

Insurance for
Doctors

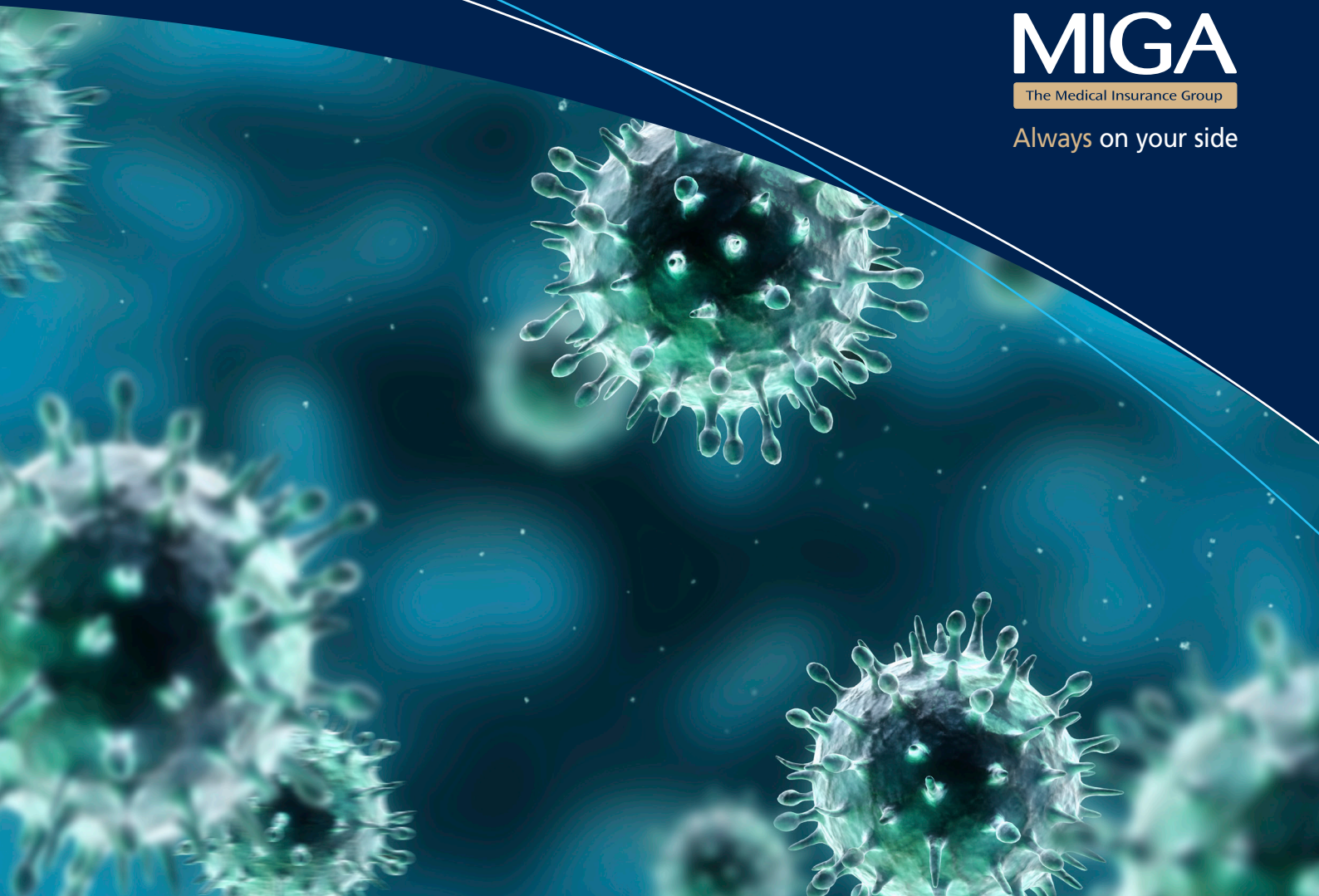
Medical Indemnity Insurance Policy

1 July 2013

MIGA

The Medical Insurance Group

Always on your side



« 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

National Free Call:
1800 777 156

24 hour emergency advisory service
+61 8 8238 4444

Facsimile
+61 8 8238 4445

Website
www.miga.com.au

Email
miga@miga.com.au

To contact any staff member type their name in lower case in the following format: [firstname.lastname@miga.com.au]

Postal
GPO Box 2048, Adelaide SA 5001

Adelaide Head Office
+61 8 8238 4444

Brisbane
+61 7 3025 3259

Melbourne
+61 3 9832 0847

Sydney
+61 2 8905 3400

Head Office location
Level 14
70 Franklin Street
Adelaide, South Australia 5000



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How to read this Policy

This Policy may cover more than one person. In this Policy We use the term 'You' to refer to all covered persons and we use 'Doctor' to refer to the insured medical practitioner.

We will cover You for:

- Claims, Claim Costs and Expenses described in Section 1; and
- additional matters described in Section 2,

if each is listed as included in the Schedule.

