

# Professional Indemnity and Public & Products Liability Insurance

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# Special Notices

This policy is an important document. The policy wording and member schedule together set out the cover provided, the amount insured and the terms and conditions of your insurance. Please read it carefully and keep it in a safe place.

BMS Risk Solutions Pty Ltd [ABN no. 45161187980] is a Coverholder for certain underwriters at Lloyd's, and in these notices a reference to "we", "our" or "us" means BMS Risk Solutions Pty Ltd. BMS Risk Solutions Pty Ltd has the authority to bind this group policy. References to "you" or "your" in these notices means a qualified member of the Association/Insured noted in the **member schedule**.

The information contained in this section is general information only and does not form part of your contract with us.

## Your Duty of Disclosure

Before you enter into an insurance contract, you have a duty to tell us anything that you know, or could reasonably be expected to know, may affect our decision to insure you and on what terms.

You have this duty until we agree to insure you.

You have the same duty before you renew, extend, vary or reinstate an insurance contract.

You do not need to tell us anything that:

- reduces the risk we insure for you; or
- is common knowledge; or
- we know or should know as an Insurer; or we waive your duty to tell us about.

### If you do not tell us something

If you do not tell us anything you are required to, we may cancel your contract or reduce the amount we will pay you if you make a claim, or both.

If your failure to tell us is fraudulent, we may refuse to pay a claim and treat the contract as if it never existed.

## Claims Made Policy

This policy is a claims made policy of insurance. This means that the policy covers you for claims made against you and notified to us during the period of insurance. The policy does not provide cover in relation to:

- events that occurred prior to the retroactive date, if any, specified in the policy;
- claims notified or arising out of circumstances notified under any previous policy (whether made or issued by us or any other insurer);
- claims made against you prior to commencement of the period of insurance;
- claims arising out of claims and circumstances noted on the proposal form for the current period of insurance or on any previous proposal form;
- subject to what is said in the next paragraph, claims made after expiry of the period of insurance even though the event giving rise to the claim may have occurred during the period of insurance.

Pursuant to section 40(3) of the Insurance Contracts Act 1984 (Cth) where you give notice to us in writing of facts that might give rise to a claim as soon as was reasonably practicable after you become aware of those facts but before the policy expires, you are covered for any claim made against you arising from those facts even if it is not made against you until after the period of insurance has expired.

## Privacy

BMS Risk Solutions Pty Ltd (BMS) is committed to protecting the privacy of the personal information you provide us. BMS collects, uses and retains your personal information in accordance with the National Privacy Principles.

We need to collect the personal information on the applicable proposal form to consider your application for insurance and to determine the premium (if your application is accepted) when you are applying for, changing or renewing an insurance policy with us. This information will also be used if you lodge a claim under your policy. We may also need to request additional information from you in connection with your application or a claim. If you do not provide us with this information, or any additional information we request, we may not be able to process your application or offer you insurance cover or respond to any claim.

We may disclose the personal information we collect:

- To our relevant employees involved in delivering our services;
- If your insurance broker collects this form from you, to that broker;
- To facilitators such as legal firms, professional experts such as accountants, actuaries, engineers and technology experts;
- To the insurance companies with whom we transact business;
- To the Lloyd's Syndicates we represent (which are located in the United Kingdom);
- To insurance reference bureau or credit reference bureau;
- To reinsurers or reinsurance brokers (which may include reinsurers located outside of Australia).

Where we do disclose the information as above the recipient may hold the information in accordance with its own privacy statement / policies. Those may include, by way of example, disclosing the information to and storage of that information by its associated entities, which may be located overseas. We may also be required to provide your personal information to others for purposes of public safety and law enforcement and if required by law or by a law enforcement body to do so.

You may request access to your personal information, and where necessary, correct any errors in this information (some restrictions and costs may apply). If you would like to access a copy of your personal information or you wish to correct or update your personal information, please also contact us on 1800 931 070.

By completing and returning a proposal form and/or providing us with any additional information in connection with your application, you agree to us using and disclosing your information as set out above. This consent to the use and disclosure of your personal information remains valid unless you alter or revoke it by giving us written notice.

From time to time, we may use your personal information to send you details of new insurance products or other insurance related information that may be of interest to you. If you do not wish to receive such information, please advise us on 1800 931 070.

## General Insurance Code of Practice

The Insurance Council of Australia Limited has developed the General Insurance Code of Practice (“the Code”), which is a voluntary self-regulatory code. The Code aims to raise the standards of practice and service in the insurance industry.

Lloyd’s has adopted the Code on terms agreed with the Insurance Council of Australia. For further information on the Code please visit [www.codeofpractice.com.au](http://www.codeofpractice.com.au).

The Code Governance Committee (CGC) is an independent body that monitors and enforces insurers’ compliance with the Code. For more information on the Code Governance Committee (CGC) go to [www.insurancecode.org.au](http://www.insurancecode.org.au)

### Complaints and disputes

If you have any concerns or wish to make a complaint in relation to this policy, our services or your insurance claim, please let us know and we will attempt to resolve your concerns in accordance with our Internal Dispute Resolution procedure. Please contact BMS Risk Solutions in the first instance:

Complaints Officer  
BMS Risk Solutions Pty Ltd  
Email. [enquiries\\_au@bmsgroup.com](mailto:enquiries_au@bmsgroup.com)  
Phone. 1800 931 070  
360 Little Collins Street, Melbourne

We will acknowledge receipt of your complaint and do our utmost to resolve the complaint to your satisfaction within 10 business days.

If we cannot resolve your complaint to your satisfaction, we will escalate your matter to Lloyd’s Australia who will determine whether it will be reviewed by their office or the Lloyd’s UK Complaints team. Lloyd’s contact details are:

Lloyd’s Australia Limited  
Email: [ldraustralia@lloyds.com](mailto:ldraustralia@lloyds.com)  
Telephone: (02) 8298 0783  
Post: Suite 1603 Level 16, 1 Macquarie Place, Sydney NSW 2000

A final decision will be provided to you within 30 calendar days of the date on which you first made the complaint unless certain exceptions apply.

You may refer your complaint to the Australian Financial Complaints Authority (AFCA), if your complaint is not resolved to your satisfaction within 30 calendar days of the date on which you first made the complaint or at any time. AFCA can be contacted as follows:

Telephone: 1800 931 678  
Email: [info@afca.org.au](mailto:info@afca.org.au)  
Post: GPO Box 3 Melbourne VIC 3001  
Website: [www.afca.org.au](http://www.afca.org.au)

Your complaint must be referred to AFCA within 2 years of the final decision, unless AFCA considers special circumstances apply. If your complaint is not eligible for consideration by AFCA, you may be referred to the Financial Ombudsman Service (UK) or you can seek independent legal advice. You can also access any other external dispute resolution or other options that may be available to you.

The Underwriters accepting this Insurance agree that:

- (i) if a dispute arises under this Insurance, this Insurance will be subject to Australian law and practice and the Underwriters will submit to the jurisdiction of any competent Court in the Commonwealth of Australia;
- (ii) any summons notice or process to be served upon the Underwriters may be served upon:

*Lloyd's Underwriters' General Representative in Australia  
Suite 1603  
Level 16  
1 Macquarie Place  
Sydney NSW 2000*

who has authority to accept service on the Underwriters' behalf;

- (iii) if a suit is instituted against any of the Underwriters, all Underwriters participating in this Insurance will abide by the final decision of such Court or any competent Appellate Court.

