

Policy Change Guide

October 2023



Medical Malpractice Civil Liability Insurance Policy

We have prepared this guide to help compare the current Medical Malpractice Civil Liability Insurance Policy (V7363 01/09/22 A) with a new policy known as Medical Malpractice Civil Liability Insurance Policy (V7363 25/10/23 A). Please read the new policy for full details of the terms, conditions, limitations and exclusions.

This comparison does not constitute advice and should not be used by a potential insured for any purposes, including making a decision about a financial product or class of products. It is intended to be a summary of key changes only and does not represent an exact or full outline of the policy wording or scope of cover.

This comparison is current as at 25 October 2023. The cover offered to an insured may vary from that described.

Summary table – key changes to the policy wording

Item	Medical Malpractice Civil Liability Insurance Policy (V7363 01/09/22A)	Medical Malpractice Civil Liability Insurance Policy (V7363 25/10/23A)	
Policy wording introduction			
Prior consent	Not included	Added	Explanation of "prior consent" at the beginning of the wording.
Reasonable costs, charges, expenses and fees	Not included	Added	Explanation of "reasonable" at the beginning of the wording.
Insurance clarification			
Defamation	Not included	Added	Defamation replaces libel or slander. Some rephrasing of the clause.
Libel or slander	Included	Removed	Libel or slander replaced with defamation.
Liability of the insured for acts, errors or omissions of contractors and consultant	Included	Updated	Updated to set out that any cover for vicarious liability for medical practitioners is limited to that provided under Extension 7.21 'Vicarious liability for medical practitioners and locum tenens' or via Endorsement.
Liquidated damages	Not included	Added	New insurance clarification for liquidated damages.
Privacy and confidentiality	Included	Updated	Clause title updated.

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Extensions			
Abuse defence costs and inquiry costs	Not included	Added	'Abuse defence costs and inquiry costs' extension replaces 'Molestation defence costs and inquiry costs' extension. The new extension writes back some cover excluded by the new 'Abuse' exclusion. The new extension applies additional conditions and cover is subject to a \$100,000 aggregate sub-limit.
Advancement of costs	Not included	Added	New extension providing for the advancement of reasonable Defence Costs and reasonable Inquiry Costs.
Compensation for court attendance	Included	Updated	Sub-limits increased.
Continuous cover	Included	Updated	Amended to expressly address a wider range of specific situations.
Emergency defence costs and inquiry costs	Not included	Added	New extension allows the Insured to incur a reasonable amount of emergency costs without consent, with conditions.
Excess reduction	Not included	Added	New extension reducing the 'Costs Inclusive' Excess if a Claim is resolved without incurring any Defence Costs.
Former subsidiary	Included	Removed	Extension removed due to changes to the definitions of 'Insured' and 'Subsidiary'.
Inquiry costs	Included	Updated	Some restructuring of the extension. One of the provisos has been removed because it is addressed in the Claims Conditions section of the wording.
Legal consultation	Included	Updated	The cap of one hour per matter has been removed. An overall cap of two hours still applies.
Lost documents	Included	Updated	Extension restructured. Added an explanation of the consequences of non-compliance with the electronic document security conditions.
Molestation defence costs and inquiry costs	Included	Removed	'Molestation defence costs and inquiry costs' extension has been replaced with the 'Abuse defence costs and inquiry costs' extension.
Newly acquired subsidiary	Included	Updated	This extension no longer applies to newly created subsidiaries due to changes to the definitions of 'Insured' and 'Subsidiary'. The 60 day cover cap has been removed for newly acquired subsidiaries with total annual revenue of no greater than 25% of the total annual revenue of the Policyholder. The 60 day cover cap still applies for newly acquired subsidiaries exceeding the 25% threshold. Updated process for obtaining cover beyond 60 days.
Students, volunteers, committee members and council members	Included	Updated	Updated to exclude cover for medical practitioners.
Vicarious liability for medical practitioners and locum tenens	Included	Updated	Additional line added to clarify that no cover is provided to the medical themselves under this extension.