However, We may refuse or reduce Your cover if You do not comply with the obligations set out in Section 3 in relation to Claims and with the general obligations set out in Section 4.

We do not cover You for the matters excluded by Section 5.

If You do not pay Your Premium in full when due, this Policy will not commence and You will have no entitlement to cover.

Our liability to cover You is limited by:

- (a) the Aggregate Limit of Cover;
- (b) any Sub-Limit of Cover; and
- (c) any Deductible.

The following words have special meanings when used in this Policy.

Aggregate Limit of Cover

Means the maximum amount that We are liable to pay or incur in the Period of Insurance in respect of all claims by You under the Policy as specified in the Schedule.

Category

Means the practice category as specified in the Schedule.

Claim

Means:

- (a) the receipt by You of any written or oral notice of demand (the *demand*); or
- (b) service on You of any writ, statement of claim, summons, application, subpoena 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 or requires the production of documents to, or a person's attendance before, a court or tribunal.

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

- alleging any defamation by You arising from Practice;
- alleging a contravention of or seeking relief under a provision of the *Competition and Consumer Act 2010* or any equivalent provision in any State or Territory legislation arising from Practice (other than a matter excluded by clause 5.10);
- in respect of legal liability arising from the rendering of emergency first aid assistance to anyone; or
- requiring the production of medical records;

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 reasonable costs and expenses incurred by Us or You in the investigation or defence of any Claim.

Deductible

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

Doctor

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

Documents

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

Eligible Midwife

Means any person who is registered as a midwife by the Nursing and Midwifery Board of Australia and whose registration has an eligible midwife notation.

Employee

Means any person employed by the Doctor or a Practice 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) an Eligible Midwife; or
- (c) any other person who provides health care treatment, advice or service charged for and billed in their own name.

Expenses

Means the reasonable costs and expenses (including the reasonable amount of any disbursements) for services provided to You in respect of a matter for which the Policy expressly provides Expenses cover.

Good Samaritan Act

Means the provision of medical treatment or medical advice by the Doctor or an Employee in an unforeseen emergency situation where the Doctor or the Employee:

- (a) is not, otherwise than by the Policy, entitled to indemnity or immunity from liability in respect of the Claim;
- (b) makes no request for payment or reward for the medical treatment or medical advice provided; and
- (c) provides no ongoing medical treatment or medical advice after the emergency situation has passed.

Gratuitous Advice

Means gratuitous medical advice by the Doctor if:

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

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 Period of Insurance (in Your name) or for work for which You are 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 You or otherwise and before any apportionment or deduction of any expenses and/or tax.

If as part of Practice, You derive 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 You such that We reasonably conclude 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 Your profession, including, but not limited to, sexual misconduct.

Inappropriate Practice includes, but is not limited to, conduct by which one of You, knowingly, recklessly or negligently, cause or permits another of You to engage in Inappropriate Practice.

MDASA

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

Medical Student

Means a person who is, at the time of each act, error or omission giving rise to a Claim or other matter covered under the Policy, 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 Us.

Period of Insurance

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

Policy

Means:

- (a) the Schedule;
- (b) this document except to the extent that one or more clauses within Sections 1 or 2 are not noted as being included on the Schedule; and
- (c) any endorsement.

Practice

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

Practice Entity

Means:

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

Premium

Means the Premium specified in the Schedule.

Public Patient

Means an individual to whom You provide 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 billing process has the effect of not classifying the individual as a public patient.

Retroactive Date

Means the date specified as the Retroactive Date in the Schedule.

Schedule

Means the schedule forming part of the Policy, signed by Us.

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 Cover

Means the maximum amount, specified in the Policy, which We are required to pay or incur in respect of all liability under any section of the Policy, less any Deductible.

We, Us and Our

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

You

Means:

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

You includes any Medical Student assigned to You 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.

Section 1

Claims and Expenses that We cover You for

Claims

1.1 Claims against You

We will cover You for legal liability for a Claim first made against You and of which You first notify Us in writing during the Period of Insurance and which arises out of the provision by You of health care treatment, advice or service connected with the Category after the Retroactive Date.

1.2 Claim Costs

We will cover You in respect of Claim Costs incurred with Our prior written consent in the defence or settlement of any Claim covered by the Policy.

Expenses

1.3 Proceedings and investigations

We will cover You for 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 You first notify Us in writing during the Period of Insurance:

- (a) complaints to or investigations or proceedings by:
 - (i) a health practitioner board, medical tribunal or other body responsible for Your professional discipline, professional college or association, hospital, health service, health district, health authority, private health insurer, Medicare Australia, a health care complaints body or a health care ombudsman;
 - (ii) the Office of the Australian Information Commissioner in connection with any matter relating to privacy or confidentiality, including but not limited to the *Privacy Act 1988* and any law of the Commonwealth, the States or Territories relating to health records including personally controlled electronic health records; or
 - (iii) such other government or statutory authority or other body that perform functions or exercises powers similar to any of the bodies listed in paragraph (a)(i) or (a)(ii);
- (b) coronial inquiries and royal commissions;
- (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; and
- (e) any action by a government or statutory authority alleging a contravention of or seeking relief under a provision of the *Competition and Consumer Act 2010* or any equivalent provision in any State or Territory legislation.