In the event of a claim arising under this Insurance IMMEDIATE NOTICE should be given to:

Proclaim

Email. [bmsgroup@proclaim.com.au](mailto:bmsgroup@proclaim.com.au)

LMA 5544  
17 May 2021

# Your Policy

## Introduction

In consideration of payment of the premium, **we** will cover you in accordance with the definitions, terms, conditions, **limit of indemnity**, **sub-limits of indemnity**, **deductibles**, exclusions and endorsements, if any, of this policy. The words in bold are specially defined, and can be found in the definitions section.

## 1. Cover

### A. Professional Indemnity

**We** agree to cover **you** against all sums which **you** shall become legally liable to pay as compensation for civil liability, including claimant's costs, for any **claim** made against **you** during the **period of insurance** arising from the **Practice of Your Profession** or **malpractice** within the **territorial limits**.

### B. Public Liability

**We** agree to cover **you** against all sums which **you** shall become legally liable to pay as **compensation** in respect of any **claim** for:

1. **bodily injury**;
2. **property damage**;

arising out of an **occurrence** and happening in the course of **your business**.

Provided always that:

1. such **bodily injury** or **property damage** occurs within the **territorial limits** of this Policy and results in a **claim** first made against **you** and notified to **us** during the **period of insurance**;
2. there shall be no liability under this Insuring Clause 1.B for any **claim** made against **you** for **bodily injury** or **property damage** sustained or alleged to have been sustained prior to the **retroactive date** (if any) specified in the **member schedule**.

### C. Products Liability

**We** agree to cover **you** against all sums which **you** shall become legally liable to pay as **compensation** in respect of any **claim** for:

- a. **bodily injury**;
- b. **property damage**,

arising out of an **occurrence** and happening in connection with **your products**.

Provided always that:

1. such **bodily injury** or **property damage** occurs within the **territorial limits** of this Policy and results in a **Claim** first made against **you** and notified to **us** during the **period of insurance**;
2. there shall be no liability under this Insuring Clause 1.C for any **Claim** made against **you** for **bodily injury** or **property damage** sustained or alleged to have been sustained prior to the **retroactive date** (if any) specified in the **member schedule**.

## Defence costs and expenses

## How much we will pay

We will also pay **defence costs and expenses**, to investigate, defend or settle a **claim**, subject to payment of the **deductible**.

1. The most **we** will pay for any one **claim** or request for cover and in the aggregate for all **claims** and requests for cover during the **period of insurance**, is the **limit of indemnity** per **member**;
2. Any **sub-limit of indemnity** that applies to cover is the most **we** will pay for that cover in the aggregate for requests for cover during the **period of insurance** per **member**; and the **sub-limit of indemnity** will apply in place of the **limit of indemnity**;
3. The **limit of indemnity** and **sub-limit of indemnity** are exclusive of the **deductible**
4. The **limit of indemnity** is inclusive of **defence costs and expenses**;
5. Nothing in this policy operates to increase the **limit of indemnity** or **sub-limit of indemnity**;
6. All **claims** or requests for cover under this policy which arise from, or are attributable to, a single act, error, omission, or occurrence or series of similar or related single acts, errors, omissions or occurrences will be treated under this policy as one claim or one request for cover.
7. If any loss gives rise to liability under more than one section, **our** total liability for all losses, **claims** or a series consequent upon or attributable to one source or original cause, shall not exceed the single greatest **limit of indemnity** or **sub-limit of indemnity** available under the sections providing cover.

## Deductible

**Our** total liability applies over and above any **deductible**, as set out in the **member schedule**.

## 2. Automatic Extensions to Your Cover

### Abuse

Notwithstanding the Abuse exclusion, **we** agree to cover **you** for **defence costs and expenses**, but excluding salaries or loss of income, **you** incur in defending **claims** made against **you** for allegations of abuse arising from the **practice of your profession or malpractice**.

The most **we** will pay **you** under this section is \$100,000 **sub-limit of indemnity** each and every **claim** and in the aggregate and is applicable to any one **period of insurance**.

### Advice on goods sold

**We** will cover **you** in respect of **claims** made against **you** in the **period of insurance** in relation to negligent advice provided by **you** during the sale of any goods or products provided the act, error or omission by **you** arose from **your business**.

The most **we** will pay **you** under this section is the limit shown in the **member schedule** as the **limit of indemnity** and is applicable to any one **period of insurance**.

### Additional insureds cover

Cover under this policy is extended to cover the following, subject to all of the definitions, terms, conditions, **limit of indemnity** and any **sub-limit of indemnity, deductibles** and exclusions of this policy:

- a. in the event that **you** die or become incompetent, **your** estate, heir or legal representatives;
- b. volunteers that **you** engage in **your** business, and
- c. students who are **members** actively studying and that **you** engage in **your business**; and only:
- d. to the same extent that you would have been covered by this policy; and
- e. if they are not acting in their capacity as a **healthcare professional**

The most **we** will pay **you** under this section is the limit shown in the **member schedule** as the **limit of indemnity** and is applicable to any one **period of insurance**.

### Breach of confidentiality

**We** will cover **you** in respect of **your** civil liability for any **claim** for compensation arising from any breach of confidentiality including any breach or alleged breach of **privacy and health records legislation** arising as a result of **your business**.

The most **we** will pay **you** under this section is the limit shown in the **member schedule** as the **limit of indemnity** each and every claim and in the aggregate in any one **period of insurance**, however, this extension does not apply to any costs or expenses **you** incur in replacing, reinstating, rectifying or erasing any personal data.

**Breaches of consumer protection laws**

**We** will cover **you** in respect of **claims** made against **you** in the **period of insurance** in relation to actual or alleged breaches of Commonwealth consumer protection legislation or similar state or territory fair trading legislation.

**Breach of intellectual property**

**We** will cover you against **your** civil liability for compensation arising from any **claim** made against **you** for any unintentional infringement of copyright, trademark, registered design or patent, or any plagiarism as a result of **your business**.

The most **we** will pay **you** under this section is \$100,000 **sub-limit of indemnity** each and every **claim** and in the aggregate in any one **period of insurance**.

**Contractual liability**

**We** will cover **you** in respect of **claims** made against **you** in the **period of insurance** in relation to contractual liability in connection with **your business**. This clause does not operate to cover any liability assumed by contract, waiver, guarantee or warranty, unless liability would have attached in the absence of such contract, waiver, guarantee or warranty.

The most **we** will pay **you** under this section is the limit shown in the **member schedule** as the **limit of indemnity** and is applicable to any one **period of insurance**.

**Coroners inquests**

**We** agree to provide costs **you** incur arising out of the representation at any Coroner’s enquiry following the death of any patient of **yours** and which **you** are legally required to attend.

The most **we** will pay **you** under this section is \$250,000 **sub-limit of indemnity** each and every **claim** and in the aggregate in any one **period of insurance**.

**Court attendance costs**

**We** agree to provide court attendance costs **you** incur where **you** are legally compelled to attend a civil proceeding as a witness in a **claim** covered by this policy.

The most **we** will pay **you** under this section is \$1,000 per day and up to a maximum of the **limit of indemnity** shown in the **member schedule**, any one **period of insurance**.

### Criminal defence costs cover

**We** agree to cover **your defence costs and expenses** incurred with **our** prior written consent in defending criminal actions, suits or proceedings commenced against **you** during the **period of insurance** and notified to **us** in writing, for penal offences in respect of charges, arising out of **your business**.

However, **we** will not cover **you** for any liability including **defence costs and expenses** arising directly or indirectly, caused by, arising from, contributed by or in any way relating to any allegation or **claim** involving **abuse**.

The most **we** will pay **you** under this section is \$1,000,000 **sub-limit of indemnity**, each and every **claim** and in the aggregate.

