical Insurance Australia may undertake a Practice review on 21 days' prior written notice to the Named Insured, in which event the Insured agrees:

- (a) to provide any information, documents and assistance reasonably requested by Medical Insurance Australia in connection with its review; and
- (b) to act in accordance with any reasonable recommendation made by Medical Insurance Australia following completion of its review.

4.20 Non-payment of Premium

- (a) The Policy will not come into force unless and until:
- (i) the Insured has provided to Medical Insurance Australia a completed application for insurance;
 - (ii) Medical Insurance Australia has accepted the application for insurance; and
 - (iii) the Insured has paid the Premium in full prior to the first date of the Period of Insurance.

Note: Where (i) and (ii) above apply but where the Insured pays the Premium in full after the first date of the Period of Insurance, Medical Insurance Australia may agree to issue the Policy effective retrospectively but otherwise the Insured has no entitlement to indemnity from Medical Insurance Australia.

- (b) It is also a condition of the Policy that the Insured must:
- (i) immediately pay any premium owing to Medical Insurance Australia in relation to any prior policy of insurance issued to the Insured as and when it falls due for payment; and
 - (ii) comply with any requirement under a prior policy of insurance issued to the Insured to provide Medical Insurance Australia with a declaration of the Named Insured's Gross Income or sessions, or to provide information or assistance in relation to such a declaration,
- and if the Insured fails to comply with either of these conditions then Medical Insurance Australia may cancel the Policy.

4.21 Assignment

The Insured may not assign its interest in the Policy.

4.22 Notice

A requirement of the Policy that the Insured provide written notice to Medical Insurance Australia may be satisfied by the Insured providing written notice to:

Medico-legal Department
MIGA
Level 9, Optus House
431-435 King William Street
Adelaide SA 5000

4.23 Agency

In arranging the Policy, MDASA will be acting under an authority given by Medical Insurance Australia to arrange the Policy and MDASA will be arranging the Policy as agent of Medical Insurance Australia and not of the Insured. In dealing with or settling a claim under the Policy, MDASA will be acting under an authority given by Medical Insurance Australia to deal with or settle the claim and MDASA will be dealing with or settling the claim as agent of Medical Insurance Australia and not of the Insured.

4.24 Jurisdiction

The Policy is governed by the law of South Australia and any dispute relating to the Policy will be determined by the courts of South Australia.

4.25 Severability

A term or condition or part of a term or condition of the Policy that is illegal or unenforceable may be severed from the Policy and the remaining terms and conditions of the Policy, or parts thereof, continue in force.

4.26 Interpretation

The singular includes the plural and vice versa, unless the context otherwise requires. A reference to a person includes a body corporate, an unincorporated body or other entity. Headings are for convenience only and do not affect interpretation. Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.

Division 5

Exclusions

Medical Insurance Australia will refuse or reduce a claim for indemnity under the Policy which relates to a Claim, Claim Costs or Expenses:

5.1 Prior or pending

other than to the extent that cover is provided under clause 2.15 if listed as included in the Schedule:

- (a) incurred by or made or threatened against the Insured prior to the Period of Insurance; or
- (b) arising directly or indirectly from any circumstances that, prior to the Period of Insurance:
 - (i) the Insured knew, or that a reasonable person in the position of the Insured would have known, may result in an entitlement to indemnity under the Policy;
 - (ii) have been notified under any prior policy of insurance or for the purpose of seeking indemnity from a medical defence organisation; or
 - (iii) have been disclosed by the Insured or ought to have been disclosed by the Insured prior to the Period of Insurance.

5.2 Retroactive Date

in any way related to circumstances that occurred prior to the Retroactive Date.

5.3 Fraud, dishonesty, crime, recklessness and intentional acts

in any way related to:

- (a) any dishonest, fraudulent, malicious or criminal act or omission of the Insured;
- (b) any reckless act or omission of the Insured; or
- (c) intentional breach of statute, contract or duty of care by the Insured.

5.4 Contractually assumed liability

in any way related to any duty or obligation assumed under contract by the Insured except to the extent that the Insured's liability is the same as the Insured's liability had the duty or obligation not been assumed.

5.5 Trading debts

in any way related to:

- (a) a trading debt; or
- (b) a guarantee.

5.6 Fee for Practice

in any way related to all or part of the fee for Practice that the Insured has provided or will provide.

5.7 Insured versus Insured

in any way related to a Claim or a matter referred to in clause 1.5 that is brought against the Insured by or on behalf of:

- (a) an Employee, other than in respect of:
 - (i) health care treatment, advice or service provided by the Insured to the Employee; or
 - (ii) cover provided under Division 1 Section 2 Part B;
- (b) any other person or entity covered by the Policy; or
- (c) any entity controlled by the Insured or in which the Insured has a direct or indirect financial interest.