Note: Under clause 5.10, no cover is provided for fines or penalties imposed on You.

1.4 Other complaints and disputes

We will cover the Doctor for Expenses incurred in relation to any of the following matters that arise from Practice after the Retroactive Date, the circumstances of which You first notify Us in writing during the Period of Insurance:

- (a) a complaint or proceeding brought against the Doctor by a person who provides services to You in the course of Practice, including allegations of breaches of anti-discrimination or equal opportunity law, harassment, bullying and unfair dismissal but excluding a dispute referred to in paragraphs (c) or (d);
- (b) a complaint or proceeding pursued by the Doctor against a person to whom the Doctor provides services in the course of Practice, including allegations of breaches of anti-discrimination or equal opportunity law, harassment, bullying and unfair dismissal but excluding a dispute referred to in paragraphs (c) or (d);
- (c) a dispute pursued or defended by the Doctor in relation to the terms of his or her employment;
- (d) a dispute pursued or defended by the Doctor in relation to the terms on which he or she provides services as a visiting medical practitioner;
- (e) a complaint or proceeding pursued by the Doctor in relation to the by-laws of a professional college or association arising from the Doctor's participation, or inability to participate, in a training program; and
- (f) a complaint or proceeding pursued by the Doctor in relation to any threat to the personal safety of the Doctor, an Employee or any of his or her immediate family that arises from Practice provided to another person by You.

Our liability under clauses 1.4(b), 1.4(c) and 1.4(d) is subject to a combined Sub-Limit of Cover of \$150,000.

Our liability under clause 1.4(e) is subject to a Sub-Limit of Cover of \$25,000.

Our liability under paragraph (f) is subject to a Sub-Limit of Cover of \$175,000.

A Deductible of \$1,000, inclusive of costs and expenses, applies to clauses 1.4(b) and 1.4(c).

Note: Clause 4.5 explains the effect of a costs-inclusive Deductible.
Under clause 4.1(b), any Sub-Limit of Cover applies to each claim and to all claims under the sub-limited paragraph.

Section 2

Other matters that We cover You for

2.1 What this section covers

Unless otherwise expressly provided, for each clause in this Section that is listed as included in the Schedule, We agree to provide cover for:

- (a) legal liability for any Claim first made against You and of which You first notify Us 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 for the related Claim Costs); and
- (b) Expenses incurred in defending or responding to any matter referred to in clause 1.3 or clause 1.4 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 You first notify Us in writing during the Period of Insurance.

2.2 Good Samaritan Acts and Gratuitous Advice

- (a) We agree to cover the Doctor for legal liability for any Claim and for 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 Doctor 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) We agree to cover any Employee for legal liability for any Claim and for 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 Doctor, 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

We agree to cover the Doctor and any Practice Entity for 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) another of You in the course of Practice;
- (b) an employed medical practitioner or contractor in the course of providing health care treatment, advice or service:
 - (i) that he or she is employed or contracted by the Doctor or a Practice Entity to undertake;
 - (ii) for which he or she is registered, if required by law to be registered by a health practitioner board; and
 - (iii) that is within the Category of the Doctor or a lower risk Category, as determined by Us, for which the Doctor is qualified; and
- (c) a non-employed health care professional under direct supervision, training or mentoring by the Doctor in the course of providing health care treatment, advice or service within the Category of the Doctor.
A non-employed health care professional means a person who, at the time of the act, error or omission:
 - (i) was a registered medical practitioner, a registered nurse, a registered nurse practitioner or a registered midwife other than an Eligible Midwife, who was neither employed by nor working under a written contract for services with the Doctor or a Practice Entity and was not in partnership with the Doctor; and
 - (ii) was required by a college, training institution, medical board or nursing and midwifery board to be directly supervised, trained or mentored by the Doctor for the purpose of obtaining, retaining or regaining a recognised professional medical or nursing or midwifery qualification, award or registration.

No cover is provided under paragraph (b) unless the employed medical practitioner or contractor held a valid policy of insurance at the time of the act, error or omission that covered claims arising from the health care treatment, advice or service referred to in paragraph (b).

A contractor means a person, including a locum, 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 Doctor or a Practice Entity.

Note 1: Partnership in this clause has the same meaning as in clause 2.17.

Note 2: Employed medical practitioners, contractors and non-employed health care professionals are not insured parties under the Policy.

2.4 Practice outside the Commonwealth of Australia

- (a) Where the Doctor is outside the Commonwealth of Australia for the purpose of Practice for no more than 120 days during the Period of Insurance, We will cover the Doctor and any Employee who accompanies the Doctor for legal liability for any Claim which arises from that Practice.
- (b) Where the Doctor is outside the Commonwealth of Australia for the purpose of Practice for no more than 120 days during the Period of Insurance, We will cover the Doctor only for 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) We will cover the Doctor and any Employee who accompanies the Doctor for legal liability for any Claim which arises from the Doctor'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.