### Defamation, Libel or Slander

**We** will cover **you** in respect of **your** civil liability for any **claim** for compensation arising from unintentional defamation, libel or slander as a result of **your business** but only where, upon **our** reasonable request, **you** issue an apology or expression of regret. **We** will not indemnify **you** in respect of any **claim** for defamation, libel or slander should **you** refuse such request by **us**.

The most **we** will pay **you** under this section is the limit shown in the **member schedule** as the **limit of indemnity** and is applicable to any one **period of insurance**.

### Continuous Cover

**We** will cover **you** in respect of **your** civil liability for any **claim** for compensation first made against **you** during the **period of insurance**, or **Defence costs and expenses** for any circumstance giving rise to an **inquiry** first commenced during the **period of insurance**, which circumstance ought to have been notified to **us** under a prior policy but wasn't provided that **you** have been continuously insured by **us** since the date when the circumstance should have been notified and the failure to notify **us** was not deliberate or fraudulent. **We** will have the discretion to apply to this claim the limit of indemnity and the excess under the prior policy in place when the circumstance should have been notified.

### Extended notification period

If this insurance is not renewed or is cancelled for any reason other than non-payment of **premium** then **you** have until such time that **you** effect another insurance policy or ninety (90) days commencing on the day immediately following the expiry of this policy, whichever is the lesser period, during which to notify us of any **claims** first made against **you** during the **period of insurance**, provided that this extension:

- a. does not reinstate or increase the **limit of indemnity** or extend the **period of insurance**; and
- b. will only apply to acts, errors or omissions committed or alleged to have been committed by **you** before the end of the **period of insurance** or the cancellation date of this policy where this policy has been cancelled.

### Good Samaritan acts

**We** will cover **you** for any **claim** made against **you** for any bodily injury, mental injury, illness, disease or death of any patient arising as a result of a **Good Samaritan act**.

The most **we** will pay **you** under this section is the limit shown in the **member schedule** as the **limit of indemnity** and is applicable to any one **period of insurance**.

### Joint venture liability

**We** will cover **you** for any **claim** arising from **your** participation in a joint venture in connection with **your business** provided that **your** fee declaration in the proposal includes your proportion of fees from the joint venture.

The most **we** will pay **you** under this section is the limit shown in the **member schedule** as the **limit of indemnity** and is applicable to any one **period of insurance**.

### Locum cover

**We** will cover **you** for **business** performed on **your** behalf by locums where this work does not exceed thirty (30) days any one **period of insurance** but only:

- a. where they are employed by **you** to perform **your business** during **your** periods of absence because of sickness or temporary leave;
- b. where they are otherwise insured for their own civil liability, errors, omissions and public liability and products liability; and
- c. where **you** made sufficient checks to ensure that such insurance covers are in place for the work being performed on **your** behalf and is effective throughout the **period of insurance**

The most **we** will pay **you** under this section is the limit shown in the **member schedule** as the **limit of indemnity** and is applicable to any one **period of insurance**.

## Loss of documents

Notwithstanding the [Documents](#) exclusion, if there has been damage to **documents**, **we** will cover **you** against all reasonable costs and expenses **you** incur in replacing and restoring such **documents** relating to **your business** provided that:

- a. such loss or damage is sustained during the **period of insurance** while the **documents** are either in transit or in **your** custody or any person to whom **you** have entrusted in the course of the normal conduct of **your business**;
- b. where the **documents** are in paper format, **you** ensure that adequate systems are in place for their storage and protection and **you** have taken reasonable steps to ensure that where applicable, copies of such documents are scanned and stored in an electronic format;
- c. where the **documents** are in electronic format, **you**, or any person to whom **you** have entrusted, has in place sufficient and proper procedures for the security and daily back-up of such **documents**; and
- d. the amount of any **claim** under this section shall be supported by invoices or accounts which shall be subject to approval by **us** or a competent person nominated by **us**.

The most **we** will pay **you** under this section is the limit shown in the **member schedule** as the **limit of indemnity** and is applicable to any one **period of insurance** and excludes any claims arising out of any infringement of the Privacy Act 1988.

## Member Therapy and Counselling Expenses

The following extension clause is added to and forms part of this Policy. It is subject to the exclusions and conditions precedent set out below, as well as to the exclusions, terms and conditions of the Policy which are not inconsistent with those below.

**We** will pay on **your** behalf, but subject to **our** prior agreement, any **gap payment for therapy and counselling expenses** up to the **sublimit**:

- incurred by **you** following **your** notification to **us** of an **inquiry** into the performance of **your professional services**; and
- provided that the **inquiry** was notified to **us** in accordance with this Policy during the **policy period**; and
- provided **we** have agreed to indemnify **you** for **your costs and expenses** resulting from **your** response or attendance at the **inquiry**.

This extension does not give rise to any right or duty to defend **you** or to pay **costs and expenses** on **your** behalf.

### Definitions

Wherever the following words or terms appear in bold in this extension, they mean what is set out below:

#### Therapy And Counselling Expenses

Therapy and counselling expenses means therapy and counselling fees incurred by **you** in a **mental health treatment plan**.

#### Mental Health Treatment Plan

**mental health treatment plan** means **your** receipt of mental health services for an assessed mental disorder pursuant to a referral under the Medicare Benefits Schedule (Better Access) Initiative by:

- a GP managing **you** under a GP Mental Health Treatment Plan; or
- under a referred psychiatrist assessment and management plan; or
- a psychiatrist.

#### Gap Payment

**Gap Payment** is the amount in excess of the Medicare rebate for which you are liable

### Exclusions

#### Pre Existing Conditions

**We** will not cover **you** for any mental disorder that **you** knew **you** had prior to the inception date of this Policy. The most **we** will pay **you** under this section is \$1,000 **sub-limit of indemnity** each and every **claim** and in the aggregate and is applicable to any one **period of insurance**.

All other terms, conditions, limitations and exclusions remain unaltered.

## Out of country cover

Notwithstanding the territorial limits shown on the **member schedule**, **we** agree to extend cover when **you** perform your business outside of the territorial limits on a temporary basis up to a maximum of 110 days in any one period of insurance, however, the jurisdictional limits will remain as stated in the **member schedule**.

## Principals' Prior Business Extension

The following extension clause is added to and forms part of this Policy. It is subject to the exclusions and conditions precedent set out below, as well as to the exclusions, terms and conditions of the Policy which are not inconsistent with those below.

**We** agree to indemnify directors, partners or principals of the **insured** for any **claim** made against them under the insuring clauses or the additional benefits arising out of the conduct by such director, partner or principal of a prior **business**, provided that such **claim** is first made against such director, partner or principal during the **policy period**.

The maximum amount payable under this extension shall be the amount shown in the **sublimit**.

All other terms, conditions, limitations and exclusions remain unaltered.

## Public relations expenses

**We** agree to pay reasonable fees, costs, and expenses incurred by **you** for the appointment of a public relations consultant for the sole purpose of protecting **your** reputation that has been brought into question as a direct result of a **claim** covered by this **policy**, provided always that:

- a. **you** notify **us** on first becoming aware of **your** reputation being brought into question and **you** provide full written details outlining the circumstances surrounding the event; and
- b. **we** have given prior written consent to retain the services of such public relations consultant.

The most **we** will pay **you** under this section is \$200,000 **sub-limit of indemnity** each and every **claim** and in the aggregate in any one **period of insurance**.