5.8 Intoxication

other than in respect of Expenses, where the Insured was under the influence of drugs or alcohol and that fact was directly related to the act, error or omission that gave rise to a claim under the Policy.

5.9 Transmission of disease

other than in respect of Expenses, in any way related to the transmission of a disease or virus carried by the Insured in circumstances where the Insured did not take any or adequate precautions to prevent the transmission of the disease or virus and where the adequacy or the omission of the precautions would not be widely accepted in Australia by peer professional opinion as competent professional practice.

5.10 Fines and penalties

to the extent that the Claim is for exemplary or aggravated damages, fines or penalties including any civil penalty.

5.11 Pollution

in any way related to pollution.

5.12 Occupier's liability and property damage

in any way related to any actual or alleged liability:

- (a) for personal injury arising from the Insured's ownership or occupation of real property; or
- (b) for property damage or loss consequent upon property damage.

5.13 Inappropriate Practice

other than in respect of Expenses, in any way related to Inappropriate Practice.

5.14 Discrimination

arising out of any actual or alleged unlawful discrimination, harassment or breach of any equal opportunity law other than to the extent that:

- (a) cover is provided under Division 1 Section 2 Part B; or
- (b) it relates to complaints or proceedings by persons to whom health care treatment, advice or service is provided in the course of Practice.

5.15 Radiation

in any way related to ionising radiations or contamination by radioactivity from any nuclear material except if the circumstances relate to the use of radioisotopes, radium or radium compounds by the Insured in the course of Practice.

5.16 War and terrorism

in any way related to:

- (a) war, invasion, acts of foreign enemies, hostilities (whether war is declared or not), civil or military uprisings or government power being taken unlawfully;
- (b) property being taken, damaged or destroyed by a government or public local authority; or
- (c) any act, including but not limited to, the use of force or violence or the threat thereof, of any person or group of persons, whether acting alone or on behalf of or in connection with any organisation or government, committed for political, religious, ideological or similar purposes, including the intention to influence any government or to put the public, or any section of the public, in fear,

other than in respect of any Claim arising directly from health care treatment, advice or service provided to persons injured as a result of any of the above.

5.17 Public liability

normally insured under a public liability policy or for which the Insured is insured or entitled to be insured by a public liability policy held by the Insured.

5.18 Product liability

arising from the manufacture or sale by the Insured of any goods or products.

Division 5 – Exclusions – continued

5.19 Trade practice

arising from any contravention of Part IV of the *Trade Practices Act 1974* or any equivalent provision in any State or Territory legislation.

5.20 Medical research and clinical trials

arising from any medical research or clinical trial, whether or not such medical research or clinical trial is related to Practice, other than to the extent that the Named Insured is entitled to indemnity under clause 2.11.

5.21 Directorships and committee memberships

- (a) arising from the Insured's directorship or membership of, or being an officer of, an external entity or committee being an entity not related to the Named Insured or to Practice by the Named Insured; or
- (b) arising from an actual or alleged act, error or omission of the Named Insured or an Employee acting in their capacity as a director, officer or committee member of a corporation.

5.22 Practice outside the Commonwealth of Australia

other than in respect of any cover provided under clauses 2.2 or 2.8, arising from Practice conducted outside the Commonwealth of Australia.

5.23 United States of America

- (a) other than in respect of any cover provided under clauses 2.2(a)(iii) or 2.8(c), arising from Practice:
 - (i) conducted in a jurisdiction to which the laws of the United States of America apply; or
 - (ii) to which the laws of the United States of America apply;
- (b) other than in respect of any cover provided under clauses 2.2(a)(iii), in any way related to:
 - (i) proceedings commenced or maintained in the United States of America; or
 - (ii) the enforcement anywhere of a judgment or verdict of proceedings commenced or maintained in the United States of America.

5.24 Statutory exclusions

for which Medical Insurance Australia is prohibited or not authorised by law from providing an indemnity including, but not limited to, workers' compensation.

5.25 Obligations to employees

attributable to or as a consequence of bodily injury, mental injury, sickness, disease or death of any employee of the Insured or damage, loss or destruction of any property of any employee arising out of or in the course of their employment.

5.26 Liability for partners

other than in respect of cover under clause 3.1 where listed as included in the Schedule, arising solely by reason of a partnership between the Insured and another person or entity or by reason of a similar contractual arrangement between the Insured and that person or entity.

5.27 Other indemnities

for which an Insured is indemnified or is entitled to indemnity:

- (a) under a contract of insurance required to be effected by or under a law; or
- (b) from any other source including but not limited to a government, governmental authority, hospital, health service or health authority.

Note: Before providing health care treatment, advice or service to any Public Patient, consider carefully whether or not there is any entitlement to indemnity for liability arising from that health care from another source, such as a hospital or area health service.