2.5 Volunteer Practice

We agree to cover the Doctor for legal liability for any Claim in respect of Practice by the Doctor as an unpaid volunteer in the course of a volunteer activity such as 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.

2.6 Liability for restricting ability to practise

We agree to cover the Doctor for legal liability for any Claim and for Expenses arising directly from any act, error or omission committed or alleged to have been committed by the Doctor:

- (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 Doctor 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.

2.7 Loss of Documents

We agree to pay the reasonable costs incurred by You in replacing or restoring Documents in Your possession 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 You first become aware of the loss within the Period of Insurance and You first notify Us in writing within the Period of Insurance;
- (b) You notify Us within 14 days after the date on which You first become 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 Us or a person acting on Our behalf;
- (d) for the purposes of this clause, Documents in Your possession will include those in the possession of a person to whom You 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.

Our liability under this clause is subject to a Sub-Limit of Cover of \$100,000.

Note: Under clause 4.1(b), any Sub-Limit of Cover applies to each claim and to all claims under the sub-limited clause.

2.8 Advice and advisory assistance

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

2.9 Severability and non-imputation

Any conduct by any of You which would allow Us to refuse or reduce Our liability to cover that person will not prejudice the right of any other person who is one of You to cover under the Policy on condition that the latter person:

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

2.10 Continuous cover

- (a) If:
 - (i) You could have first notified Us of a Claim under an earlier medical indemnity insurance policy issued by Us;
 - (ii) You provide Us with written notice of the Claim during the Period of Insurance; and
 - (iii) We have been Your insurer under a medical indemnity insurance policy continuously between the date on which You could have first notified Us and the date on which the notification was in fact given,
 We will treat the notification of the Claim as a notification under the Policy during the Period of Insurance.
- (b) If:
 - (i) You could have first notified MDASA of a Claim under medical indemnity cover provided to You after 1 July 2000 and before 1 July 2003;
 - (ii) You provide Us with written notice of the Claim during the Period of Insurance; and
 - (iii) You were a financial member of MDASA continuously between the date on which You could have first notified MDASA and the date on which the notification was given to Us,
 We 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 cover and deductible) applicable to a Claim notified under:
 - (i) paragraph (a) will be the terms and conditions applicable to Our medical indemnity insurance policy under which You could have first notified Us; and
 - (ii) paragraph (b) will be the terms and conditions of this Policy.

2.11 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 We were the last provider of medical indemnity cover to the Doctor, We will provide medical indemnity cover as required by section 26A of the Act for no additional premium.

2.12 ROCS Gap cover

If, during the Period of Insurance, the Doctor:

- (a) notifies Us that the Doctor 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 2.11 and is aged less than 65 years,

We 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 Doctor;
- offer to provide to the Doctor annually renewable medical indemnity cover for claims that may be made against the Doctor 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 Doctor'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 Doctor has continuously held medical indemnity insurance with Us for at least 5 years immediately prior to ceasing private medical practice, We 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 Doctor as a Medical Student by Us or MDASA does not accrue to the calculation of a continuous period of medical indemnity cover.

2.13 Out of pocket expenses cover

We agree to cover the Doctor for any personal out of pocket expenses incurred with Our prior written consent, including travel, meal and accommodation expenses, that the Doctor reasonably incurs in responding to a Claim or a matter for which We have agreed to provide cover under the Policy.

Our liability under this clause is subject to a Sub-Limit of Cover of \$10,000.

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

Under clause 4.1(b), any Sub-Limit of Cover applies to each claim and to all claims under the sub-limited clause.

2.14 Run-off cover

(a) Subject to paragraph (b), We agree to cover You for legal liability for Claims and for 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 the Doctor was previously covered by Us for that health care treatment, advice or service under a contract of insurance and the Doctor has held continuously medical indemnity insurance cover with Us for a period of at least:

- 2 years, if the Category is for ongoing practice (other than an employer-indemnified, non-clinical, retired, compound life or suspended Category); or
- 5 years, if the Category is an employer-indemnified Category.

(b) We may require the payment of an additional premium for the cover provided by paragraph (a), based on Your change of Category, whether cover is no longer required for Public Patients and Your claims and practice history, in which case no cover is provided by paragraph (a) until such additional premium has been paid to Us.

Note: Under clause 4.8, You may be entitled to a rebate of Premium in the event of a change to a lower risk Category.

2.15 Public Patients

We agree to cover You in connection with Practice provided to a Public Patient that is not otherwise excluded by the Policy.

Note: Under clause 4.10, it is a condition of the Policy that the Doctor comply with any request by Us 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 Doctor must provide to Us prior to the commencement date of the Policy any information We reasonably require as to whether the Doctor must maintain his or her own insurance for health care treatment, advice or service provided to a Public Patient.