**Punitive or exemplary  
damage cover**

Notwithstanding the [Fines and penalties](#) exclusion, **we** will cover **you** for any **claim** made against **you** during the **period of insurance**, for punitive or exemplary damages or for damages that are a multiple of compensatory damages. **We** will cover **you** in respect of **your** liability for such damages, provided always that any such **claim** made against **you** is in conjunction with a **claim** for compensatory damages.

The most **we** will pay **you** under this section is \$500,000 **sub-limit of indemnity**, each and every **claim** and in the aggregate, however no indemnity shall be provided where such damages are deemed to be uninsurable as a matter of law in the jurisdiction in which such damages are awarded.

**Regulatory legal  
expenses**

**We** agree to pay costs of representing **you** at any properly constituted investigation, first discovered during the **period of insurance**.

The most **we** will pay **you** under this section is the limit shown in the **member schedule** as the **limit of indemnity** and is applicable to any one **period of insurance**.

## Spousal Liability Extension

The following extension clause is added to and forms part of this Policy. It is subject to the exclusions and conditions precedent set out below, as well as to the exclusions, terms and conditions of the Policy which are not inconsistent with those below.

If a **claim** against **you** which is covered under the insuring clauses or additional benefits includes a **claim** against **your** spouse solely by reason of:

- such **spouse's** legal status as **your spouse**; or
- such **spouse's** ownership or interest in property that the claimant seeks to recover as a result of a **claim** made against **you**,

**we** agree to indemnify **your spouse** for civil liability for **loss** arising out of such **claim**.

No cover is provided to **your spouse** to the extent that the **claim** alleges any act, error or omission by **your spouse**.

The maximum amount payable under this extension shall be the amount shown in the **sublimit**.

### Definitions

Wherever the following words or terms appear in bold in this endorsement, they mean what is set out below:

#### Spouse

means a lawful spouse, **domestic partner** (including without limitation same sex partner) or any person deriving similar status by reason of the common law or statute.

#### Domestic partner

means any person with whom **you** are co-habiting as a couple at the time of the **claim** and have been for a minimum period of 12 months, and with whom **you** share financial responsibility. A domestic partner cannot be a blood relation to **you**.

All other terms, conditions, limitations and exclusions remain unaltered.

## Student cover

**We** will cover **you** for any **claim** made against **you** during the **period of insurance**, arising from the **Practice of Your Profession** or **malpractice** performed by any student but only where they were performing such **business** on **your** behalf and under **your** full supervision.

The most **we** will pay **you** under this section is the limit shown in the **member schedule** as the **limit of indemnity** and is applicable to any one **period of insurance**.

**Telehealth activities**

**We cover you** in respect of in respect of **claims** made against **you** in the **period of insurance** in relation to providing **telehealth** provided the act, error or omission by **you** arises from **your business**.

The most **we** will pay **you** under this section is the limit shown in the **member schedule** as the **limit of indemnity** and is applicable to any one **period of insurance**.

**Your work as a subcontractor or agent work**

**We will cover you** where **you** perform **your business** as a subcontractor or agent of an employer or principal.

The most **we** will pay **you** under this section is the limit shown in the **member schedule** as the **limit of indemnity** and is applicable to any one **period of insurance**.

### 3. Automatic Extensions to Your Cover – Part B

#### Cover B: Public Liability

##### Car Parking

**We** will indemnify **you** against all sums which **you** shall become legally liable to pay for **compensation** in respect of **your** obligations as a tenant under any lease agreement to a lessor for actions, suits and demands in respect of:

1. **bodily injury**; or
2. **property damage**;

provided that the **bodily injury** or **property damage** arises out of or is caused by the use of any vehicle in **your** physical or legal control and the injury or damage occurs while that vehicle is in a car park owned by or operated by **you**.

This Additional Extension does not cover any liability:

- a. arising out of or connected with the use of any vehicle belonging to **you**; arising out of or connected with the use of any vehicle used by **you** or on **your** behalf independently of **your** operations as a car park owner or operator; or
- b. arising directly or indirectly out of or caused by or in connection with the servicing, repairing or maintenance or any vehicle.

##### Tenant's Liability

**We** will indemnify **you** against all sums which **you** shall become legally liable to pay for **compensation** in respect of **your** obligations as a tenant under any lease agreement to a lessor for actions, suits and demands in respect of:

3. **bodily injury**; or
4. **property damage**;

provided that such **bodily injury** or **property damage** results from an **occurrence** arising from the use by **you**, **your** invitees, sub tenants or licensees of a building at **your** business address/es or of passenger or goods elevators or escalators installed there.

## 4. Run-Off Cover Extension

### Run-Off cover

In the event that during the **period of insurance you** permanently retire or permanently cease for some other reason (including death) to conduct the professional services described in the **member schedule** then provided that the **limit of indemnity** has not been exhausted as at the date of death or permanent cessation of professional services, the insurance cover provided under the policy will continue from such date for:

- a. the period specified in the **member schedule**. Such cover shall be subject to the **limit of indemnity** less all amounts paid and/or to be paid by **us** in respect of any **claim** first made and notified or circumstance or **incident** likely to give rise to a **claim** notified during the **period of insurance**

provided always that **you**:

- a. notify **us** of the permanent cessation of professional services before expiry of the **period of insurance**; and
- b. provide **us** with a completed and signed declaration requesting run-off cover under this extension, in a form to be provided by **us**, confirming:
  - i. have not had any registration or membership with any association or governing body related to the professional services cancelled, withdrawn, revoked or suspended as a result of misconduct during the **period of insurance**; and
  - ii. have not been subject to disciplinary or criminal inquiry, conviction or penalty in relation to the provision of professional services during the **period of insurance**; and
  - iii. **have** not notified any **claim**, circumstances or **incident** during the **period of insurance** or any period prior to this for which **we** provided insurance cover to **you**; and
  - iv. are not aware of any **claim**, circumstances or **incident** that has not been notified to **us**.

**We** will not be liable to indemnify **you** in respect of any act, error or omission occurring after the cessation of business. **You** agree that when this extension applies, this policy becomes nonrenewable and is not “renewable insurance cover” within the meaning of Section 58(1) Insurance Contracts Act 1984.

If at any time during the run off period identified in the **member schedule you** resume any form of work, paid or unpaid, which would have attracted cover under this policy, then this run off extension is deemed to be cancelled from the date of resumption of such work.

## 5. Retroactive Date Endorsement

### Retroactive Date Endorsement

The following extension clause is added to and forms part of this Policy. It is subject to the exclusions and conditions precedent set out below, as well as to the exclusions, terms and conditions of the Policy which are not inconsistent with those below.

#### Retroactive Date Endorsement

The retroactive date that shall apply in respect of each **member**, shall be either:

- The inception date of the **members** insurance policy  
or
- If the **member** has a previous claims made insurance policy, then the retroactive date will be the date continuous coverage was first held from.

When making a claim for a **loss** prior to the **members policy period**, the **member** must provide evidence via a schedule of insurance, or other acceptable means, of the date claims made coverage was first held.

If **you** do not meet these conditions or make a fraudulent claim **we** may:

- a) Refuse to pay **your** claim or reduce what **we** pay for **your** claim
- b) Cancel **your** policy

All other terms, conditions, limitations and exclusions remain unaltered.