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Optional extensions			
Fidelity	Included	Updated	Conditions relating to mitigation and recovery have been moved to the Claims Conditions section of the wording. The condition relating to the Fidelity Excess has been moved the clause 4 'Excess'.
Exclusions			
Lead-in verbiage	Included	Updated	The exclusionary lead-in verbiage for most extensions has been updated to include "in connection with".
Prior claims or known circumstances	Included	Updated	Broadened to apply to a wider range of coverages under the policy.
Retroactive date	Included	Updated	Broadened to apply to a wider range of coverages under the policy.
Professional fees	Included	Updated	Now also applies to commissions.
Section 2 preamble	Included	Updated	Broadened to apply to a wider range of coverages under the policy.
Abuse	Not included	Added	New exclusion for abuse.
Intoxicants and drugs	Included	Updated	Updated to exclude cover where a person rendered services while under the influence of intoxicants or drugs without the knowledge of a Principal. In this case, cover is only excluded for the person who was under the influence of intoxicants or drugs. Added clarifications of the terms "drug" and "competently".
Liquidated damages	Included	Removed	Replaced by the 'Liquidated damages' insurance clarification.
Medical practitioners	Included	Included	Updated the basis of the exclusion from "the liability at law of a Medical Practitioner to a patient, where such liability arises directly from the Medical Practitioner's activities as a Medical Practitioner" to "any services rendered or failure to render services by a Medical Practitioner".
Related parties	Included	Updated	Expanded list of related parties. Added write backs for certain situations.
Subrogation waiver	Included	Included	Added write-back for situations where recovery rights are waived with the Insurer's consent.
War	Included	Removed	War exclusion removed.
Sanctions	Not Included	Added	Sanctions exclusion added.
Claims conditions			
Introduction	Not Included	Added	Sets out the Insurer's legal rights where there is non-compliance with the claims conditions.
Claims notifications	Included	Updated	Includes new notification obligations.
Claims co-operation	Included	Updated	The scope of the Insured's obligations to co-operate with the Insurer have been broadened and examples of such assistance included.

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Claims conditions (cont.)			
Fidelity mitigation	Not Included	Added	New Claims Condition setting out Insured's obligations to prevent loss or further loss of money or goods if the Fidelity optional extension applies.
Claims conduct	Included	Updated	The Insurer's claims management rights have been broadened. The Senior Counsel provision has been removed, and a mediation provision has been introduced to handle disputes between the Insurer and the Insured about the approach to defending the Claim.
Claims settlement	Included	Updated	Amended to also include any objection to claims management of an Inquiry Notice.
Fidelity recoveries	Included	Updated	Sets out examples of recovery steps.
Allocation of loss	Not Included	Added	Added new Claims Condition for allocating loss between Insureds and between covered losses and losses which are not covered.
Recovery rights Application of recoveries	Not Included	Added	Added new Claims Conditions setting out rights and obligations in relation to recoveries and setting out how recoveries will be applied.
General conditions			
Cancellation	Included	Updated	Amended to update the cancellation process and arrangements for refund of premium.
Material change	Included	Updated	Updated to set out an exhaustive list of changes that are notifiable under this clause. Added a process for what happens after an Insured notifies the Insurer of a material change. Added an explanation of the consequences of non-compliance with this condition.
Words with special meaning	Not Included	Added	New condition related to the use of defined terms in the wording and other documents, such as the Schedule and Endorsements.
Definitions			
Claimant's Costs	Not Included	Added	New definition to replace the previously undefined phrase "claimant's costs and expenses".
Inquiry Costs	Included	Updated	Updated instances of "requiring" to "requiring or inviting".
Inquiry Notice	Not Included	Added	New definition to make it easier to address 'Inquiry Costs' claims in the claims conditions and other clauses.
Insured	Included	Updated	Updated to automatically include Subsidiaries (other than subsidiaries acquired during the policy period – refer to the 'Newly acquired subsidiary' extension). Updated to exclude the conduct of Employees or Principals in their capacity as Medical Practitioners.
Medical Practitioner	Included	Updated	Added more detail to the definition. Removed dentists from this definition.
Medicare Benefits Fraud	Included	Updated	Amended for accuracy.

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Definitions (cont.)			
New Subsidiary	Not Included	Added	New definition to support changes to the definitions of 'Insured' and 'Subsidiary' and the 'Newly acquired subsidiary' extension.
Subsidiary	Included	Included	Updated to refer to current subsidiaries, newly created subsidiaries and former subsidiaries of the Policyholder.