Under clause 5.25, no cover is provided if You are entitled to indemnity from another source.

2.16 Liability for complaints about others

We agree to cover the Doctor for legal liability for Claims and for Expenses that arise from the Doctor having:

- reported an incident and/or health care professional to a health practitioner board, medical tribunal, professional college or association, hospital, health service, health authority, private health insurer, Medicare Australia, a health care complaints body, a health care ombudsman or other body responsible for the professional discipline of health care professionals; or
- assisted in an investigation in relation to the incident or the reporting of an incident to any one or more of the bodies described in paragraph (a).

2.17 Innocent partner cover

We agree to provide cover for legal liability for any Claim first made against the Doctor and of which You first notify Us 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 Doctor but arises in connection with the practice of a medical profession by the Doctor;
- (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 Doctor is jointly and severally liable solely by reason of a partnership with the other party
 - (ii) within the Category of the Doctor, or a lower risk Category as determined by Us, for which the Doctor is qualified; and
 - (iii) in the conduct of the partnership; and
- (c) the Doctor 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.

Our liability under this clause is subject to a Sub-Limit of Cover equal to the lesser of:

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

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 4.1(b), any Sub-Limit of Cover applies to each claim and to all claims under the sub-limited clause.

2.18 Protection of reputation

We agree to cover the Doctor for Expenses incurred in relation to complaints and proceedings pursued by the Doctor in which the Doctor alleges that he or she has been defamed in connection with Practice if:

- (a) You first notify Us of the complaint or proceeding in writing during the Period of Insurance; and
- (b) the complaint or proceeding is not pursued against one or more persons insured by Us.

Our liability under this clause is subject to a Sub-Limit of Liability of \$20,000 and a Deductible of \$1,000, inclusive of costs and expenses.

2.19 Pursuit of indemnity

We agree to cover the Doctor for Expenses incurred in pursuing a third party including an insurer, employer, professional college or association, hospital, health service, health district, health authority or other government authority for indemnity in respect of any Claim or other matter covered under the Policy, where the Doctor is entitled to indemnity from the third party but is not indemnified by the third party.

2.20 Public relations expenses

We agree to cover the Doctor for Expenses incurred in engaging the services of a public relations consultant solely for the purpose of protecting his or her reputation directly as a result of a Claim or other matter for which We have agreed to provide cover under the Policy if the consultant is retained and if the expenses are incurred:

- (a) within the first 30 days after the Claim is made against You or after You first become aware of the other covered matter; and
- (b) with Our prior written consent.

The cover provided under this clause is subject to a Sub-Limit of Cover of \$25,000.

2.21 Unintentional intellectual property rights infringement

We agree to cover the Doctor for legal liability for any Claims, Claim Costs and for Expenses arising out of an innocent infringement of a third party's intellectual property rights in the course of Practice.

An innocent infringement is one where the Doctor can demonstrate that he or she had no actual knowledge of a third party's intellectual property rights and did not act with reckless disregard as to whether or not those rights existed.

Section 3

How We will conduct Claims and other proceedings and what You must do

3.1 Notification

You must notify Us in writing of each Claim and each other matter for which You seek or intend to seek cover under the Policy by providing particulars of the Claim or matter to Us 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 You which arises from facts that might give rise to a claim that You notified to Us:

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

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

We continue to encourage You to notify any circumstance or incident which has the potential to lead to a claim as soon as You become aware of the circumstance or incident.

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

3.2 Other insurance and Public Patients

In the event of:

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

You must notify Us in writing of any other insurance or indemnity under which You are entitled to a benefit in respect of the event referred to above.

Note: Under clause 5.25, no cover is provided if You are entitled to indemnity from another source.

3.3 Admission or limitation of liability

You must not, without Our prior written consent, admit liability for, compromise or assume any contractual liability or agree to reduce or limit the liability of any other person in relation to any matter for which You may have an entitlement to cover under the Policy. We will not withhold Our consent 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.

3.4 Conduct

- (a) We may, at any time and in Your name, take over the conduct of any Claim or other matter covered under the Policy, or of circumstances which may give rise to an entitlement to cover under the Policy, including by appointing a lawyer to represent You. You must assist any lawyer appointed by Us to act in relation to any Claim or other matter and You must not direct, or purport to direct, the lawyer to cease to represent You without Our prior written consent.
- (b) We may, at Our absolute discretion and on such terms and conditions as We see fit, agree to cover the Doctor for Expenses incurred in arranging separate legal representation for the Doctor in defending or responding to a coronial inquiry or royal commission if the Doctor:
 - (i) is entitled to be indemnified for those Expenses by an employer;
 - (ii) is not entitled to be covered for those Expenses under the Policy by reason of clause 5.25; and
 - (iii) if the Doctor believes that there may be a conflict of interest if the same lawyers were to act for both the Doctor and the Doctor's employer in relation to the coronial inquiry or royal commission, in which case We reserve the right to seek recovery of the Expenses We have incurred from the Doctor's employer.
- (c) We will take into consideration Your views in relation to the conduct of any Claim or other matter but We will have full discretion in its conduct and settlement or resolution.
- (d) If You do not agree with a proposal by Us to settle a Claim or to resolve a matter covered by the Policy, then You will be entitled to assume the conduct of the Claim or matter but We will not cover You for any amount greater than the amount of money (including Claim Costs and Expenses and after deducting the Deductible) for which We believe that We could have settled the Claim or resolved the matter as at the date on which You elected to assume conduct.