## 6. What We Do Not Cover

We will not pay for any claim made under any section of this policy including any **defence costs and expenses** or **compensation**, directly or indirectly, caused by, arising from or contributed to by:

<b>Abuse</b>	Actual or alleged <b>abuse</b> , unless <b>you</b> seek cover under the <b>Abuse</b> extension, but our liability will be limited to the <b>sub-limit of indemnity</b> stated.
<b>Advice, design and specification</b>	The provision of advice, design or specification where <b>you</b> manufacture, design, construct, erect, install or supply materials or equipment. This exclusion shall not apply in respect of advice, design or specification for products that are specifically manufactured or designed by you in the course of <b>your business</b> , and <b>you</b> had no knowledge, of or had reason to suspect at the time when the <b>product</b> passed from <b>your</b> control and physical custody of the existence of any defect or deficiency.
<b>Asbestos</b>	Any claim directly or indirectly based upon, attributable to, or in consequence of asbestos, asbestos fibres or derivatives of asbestos in whatever form or quantity.
<b>Assumed duty or obligation</b>	Any claim arising out of a specific liability assumed by <b>you</b> under any contract which goes beyond the duty to use such skill and care as is usual in the exercise of <b>your business</b> unless our prior written agreement has been obtained and such specific liability is endorsed upon the policy and where applicable, with your acceptance of any additional terms and conditions <b>we</b> have imposed.
<b>Bodily injury elsewhere</b>	Bodily injury, mental injury, illness, disease or death to any person or loss of or damage to tangible property of any person unless arising out of the <b>Practice of Your Profession</b> or <b>malpractice</b> .
<b>Breach of Registration, unregistered practice or lack of qualifications</b>	The <b>Practice of Your Profession</b> where <b>You</b> : <ol style="list-style-type: none"><li>are in breach of terms, conditions, undertakings or limitations on Your registration; or</li><li>were not registered and were required to be registered; or</li><li>have not completed the recognised training or lack the qualification to practice.</li></ol> Except where cover applies to students under this policy.
<b>Business interruption</b>	Any trading loss or trading liability including that arising from the loss of any client, account or <b>business</b> .
<b>Clinical trials</b>	<b>Your</b> involvement in <b>clinical trials</b> .
<b>Cyber liability</b>	<b>Cyber Liability</b> .
<b>Directors and officers</b>	Any <b>claim</b> made against any director or officer of <b>yours</b> where such <b>claim</b> is made solely by reason their holding the position of director or officer and having acted in that capacity.
<b>Discrimination</b>	Actual or alleged discrimination.

## Documents

Loss or damage to **documents** caused by:

- a. riot or civil commotion;
- b. fading, mould, vermin, pest infestation, wear, tear or any other gradually operating cause;
- c. any computer virus;

interference with electronically stored data by any person who is not a current principal, partner, director or **employee of yours**.

## Employers liability

Any claim by any person for bodily injury, mental injury, illness, disease or death incurred, contracted or occurring whilst in the course of employment with **you** and for which any compensation is available under any Workers' Compensation Scheme and or similar legislation unless such bodily injury, mental injury, illness or death is caused by any negligent act, error or omission by you in the performance of **your business** and where such **employee** was in the capacity of a client.

## Euthanasia

Euthanasia.

## Fines and penalties

Any award of punitive or exemplary damages, or any fines or penalties, whether contractual, or other similar.

## Fraud and dishonesty

Any claim directly or indirectly caused or contributed to by a violation of any law, dishonest, fraudulent or criminal act by **you**, or any deliberate or reckless act which could with reasonable foresight result in a **claim** for damages.

## Gender reassignment

The performance or provision of any gender reassignment work.

## Hepatitis, HIV or Aids

Any claim arising from Hepatitis Non A or any condition directly or indirectly caused by, or associated with, the human immunodeficiency syndrome (HIV) initially named as either HTLV III or LAV or the mutants, derivatives or variations thereof or in any way related to Acquired Immune Deficiency Syndrome (AIDS) or AIDS related complex (ARC) or any syndrome or condition of a similar kind howsoever it may be named.

## Industrial action

Any delays, strikes, industrial action or labor disturbances.

## Insolvency, bankruptcy or liquidation

Any **claim** directly or indirectly based upon, attributable to, or in consequence of **your** insolvency, bankruptcy or liquidation. This also applies to **your** subcontractors or freelancers whose work has been disclosed to and accepted by **us**.

## Intoxication

**Business you** performed whilst under the influence of intoxicants or narcotics.

## Jurisdiction

Any **claim** brought or any judgement, award, or settlement made outside Australia, unless **you** seek further extended coverage under the [Out of country coverage](#).

## Land, buildings, animal, aircraft, motor vehicles and watercraft

The possession, ownership or use of any land or building, any animal, any aircraft, watercraft or any motor vehicle.

## Loss of profits

Any **claim** arising from **your** lost profit or liability for GST or its equivalent.

**Maternity and obstetrics**

The performance or provision of any maternity and/or obstetric services.

**Nuclear, chemical and biological**

Any **claim** directly or indirectly caused by, contributed to, or arising from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or from the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

**Organ transplant**

The performance or provision of any organ transplant work.

**Other indemnity**

Any claim which is the subject of indemnity or assistance provided by any other insurer or entity which indemnifies or otherwise provides an indemnity for **you** or would ordinarily do so in respect of such claim.

**Pension and securities**

**Your** operation or administration of any pension or employee benefit scheme or trust fund or the purchase or any dealing in stocks, shares or other securities or the misuse of any information relating to them or for **your** breach of any legislation or regulation relating to these activities.

**Pollutant removal**

Any claim for the costs of removing, nullifying or cleaning-up seeping, polluting or contaminating substances.

**Pollution**

Any claim arising from personal injury or bodily injury or loss of or damage to, or loss of the use of property directly or indirectly caused by seepage, subsidence, pollution or contamination.

**Prior or pending acts**

Any **claim** or circumstance or any matter arising out of the **Practice of Your Profession** or **malpractice**, negligence, breach of a duty of care or any liability covered occurring prior to the inception date of this policy (or **retroactive date**, if stated in **your member schedule**) if you knew or could have reasonably foreseen that such civil liability, **malpractice**, negligence, breach of a duty of care or any liability covered might be expected to form the basis of a claim. This exclusion applies unless **you** satisfy the terms and conditions in the [Extended continuous cover](#) extension.

**Products supplied**

The manufacture, or the construction, alteration, formulation, repackaging, repair, servicing or treating of any product supplied sold, used or supplied by or distributed by **you** in the course of **your business** (including containers, labelling instructions or packaging) and any claim arising out of the failure of any products supplied to fulfil the purpose for which it was designed, or to perform as specified, warranted or guaranteed once such product has ceased to be under **your** custody or control.

The exclusion shall not apply to the **products** that are specifically manufactured, materially altered or formulated by **you** in the course of **your business** (rather than just sold, used, supplied by or distributed by **you**), and **you** had no knowledge, or had reason to suspect at the time when the **product** passed from **your** control and physical custody of the existence of any defect or deficiency.

## Property damage

Damage to property:

- a. belonging to **you** ; or
- b. in **your** custody or under **your** control, other than personal effects (including vehicles and their contents) of any of **your** visitors, directors, partners; or
- c. being that part of any property on which **you** are or has been working, where the damage arises out of such work.

## Property owners

Any defect in or use of any buildings, premises or land owned or occupied by **you**.

## Related parties

Any **claim** brought by any party falling within the definition of **you** or any party with a financial, executive or managerial interest in **you**, including any parent company or any party in which you have a financial, executive or managerial interest, including any subsidiary company. This does not apply to a **claim** based on a liability to an independent third party directly arising out of the performance of **your business**.

## Sanctions

**We** shall not be deemed to provide cover and no (re)insurer shall be liable to pay any **claim** or provide any benefit under this policy to the extent that the provision of such cover, payment of such **claim** or provision of such benefit would expose **us** or that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

## Surgery

Any **claim** arising out of the performance of surgical activities involving general anaesthesia.