5.28 De-registration and restrictions on Practice

in any way related to:

- (a) Practice for which the Named Insured was required by law to be registered by a medical board but for which the Named Insured was not registered; or
- (b) the provision of health care treatment, advice or service by the Insured, or a person for whose act, error or omission the Named Insured or an Insured Entity is vicariously liable, in respect of which there was at any relevant time any restriction, limitation or prohibition imposed by any medical board, regulatory authority or judicial authority, where the liability arises from an act, error or omission in breach of that restriction, limitation or prohibition.

5.29 Publication and authorship

arising out of the conduct by the Named Insured as a publisher or author other than in respect of published health care advice or health care articles or arising out of presentations by the Named Insured or provided directly to a person by the Named Insured in the course of Practice.

Division 6

Exclusions relating to Claim Costs and Expenses

6.1 Written consent

Medical Insurance Australia will not indemnify the Insured for Claim Costs or Expenses incurred prior to, or in the absence of, the written consent of Medical Insurance Australia.

6.2 General exclusions

Medical Insurance Australia will not indemnify the Insured for Claim Costs or Expenses in any way related to:

- (a) a dispute with Medical Insurance Australia or MDASA in any way related to a claim under any section of the Policy or any other policy of insurance;
- (b) the Insured's failure to provide all reasonable information, documents and assistance required of it by Medical Insurance Australia or its nominees;
- (c) the bankruptcy or insolvency of the Insured;
- (d) the dismissal or termination of employment of an Insured within 60 days of the date on which the Insured was first insured by Medical Insurance Australia under a policy of insurance;
- (e) the pursuit or defence of a complaint, prosecution or proceedings against or by a current or former business partner of the Insured;
- (f) a complaint in respect of property damage or loss, other than prostheses, dental attachments, bodily implants or similar items attached to or implanted in the body; or
- (g) a dispute with any medical board, regulatory authority or judicial authority in respect of any restriction, limitation or prohibition after it has been imposed on the Insured.

6.3 Other indemnities

Medical Insurance Australia's liability to indemnify the Insured for Claim Costs or Expenses is reduced by any amount that the Insured receives from any other source in respect of those costs and expenses including any orders in the Insured's favour and any indemnity of which the Insured has a benefit, including a right to an indemnity under an insurance policy that provides specific cover for the costs and expenses.

Division 7

Dictionary

In the Policy, unless the contrary intention appears:

Aggregate Limit of Indemnity

Means the maximum amount that Medical Insurance Australia is liable to pay or incur in the Period of Insurance in respect of all claims by the Insured under the Policy as specified in the Schedule.

Category

Means the Category of the Named Insured specified in the Schedule.

Claim

Means:

- (a) the receipt by the Insured of any written or oral notice of demand (the *demand*); or
 - (b) service on the Insured of any writ, statement of claim, summons, application or other originating legal or arbitral process (including any cross claim, counter claim or third party notice) (the *process*),
- where the demand or the process claims damages, contribution or indemnity, injunctive or equitable relief.

Claim includes, but is not limited to, a demand or process:

- alleging any defamation by the Insured arising from Practice;
- alleging a contravention of or seeking relief under a provision of the *Trade Practices Act 1974* or any equivalent provision in any State or Territory legislation arising from Practice (other than a matter excluded by clause 5.10 or clause 5.19); and
- in respect of legal liability arising from the rendering of emergency first aid assistance to anyone,

but Claim does not include a demand or process:

- arising out of the use or occupation of any premises or any plant or equipment used in the course of Practice other than that directly used for the purpose of Practice; or
- arising out of any contractual dispute other than in relation to a contract for Practice,

other than to the extent cover is otherwise expressly provided under the Policy.

Claim Costs

Means any costs and expenses incurred by Medical Insurance Australia or the Insured in the investigation or defence of any Claim.

Deductible

Means the amount of any claim covered by the Policy which is payable by the Insured and which is specified in the Policy.

Documents

Means any written material or any computer or electronic data used or created in connection with Practice but will not include any currency, negotiable instrument, cheque, stamp, bond or coupon or any document evidencing title to or which constitutes any form of security.

Employee

Means any person employed by the Named Insured or an Insured Entity under a contract of service during or prior to the commencement of the Period of Insurance other than:

- (a) a registered medical practitioner; or
- (b) any other person who provides health care treatment, advice or service in the course of Practice charged for and billed in their own name except to the extent that the person is acting under the direct control and supervision of the Named Insured.

Expenses

Means the reasonable costs and expenses (including the reasonable amount of any disbursements) for services provided to the Insured in respect of a claim or a matter covered by Section 2 Parts A or B of Division 1 of the Policy or by a clause in Division 2 or Division 3 of the Policy that is listed as included in the Schedule.