Similarly, We may elect not to cover You for Expenses in pursuing a matter which We believe You are more likely than not to be unsuccessful in pursuing. If We make such an election, We will only cover You for Your Expenses (less the Deductible) that relate to the matter up to the date of the election but if You successfully pursue the matter We will cover You for such part of Your Expenses as is reasonable having regard to the Expenses incurred, the outcome You sought and the actual outcome.

3.5 Subrogation

- (a) We may, in Your name, pursue a right of contribution or indemnity that You may have against any other person whether or not We have paid any or all of a Claim or other matter covered by the Policy.
- (b) You must not, without Our prior written consent, engage in any conduct that has the effect of excluding, restricting or modifying any right of recovery that We may have against another person.

3.6 Contesting Claims and other matters

Unless a Senior Counsel, instructed by agreement between You and Us or, in the absence of such agreement, by Us, advises that a Claim or other matter covered by the Policy should be contested, We will not require You to contest the Claim or matter. The Senior Counsel will be instructed to provide the requested advice based on the economics of the Claim or matter, the damages and costs likely to be recovered, the likely costs of the conduct of the Claim or matter and the prospects of successfully defending the Claim or obtaining a more favourable outcome in the matter. The cost of the advice provided by the Senior Counsel will be part of the Claim Costs or Expenses.

3.7 Mitigation, co-operation and assistance

- (a) You will do, and allow to be done, everything reasonably practicable to reduce or avoid liability in respect of a Claim or other matter covered under the Policy or circumstances which may give rise to an entitlement to cover under the Policy.
- (b) You will provide Us, or any person that We nominate, with all information, documents and assistance reasonably required by Us:
 - (i) in relation to the investigation, defence or settlement of a Claim or other matter or circumstances which may give rise to an entitlement to cover under the Policy;
 - (ii) in relation to the pursuit of a subrogated right by Us; and
 - (iii) in order for Us to ascertain Our liability to cover You under the Policy,
 and We will not cover You for the costs of complying with this condition except to the extent that such costs are:
 - if cover for Claims Costs is listed as included in the Schedule, Claim Costs; or
 - if cover for Expenses is listed as included in the Schedule, Expenses.

3.8 Advances

We may, but are not required to, advance Claim Costs or Expenses to You prior to the completion (including any appeal) of:

- (a) any proceedings arising from a Claim covered by the Policy; and
- (b) any proceedings or other matters covered by the Policy,

on such terms and conditions as We see fit, having regard to Our assessment as to whether You have reasonable prospects of success in relation to the Claim or matter and whether Our assessment changes during the course of the proceeding or other matter. We may, but are not required to, seek independent legal advice in assessing Your prospects of success. In the event that You are not entitled to cover, any Claim Costs and Expenses advanced to You and any interest chargeable must be repaid by You to Us on such terms and conditions as are specified by Us.

3.9 Appeals and matters instigated by You

We will not cover You for any matter instigated by You (including an appeal or the defence of an appeal against a decision of a court, tribunal, health practitioner board, medical tribunal or other body responsible for Your professional discipline, professional college or association, hospital, health service, health district, health authority, private health insurer, Medicare Australia, a health care complaints body or a health care ombudsman) unless:

- (a) in the case of an appeal or response to an appeal, You have given Us 7 days' written notice prior to first making the appeal or lodging any defence or response to the appeal;
- (b) in any other case, You have given Us 28 days' written notice prior to first taking any steps in the matter; and
- (c) in each case, We have formed the opinion that there are reasonable prospects of success in relation to the matter and We continue to hold that opinion during the course of the matter.

If We have 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 the matter must be taken then We will not be taken to have formed a favourable view unless We do so subsequently. We may, but are not required to, seek independent legal advice in assessing Your prospects of success.

3.10 Criminal convictions

If any of You is found guilty of, or admits, any crime then that person will have no cover in respect of that matter (including in relation to any appeal) and any moneys advanced by Us in respect of that matter (together with any applicable interest) will immediately become due and payable to Us.

Section 4

Additional obligations for You and Us

4.1 Limit of cover

- (a) Our liability to You 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 Cover. Any payment by Us to a person in respect of a matter that might give rise to a Claim is taken to be a payment made to settle a Claim.
- (b) Our liability to You 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 Cover applies will not exceed the Sub-Limit of Cover.