## Suspended licence

The performance of **your business** during any period that your licence to practice was suspended by any regulatory or governing body.

## Tax, restraint of trade and anti-trust

**Your** breach of any taxation competition, restraint of trade or anti-trust legislation or regulation.

## Territorial limits

Any work or activities undertaken by **you** outside the territorial limits save in respect of **good samaritan acts** where cover is worldwide.

## Terrorism and riot

Any **terrorism** regardless of any other cause or event contributing to any liability or any action taken in controlling, preventing or suppressing **terrorism**, or riot.

## Trading debts

Any claim directly or indirectly based upon, attributable to, or in consequence of any trading debt incurred by **you** or any guarantee given by **you** for a debt.

**United States of America**

Any **claim** directly or indirectly based upon, attributable to, or in any respect arising in the United States of America including its territories and possessions. Further, any judgement, award, payment or settlement made within countries which operate under the laws of the United States of America including its territories and possessions (or to any order made anywhere in the world to enforce such judgement, award or settlement either in whole or in part).

**War**

Any legal liability of whatsoever nature directly or indirectly caused by or contributed to or arising from war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, riot, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority including any action taken in controlling, preventing, suppressing or in any way relating to the above.

**Cyber Liability Exclusion**

Any Claim directly or indirectly or in any manner whatsoever arising out of, caused by or connected with;

- 1.1 failure of any programme, instruction or data, for use in any computer or other electronic processing device, equipment or system, to function in the way expected or intended;
- 1.2 transmission or receipt of any virus programme or code that causes loss or damage to any Computer System or prevents or impairs its proper function or performance; or
- 1.3 the use of, or inability to use, any application, software or programme in connection with any computer or other electronic processing device.

For the purpose of this exclusion, the following definitions apply:

**Claim:**

A written demand for compensation or damages (including claimants' costs and expenses) against the Insured.

**Computer System:**

Any computer, data processing equipment, media or part thereof, or system of data storage and retrieval, or communications system, network, protocol or part thereof, or storage device, microchip, integrated circuit, real-time clock system or similar device, or any computer software (including but not limited to application software, operating systems, runtime environments or compilers), firmware or microcode.

## 7. How to Notify us of a Claim or Incident

### What you need to tell us

**You** must tell **us** in writing as soon as practicable of any **incident** or **claim** including, but not limited to:

- a. a patient suffering a major complication; or
- b. there is an error made, causing harm; or
- c. an adverse outcome results in significant anger in **your** patient or their family; or **you** receive a letter from a solicitor indicating dissatisfaction or requesting a patient record; or
- d. **you** are concerned that an **incident** has occurred (including a **complaint**, investigation or inquiry) which **you** think may lead to a **claim**.

If **you** do not tell **us** of an **incident** or **claim** as soon as practicable, **you** may not be covered under this policy and **your** right to any cover may be significantly reduced by **us**.

To report an **incident** or **claim** **you** must notify **us** in writing or on the BMS hotline 1800 931 070 or email [aka@bmsgroup.com](mailto:aka@bmsgroup.com) .

**Your** notification must include **your** details, the details of the **incident** or **claim** including the date of the **incident** giving rise to the **claim**, the patient's name and details of any allegations.

### Telling us about prosecutions, inquiries, complaints or investigations

**You** must notify **us** in writing as soon as practicable of any matter that will lead **you** to request cover under this policy including (but not limited to) any prosecution, inquiry, inquest, investigation or **complaint**, judgment, appeal, dispute that may be covered by this policy which relates to **your business**.

If **you** do not notify **us** of the matters set out above as soon as practicable, **you** may not be covered under the policy and **your** right to any cover may be significantly reduced by **us**.

### How we handle claims, complaints and other matters

**You** agree that **we** are entitled to have the conduct of any claim, **complaint** or matter covered under this policy including its investigation, pursuit, defence, avoidance, reduction or settlement and we may do so in **your** name. **We** may defend or settle a **claim**, **complaint** or any matter as **we** think fit.

### No admissions without our consent

**You must** not make any admission of liability, offer or compromise in relation to any **claim, complaint** or matter covered by this policy without **our** prior written consent.

### You must be reasonable in relation to settlement

**You must** not act unreasonably in rejecting a settlement or an offer of settlement, which the **lawyer or we** recommend to **you**. **You** may defend any **claim, complaint** or matter which **we** believe should be settled but we will not pay any more in relation to that claim, complaint or matter than we would have been required to pay if it had been settled

or resolved as we believed it could or should have been.

### We may decide not to continue

**We** may decide not to incur any further **defence costs and expenses** for pursuing, defending or responding to a **complaint, matter** or prosecution if **we** believe that there are no reasonable grounds for pursuing, defending or responding to the **complaint, matter** or prosecution. **We** will take account of the **lawyer's** advice in making that decision.

If **we** do that, **we** will notify **you** in writing. **We** will pay the **defence costs and expenses** incurred prior to the date on which **we** write to **you** notifying **you** of **our** decision. **You** may continue pursuing, defending or responding to the **complaint, matter** or prosecution at **your** own cost.

If **we** subsequently decide to assist **you**, **we** will appoint the **lawyer** to act on **our** behalf. After **we** cease paying the **defence costs and expenses**, **we** will only pay **you** thereafter for **defence costs and expenses** (not including the GST component if you are registered for GST) that **you** have incurred if **you** are successful in pursuing, defending or responding to a **complaint, matter** or prosecution.

### Your duty to cooperate

You must cooperate with the lawyer in resolving the matter in a satisfactory, timely and cost-effective way. In particular, you must:

- a. give the lawyer a full and truthful account of the relevant facts;
- b. give the lawyer any relevant information or documents in your possession that they ask for;
- c. obtain any other relevant information or documents that you can;
- d. execute any documents the **lawyer** reasonably asks **you** to execute; and
- e. attend any meetings the **lawyer** reasonably asks **you** to attend. **You** agree at **your** expense to give **us, our** investigators and the **lawyer** all information, documents and assistance **we** reasonably require, and fully cooperate with **us, our** investigators and the **lawyer**.

## Appointing lawyers and experts

## Appeals

## Claims acceptance

### We are not liable if you do not cooperate

We will not be liable for **defence costs and expenses** if **you** do not give **us** or the **lawyer** adequate instructions, or **you** do not follow the advice of the **lawyer** or **you** cause a delay which, in our or the **lawyer's** reasonable opinion, prejudices the outcome of the case.

We will appoint the **lawyer** or **expert**. When **we** appoint the lawyer or expert, **we** do so in **our** own capacity and not as an agent for **you**. The **lawyer** or **expert** appointed by **us** supplies services to **us** and not to **you** for the purposes of the Goods and Services Tax (GST). **We** are entitled to claim a GST input tax credit on services supplied by the **lawyer** or the **expert**.

### How to appeal

If **you** are dissatisfied with any decision made in a **claim, complaint** or matter against **you** by a court or other decision making body and wish to appeal against that decision, **you** must seek **our** consent to the appeal within seven (7) business days after the date of the decision, or such shorter period as may be reasonable having regard to the time limit for an appeal.

The application must be in writing and must fully set out the reasons for bringing an appeal. **We** will inform **you** in writing if **we** consent to the appeal. If **we** do not consent to the bringing of an appeal, **you** may conduct the appeal at **your** own expense.

If **we** wish to appeal against any decision made in a **claim, complaint** or matter against **you** by a court or other decision making body, **you** must reasonably cooperate with **us** in the bringing of such an appeal.