Good Samaritan Act

Means the provision of medical treatment or medical advice:

- (a) by:
 - (i) the Named Insured; or
 - (ii) an Insured during the course of their employment by the Named Insured;
- (b) in an unforeseen emergency situation;
- (c) where the Insured is not, otherwise than by the Policy, entitled to indemnity or immunity from liability in respect of the Claim;
- (d) where the Insured makes no request for payment or reward for the medical treatment or medical advice provided; and
- (e) where the Insured provides no ongoing medical treatment or medical advice after the emergency situation has passed.

Gratuitous Advice

Means gratuitous medical advice by the Named Insured if:

- (a) the Named Insured is a registered medical practitioner in Australia at the time the advice is given;
- (b) the Named Insured makes no request for payment or reward for the gratuitous medical advice; and
- (c) the Named Insured does not write a prescription.

Gross Income

Means the total of all billings generated by the Insured from all areas of Practice for which the Insured requires medical indemnity cover for the Period of Insurance (in the Insured's name) or for work for which the Insured is personally liable, including without limitation Medicare benefits, payments by individuals, and payments by the Department of Veterans' Affairs, workers compensation schemes and third party and/or vehicle insurers and income earned for medical practice overseas that is covered by the Policy, whether retained by the Insured or otherwise and before any apportionment or deduction of any expenses and/or tax.

If as part of Practice, the Insured derives income from any other sources (ie professional fees, incentive payments, etc) this income must be included in the declaration of Gross Income.

Inappropriate Practice

Means conduct by the Insured such that Medical Insurance Australia reasonably concludes that:

- (a) the conduct would be unacceptable to the general body of practitioners in the Category; or
- (b) the conduct would be unacceptable to the general body of the members of the Insured's profession, including, but not limited to, sexual misconduct.

Inappropriate Practice includes, but is not limited to, conduct by which the Insured, knowingly, recklessly or negligently, causes or permits another Insured to engage in Inappropriate Practice.

Insured

Means:

- (a) the Named Insured;
- (b) any Insured Entity;
- (c) any person who is, during the Period of Insurance, an Employee; and
- (d) any former Employee of the Named Insured or Insured Entity.

The Insured includes any Medical Student assigned to the Insured by the Medical Student's medical school or university where a Claim arises from an act, error or omission incurred on the part of such Medical Student in the course of Practice.

Insured Entity

Means:

- (a) a company or trust owned and controlled by the Named Insured and which provides services for the purpose of Practice by the Named Insured; or
- (b) an entity, specified as an Insured Entity in the Schedule.

MDASA

Means Medical Defence Association of South Australia Limited (ABN 41 007 547 588), its successors and assigns.

Medical Insurance Australia

Means Medical Insurance Australia Pty Limited (ABN 99 092 709 629), its successors and assigns.

Medical Student

Means a person who is at all times during the Period of Insurance enrolled in an accredited course of medical study in a medical school or university in Australia for the purpose of obtaining registration as a medical practitioner and which course is approved by Medical Insurance Australia.

Named Insured

Means the registered medical practitioner identified in the Schedule and includes the estate, heirs and legal representatives or assigns of the Named Insured in the event of the death or permanent disablement of the Named Insured on the basis that those persons will have the benefit of the Policy on condition that they at all times observe and comply with the terms and conditions of the Policy.

Period of Insurance

Means the period specified in the Schedule as the Period of Insurance.

Policy

Means:

- (a) the Schedule;
- (b) this document except, in respect of Division 1 above, one or more of Section 1, Section 2 Part A and Section 2 Part B only if noted on the Schedule as being included;
- (c) any automatic extension or optional extension only if noted on the Schedule as being included; and
- (d) any endorsement.

Practice

Means the provision of health care treatment, advice or service in connection with the Category by the Insured or, where expressly provided in the Policy, by the Named Insured.

Premium

Means the Premium specified in the Schedule.

Public Patient

Means an individual to whom the Insured provides health care treatment, advice or service under the terms of an agreement with a public hospital (within the meaning of the *Health Insurance Act 1973*), an area health service or a State or Territory Government, unless the agreement or the billing process has the effect of not classifying the individual as a public patient.

Retroactive Date

Means the Retroactive Date specified in the Schedule.

Schedule

Means the schedule forming part of the Policy, signed by Medical Insurance Australia.

Senior Counsel

Means a barrister-at-law who is entitled to use the post-nominals QC or SC in recognition of their professional eminence.

Sub-Limit of Indemnity

Means the maximum amount, specified in the Policy, which Medical Insurance Australia is required to pay or incur in respect of all liability under any section of the Policy.

Contacting MIGA

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MIGA
The Medical Insurance Group

Practise *with confidence*