Note: Our liability to You may also be limited by operation of another clause such as clause 2.17 or clause 4.2.

4.2 Practice Entities and multiple policies

- (a) A Practice Entity and its Employees are only covered by the Policy if the entitlement to cover of the Practice Entity and its Employees arises directly from Practice by the Doctor.
- (b) Where You are entitled to cover under more than one policy issued by Us, the limits and sub-limits of cover under each policy are not cumulative and the amount of cover that We are required to provide to You under all policies issued by Us will not exceed the Aggregate Limit of Cover and Sub-Limit of Cover.

4.3 Deductible

We will only cover You for that part of a Claim, Claim Costs or Expenses (including any cover under any automatic extension or optional extension) that exceeds the Deductible. The Aggregate Limit of Cover and any Sub-Limit of Cover are inclusive of the Deductible.

4.4 Deductible – payment

If We notify You in writing that You are entitled to cover for a matter covered by the Policy and to which a Deductible applies, You will pay the Deductible to Us within 14 days of receipt of the notice. Subject to law, We are not required to take any steps in relation to the matter until You have paid the Deductible. If the matter covered by the Policy is resolved for a cost to Us that is less than the Deductible, We will repay to You an amount equal to the difference between the Deductible and the cost incurred by Us in disposing of the matter.

4.5 Deductible – costs inclusive

If the Policy states that a Deductible is inclusive of costs and expenses, the Doctor will indemnify Us for Our reasonable Claim Costs or Expenses, up to the amount of the Deductible, but the Doctor will not indemnify Us for any costs incurred in determining Our liability to cover You.

4.6 Multiple Claims and matters

All covered Claims, Claim Costs and Expenses arising from any of the following will be treated as if they arise from a single Claim or matter to which one Deductible and Aggregate Limit of Cover or Sub-Limit of Cover will apply:

- (a) a related course of treatment to a single person;
- (b) all Inappropriate Practice involving a single person; or
- (c) the provision of health care treatment, advice or service to any one woman and her unborn child or children in relation to all injuries, illnesses or symptoms suffered by them in relation to the pregnancy of the woman and the birth of the child or children.

4.7 Material change in risk

You will provide immediate notice to Us of any temporary or permanent material change affecting You or Practice during the Period of Insurance including, but not limited to:

- (a) **the Doctor or a Practice 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 Doctor's registration with a medical board;

(continued on page 14)

(e) the Doctor being required to maintain their own insurance for health care treatment, advice or service provided to a Public Patient,

and You will immediately notify Us if during or after the Period of Insurance, the Doctor:

- 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.

4.8 Material change in risk – adjustment of Premium

(a) In the event of change notifiable under clause 4.7 that, in Our opinion, decreases the risk insured by the Policy, We may agree to rebate part of the Premium having regard to:

- (i) Our 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.

(b) Paragraph (a)(ii) does not apply to a change in the Category if the Doctor has held continuously medical indemnity insurance cover with Us for the periods and in the Categories specified in clause 2.14.

4.9 Cancellation by Us

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

4.10 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 We may send to the Doctor a written notice requiring a declaration of the Doctor'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 Doctor must provide Us with the written declaration required by the notice.
- (c) We may, at Our discretion and at Our cost, require an audit of the declaration referred to in paragraph (b), in which case You will provide all information and assistance reasonably required for the purpose of the audit. If the Doctor does not provide the declaration, the information or the assistance required, We may, at Our discretion and at Your cost, audit the Doctor's Gross Income or sessions (as the case may be) for the Period of Insurance.
- (d) We may adjust the Premium based on a comparison of the Doctor's declaration provided under this clause with the estimated Gross Income or sessions disclosed by the Doctor when renewing or applying for the Policy. If the Premium is adjusted, You will pay to Us the amount of any increase in the Premium and We will pay to You 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 You nor We will be liable to pay to the other the adjustment.

4.11 Practice review

We may undertake a Practice review on 21 days' prior written notice to the Doctor, in which event You agree:

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

4.12 Non-payment of Premium

(a) The Policy will not come into force unless and until You have paid the Premium in full prior to the first date of the Period of Insurance. Also, unless the Policy is a renewal of another medical indemnity insurance policy that We have issued to You, the Policy will not come into force until You have provided to Us a completed application for insurance and We have accepted the application.

Note: Where You pay the Premium in full after the first date of the Period of Insurance, We may agree to issue the Policy effective retrospectively but otherwise You have no entitlement to cover from Us.

- (b) It is also a condition of the Policy that You must:
- (i) immediately pay any premium owing to Us in relation to any prior policy of insurance issued to You as and when it falls due for payment; and
 - (ii) comply with any requirement under a prior policy of insurance issued to You to provide Us with a declaration of the Doctor's Gross Income or sessions, or to provide information or assistance in relation to such a declaration,

and if You fail to comply with either of these conditions then We may cancel the Policy.

4.13 Assignment

You may not assign Your interest in the Policy.