### Appeals without our consent

If **you** appeal from a decision in a **claim, complaint** or matter without **our** consent:

after **we** cease paying the **defence costs and expenses**, **we** will only pay **you** thereafter for **defence costs and expenses** (not including the GST component if **you** are registered for GST) that **you** have incurred if **you** are successful in the appeal, and; if the appeal is successful and **you** are entitled to a refund of any money that **we** paid to the claimant, then **we** are entitled to recover that amount after deduction of the costs **you** have incurred.

The acceptance of a **claim, complaint**, matter or any cover by **us** under this policy can be subsequently withdrawn if facts come to **our** attention that trigger or satisfy a policy exclusion or the policy does not cover the **claim, complaint** or matter.

## 8. Conditions

These conditions apply to **your** policy.

### Additional insureds

If more than one insured is named in the **member schedule**, unless otherwise stated, **our** total aggregate liability under this policy will not exceed the single **limit of indemnity** shown in the **member schedule** for the total of all named insureds. **You** agree that where there is more than one insured named in the **member schedule** the first of them is authorised to receive all notices and agree any amendments to the policy.

### Cessation of specified clinical activities

**You** must stop providing or conducting a particular procedure, treatment or clinical activity if:

- a. **We** consider that the procedure or clinical activity poses an unreasonable risk of negligence or injury, illness or disability to patients; or
- b. a registration board places a condition on **your** registration that **you** must not perform a specified procedure, or that **you** cannot perform a procedure in a particular way.

**We** will provide a minimum of fourteen (14) business days' notice requiring **you** to cease carrying out any such procedure, treatment or clinical activity. If **you** do not do so, **we** may cancel **your** policy by giving **You** seven (7) business days' notice in writing.

### Compliance with statute

Where any term or condition of this policy conflicts with any applicable and governing statute or regulation, the statute or regulation shall prevail and shall apply, but only to the extent necessary to achieve compliance therewith.

### Deductible

Unless otherwise stated, **you** must pay the **deductible** shown in the **member schedule** for each **claim**, including **defence costs and expenses**.

### Fraudulent claims

If any claim be in any respect fraudulent or if any fraudulent means or devices be used by **you** or anyone acting on **your** behalf to obtain any benefit under this policy, or if any loss hereunder be occasioned by the wilful act or with the connivance of any insured, **we**, without prejudice to any other right(s) **you** might have under this policy, shall be entitled to refuse to pay such claim.

### Limit of indemnity

**Our** total aggregate liability during the **period of insurance** for claims and **defence costs and expenses** is the **limit of indemnity** shown in the **member schedule**, for any one claim, or all claims arising out of or in connection with the same originating cause or source, or all losses for which cover is available, arising out of or in connection with the same originating cause or source.

## Loss prevention

**You must** not do anything recklessly or wilfully that might give rise to a **claim, complaint** or matter under this policy. **You** must take all reasonable care to avoid or reduce the chance of any **claim, complaint** or matter being made against **you**. **You** must not do, or fail to do anything which **you** know or should reasonably be expected to know will result in any **claim, complaint**, or matter being made against **you**.

## Misrepresentation and non-disclosure

If **you**:

- a. failed to disclose any matter which **you** were under a duty to disclose to **us**: or
- b. made a misrepresentation to **us** before this policy was entered into and if **we** would not have entered into this policy for the same premium and on the same terms and conditions expressed in this policy but for the failure to disclose or the misrepresentation, then:
  - i. **our** liability in respect of any claim will be reduced to an amount to place **us** in the same position in which **we** would have been placed if such non-disclosure had not occurred or such misrepresentation had not been made: or
  - ii. if the non-disclosure or misrepresentation was fraudulent, **we** may avoid this policy.

## Payment of deductible

When a **deductible** applies to **your** request for indemnity the following applies:

- a. **You** shall bear the amount of the **deductible** at **your** own risk;
- b. where **we** have paid all or any part of any **deductible** in respect of a request for cover on **your** behalf, **you** must reimburse **us** all or any part of the **deductible you owe us** within 14 days from the date **we** request payment from **you**;
- c. in the event that **you** fail to reimburse **us** in response to a request under (b) above, the sum requested shall, at the expiration of 14 days after the request, become a debt due and payable by **you** to **us**;
- d. in the event that **you** fail to reimburse **us** in response to a request under (b) above, and if such failure leads to an increase in costs or liability, **our** liability under the policy shall not exceed the amount for which the **claim** or matter could have been settled up to the date of **your** failure or refusal to reimburse all or part of the **deductible**.

## Payment of premium

**You** will not be covered for any period for which you have not paid **premium**

## Policy cancellation

Your policy may be cancelled if your membership ceases. If an affected **member** has notified an **incident** or a claim during the **period of insurance** there will be no pro rata refund.

**We** may cancel this policy at any time by giving seven (7) business days' notice in writing:

- a) if **you** have not paid the **premium** within thirty (30) business days of the **period of insurance** commencing; or
- b) for any other reason available to **us** under the Insurance Contracts Act 1984 (Cth.).

If **we** give notice to cancel the policy then **we** must give that notice to **you** personally, or send it by certified mail at the last address of which **you** notified **us**. Unless **you** prove otherwise, it will be treated as if **you** received the notice when it would have arrived in the ordinary course of the post.

## Record keeping

**You** shall at all times maintain accurate descriptive records of all professional services and equipment used in procedures, which shall be available for inspection and use by **us** or **our** duly appointed representatives, and you shall retain these records for a period of at least ten years from the date of treatment and, in the case of a minor, for a period of at least seven years after that minor attains the age of majority.

## Rights of third parties

This policy is not intended to confer any enforceable rights upon any other person, whether or not an interest of such person is acknowledged by **us**.

## Risk management

**We** are entitled to undertake a practice audit, peer review, risk analysis or other investigation of **your** practice when, in **our** reasonable opinion, such action is required. **Your** cooperation in any such action is a condition of **your** policy. If **you** do not cooperate in such action, **we** may cancel **your** policy by giving **you** seven (7) business days' notice in writing.

## Subrogation and other insurance

If **we** make a payment under this policy **we** are subrogated to all **your** rights of contribution, indemnity or recovery without the need for **your** consent. **You** agree not to surrender any right to, or settle any claim for, contribution, indemnity or recovery without our prior written consent.

## Use of instruments

In the performance of **your business**, **you** shall at all times handle, use, sterilise and store any tool or implement which is intended to penetrate tissue or be in contact with bodily fluid, in accordance with the manufacturer's instructions.

## 9. Governing Law and Jurisdiction

### Governing law and jurisdiction

Any interpretation of this policy relating to its construction, validity or operation shall be made in accordance with the laws of the Australian state or territory in which it is issued. The parties to this policy will submit to the exclusive jurisdiction of the courts of that state or territory.

### Interpretation

In this policy:

- a. reference to any Act, statute or statutory provision shall include a reference to that provision as amended, re-enacted or replaced from time to time whether before or after the date of the inception of this policy;
- b. if any term, condition, exclusion or endorsement or part is found to be invalid or unenforceable the remainder shall be in full force and effect;
- c. headings are for reference only and shall not be considered when determining the meaning of this policy.

## 10. Additional Policy Clauses

### Several Liability Notice

The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

08/94

LSW1001 (Insurance)

## 11. Definitions

For the purposes of this policy the following words have special meaning:

<b>Abuse</b>	Any direct or indirect act or failure to act that intentionally harms or injures a third party. For the purposes of this policy, <b>abuse</b> shall include any form of physical, sexual and psychological harm or injury arising in the course of <b>your business</b> .
<b>Business</b>	Professional services performed by <b>you</b> as stated in the proposal or declaration and as shown in the <b>member schedule</b> .
<b>Bodily injury</b>	Bodily injury, death, sickness, disease, illness, disability, nervous shock or emotional distress, mental anguish and/or mental injury, including loss of consortium resulting therefrom.
<b>Claim</b>	<p>Any:</p> <ul style="list-style-type: none"><li>a) written or verbal notice of demand for compensation made by a third party against <b>you</b>; or</li><li>b) writ, statement of claim, summons, application or other originating legal or arbitral process, cross-claim, counter claim or third or similar party notice served upon you arising out of any actual or alleged breach of <b>your business</b>.</li></ul> <p>Also includes any circumstance, <b>incident, complaint</b> or criminal prosecution.</p>
<b>Clinical trials</b>	Any organized study or test that uses human or animal subjects to develop effectiveness or safety data for a designated treatment, procedure or product.
<b>Complaint</b>	An allegation of unlawful or actionable conduct or an allegation of misconduct or unsatisfactory conduct.
<b>Costs and expenses</b>	The reasonable legal costs including reasonable appeal costs and other necessary expenses incurred by <b>you</b> or on <b>your</b> behalf. Costs and expenses does not include <b>your</b> overheads or any salaries, wages, fees or benefits of <b>your</b> directors, <b>employees</b> , partners or principals.
<b>Cyber liability</b>	<p>Any <b>claim</b> or loss or damage liability or expense directly or indirectly or in any manner whatsoever arising out of, caused by or contributed by or connected with:</p> <ul style="list-style-type: none"><li>a. failure of any programme, instruction or data, for use in any computer or other electronic processing device, equipment or system, to function in the way expected or intended;</li><li>b. transmission or receipt of any virus programme or code that causes loss or damage to any computer system or prevents or impairs its proper function or performance;</li><li>c. the use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus or process or any other electronic system.</li></ul>

<b>Deductible</b>	The amount set out in the <b>member schedule</b> , which is the amount that <b>you</b> shall bear at your own risk in respect of each claim or request for cover under the policy. The <b>limit of indemnity</b> and <b>sub limit of indemnity</b> only apply after the deductible has been exhausted.
<b>Defence costs and expenses</b>	All costs, fees and expenses incurred with <b>our</b> prior written agreement in the defense, investigation, mitigation or settlement of a <b>claim, incident, complaint</b> or prosecution.
<b>Documents</b>	Shall include any deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature whatsoever, whether written, printed or reproduced by any method including computer records and electronic data material. However, this shall not include any bearer bonds or coupons, stamps, bit-coins, bank or currency notes or any other negotiable instruments.
<b>Expert</b>	A person including but not limited to: an accountant, an actuary, an expert witness, a witness as to fact, or any person required to assist <b>us</b> in any matter covered under this policy.
<b>Good Samaritan act</b>	Any treatment administered by you at the scene of a medical emergency, accident or disaster where you were present following such medical emergency, accident or disaster.
<b>Health care professional</b>	A person who provides healthcare who is a medical or dental practitioner or is registered to provide healthcare in accordance with the laws of the Commonwealth or the State or Territory legislation in Australia.
<b>Incident</b>	Any act, error or omission by you, which adversely affects a patient; or an unexpected complication or injury occurring to a patient under your care as a result of the practice of your profession.
<b>Inquiry</b>	An investigation, examination or inquiry by a <b>regulatory authority</b> or disciplinary committee of any association or professional body of which <b>you</b> are a member; <b>inquiry</b> does not include any audit of <b>you</b> or any inquiry by a Coroner.
<b>Lawyer</b>	A legal practitioner or other person instructed by <b>us</b> .
<b>Limit of indemnity</b>	The limit of liability under this policy as stated in the <b>member schedule</b> .
<b>Malpractice</b>	Any bodily injury, mental injury, illness, disease or death of any patient caused by any negligent act, error or omission committed by <b>you</b> arising from the <b>Practice of Your Profession</b> .
<b>Member(s)</b>	A member of the Association or Insured noted in the <b>member schedule</b> .
<b>Member schedule</b>	The schedule sent to <b>you</b> setting out details of <b>your</b> insurance

<b>Occurrence</b>	An event, including continuous or repeated exposure to conditions, which results in bodily injury or property damage, neither expected nor intended from your standpoint.
<b>Period of insurance</b>	The period specified in the <b>member schedule</b> .
<b>Practice entity</b>	Any corporate entity that is in the business of providing professional services (as noted in the <b>member schedule</b> ) which is wholly controlled or owned by a member(s).
<b>Practice staff</b>	An employee, contractor, student or locum working in <b>your</b> practice or employed by <b>you</b> (but not a <b>healthcare professional</b> ), who is supervised or instructed in their activities by <b>you</b> or an appropriately trained member of <b>your</b> staff.
<b>Practice of Your Profession</b>	Any role, whether remunerated or not, where <b>you</b> use <b>your</b> skills and knowledge to: <ul style="list-style-type: none"> <li>a. provide direct clinical care to a patient;</li> <li>b. conduct a medical examination, provide a medical report or medical opinion at the request of a third party, or</li> <li>c. provide education or conduct research, give a presentation or address, publish an article in a newspaper, newsletter or journal to the extent that it provides healthcare information or healthcare advice,</li> </ul> act in an administrative capacity.
<b>Premium</b>	The premium specified in the <b>tax invoice</b> .
<b>Privacy &amp; health records legislation</b>	The Privacy Act 2001 (Cth) and the Health Records & Information Privacy Act 2002 (NSW), Health Records Act 2001 (Vic), Health Records (Privacy & Access) Act 1997 (ACT) or similar legislation enacted by the other states or territories of Australia.
<b>Products</b>	Any property after it has left <b>your</b> custody or control which has been designed, specified, formulated, manufactured, constructed, installed, sold, supplied, distributed, treated, serviced, altered or repaired by <b>you</b> or on <b>your</b> behalf. Any food or drink supplied by or on <b>your</b> behalf primarily to <b>your</b> employees as a staff benefit is not a <b>product</b> .
<b>Property Damage</b>	<ol style="list-style-type: none"> <li>1. Physical damage to, destruction of or loss of tangible property including the loss of use thereof at any time resulting therefrom; and/or</li> <li>2. Loss of use of tangible property which has not been physically damaged, destroyed or lost, provided that such loss of use is caused by or arises out of physical damage of other tangible property.</li> </ol>

<b>Regulatory authority</b>	A person or entity appointed, constituted or acting under a delegation pursuant to any legislation for the purposes of enforcement of such legislation.
<b>Retroactive date</b>	The date specified in the <b>member schedule</b> from which <b>we</b> will cover <b>business you</b> performed but only where such <b>business</b> was disclosed to and accepted by <b>us</b> .
<b>Schedule</b>	The current <b>member schedule</b> to this policy.
<b>Sub-limit of indemnity</b>	A limit of indemnity in respect of an additional cover under this policy which is in place of and not in addition to the <b>limit of indemnity</b> .
<b>Telehealth</b>	Services provided in the practice of <b>your</b> profession to, or in respect of a patient who is not in the same place, that uses any form of technology to enable it to be provided, including videoconferencing, internet and telephone.
<b>Terrorism</b>	An act, including but not limited to the use of force or violence and/ or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) committed for political, religious, ideological or similar purposes including the intention to influence any government and/or business and/or to put the public, or any section of the public, in fear.
<b>Territorial limits</b>	The territorial limits stated in the <b>member schedule</b> .
<b>We, our, us</b>	The insurers named in the <b>member schedule</b> .
<b>You, your</b>	A qualified member of the Association/Insured noted in the <b>member schedule</b> .