4.14 Notice

A requirement of the Policy that You provide written notice to Us may be satisfied by You providing written notice to

MIGA
Level 14
70 Franklin Street
Adelaide SA 5000

4.15 Agency

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

4.16 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.

4.17 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.

4.18 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.

Section 5

Claims and Expenses that We do not cover You for

We will refuse or reduce a claim for cover under the Policy which relates to any Claims, Claim Costs or Expenses:

5.1 Prior or pending

other than to the extent that cover is provided under clause 2.10 if listed as included in the Schedule:

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

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

5.4 Contractually assumed liability

in any way related to any duty or obligation assumed under contract by You except to the extent that Your liability is the same as Your 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 You provided or will provide other than in circumstances where in Our view reimbursement of all or part of the fee for Practice will significantly reduce the likelihood of a Claim or complaint being made against You.

5.7 Related parties

in any way related to a Claim or a matter that is brought against You by or on behalf of:

- (a) an Employee, other than in respect of:
 - (i) health care treatment, advice or service provided by You to the Employee; or
 - (ii) cover provided under clause 1.4;
- (b) any other person or entity covered by the Policy; or
- (c) any entity controlled by You or in which You have a direct or indirect financial interest.

5.8 Intoxication

other than in respect of Expenses, where You were 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 You in circumstances where You 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 or asbestos

in any way related to pollution or asbestos other than in relation to health care treatment, advice or service provided by You in the course of Practice for pollution-related or asbestos-related conditions.

5.12 Occupier's liability and property damage

in any way related to any actual or alleged liability:

- (a) for personal injury arising from Your 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

other than in respect of Expenses, arising out of any actual or alleged unlawful discrimination, harassment or breach of any equal opportunity law, except to the extent that it relates to a complaint or proceeding by a person 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 You 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 You are insured or entitled to be insured by a public liability policy held by You.

5.18 Product liability

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

5.19 Directorships and committee memberships

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

5.20 Practice outside the Commonwealth of Australia

other than in respect of any cover provided under clauses 2.2 or 2.4, arising from Practice conducted outside the Commonwealth of Australia.

5.21 United States of America

- (a) other than in respect of any cover provided under clauses 2.2(a)(iii) or 2.4(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 clause 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.

5.22 Statutory exclusions

for which We are prohibited or not authorised by law from providing cover including, but not limited to, workers' compensation.

5.23 Obligations to employees

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

5.24 Liability for partners

other than in respect of cover under clause 2.17, arising solely by reason of a partnership between You and another person or entity or by reason of a similar contractual arrangement between You and that person or entity.

5.25 Other indemnities

for which You are indemnified or are entitled to:

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

In addition, Our liability to cover You for Claim Costs or Expenses is reduced by any amount that You receive from any other source in respect of those costs and expenses including any orders in Your favour and any indemnity of which You have a benefit, including a right to cover under an insurance policy that provides specific cover for the costs and expenses.

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.

5.26 De-registration and restrictions on Practice

- (a) in any way related to Practice for which the Doctor or an Employee was required to be registered, endorsed or authorised by a health practitioner board but for which he or she was not registered, endorsed or authorised;
- (b) in any way related to an act, error or omission that is in breach of any restriction, limitation or prohibition imposed by any lawful authority, including a health practitioner board, tribunal or council, other than in respect of Expenses incurred by the Doctor or a Practice Entity in relation to such an act, error or omission by a person for whose act, error or omission the Doctor or Practice Entity is vicariously liable.

5.27 Publication and authorship

arising out of the conduct by the Doctor 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 Doctor or provided directly to a person by the Doctor in the course of Practice.

5.28 Written consent

where, in the case of any Claim Costs or Expenses, You did not obtain Our written consent prior to incurring the Claim Costs or Expenses.

5.29 Other matters

where the Claim Costs or Expenses are in any way related to:

- (a) a dispute with Us or MDASA in any way related to a claim under any section of the Policy or any other policy of insurance;
- (b) Your failure to provide all reasonable information, documents and assistance required of You by Us or Our nominees;
- (c) Your bankruptcy or insolvency;
- (d) Your dismissal or termination of employment within 60 days of the date on which You were first insured by Us under a policy of insurance;
- (e) the pursuit or defence of a complaint, prosecution or proceedings against or by Your current or former business partner;
- (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 lawful authority, including a health practitioner board, tribunal or council, in respect of any restriction, limitation or prohibition after it has been imposed on You.

How to contact Us

National Free Call

1800 777 156

24 Hour emergency advisory service

+61 8 8238 4444

Website

www.miga.com.au

Email

miga@miga.com.au

Head Office

Level 14, 70 Franklin Street
Adelaide, South Australia 5000
GPO Box 2048
Adelaide, South Australia 5001
Telephone +61 8 8238 4444
Facsimile +61 8 8238 4445

Branch Offices

Brisbane +61 7 3025 3259

Melbourne +61 3 9832 0847

Sydney +61 2 8905 3400

MIGA

The Medical Insurance Group

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