

# Avant Practice Medical Indemnity Policy

Policy wording

Version 4.0  
1 April 2021



# Welcome to Avant

## Thank you for choosing Avant to provide your practice medical indemnity insurance.

The policy wording and policy schedule, as well as any other documents we provide to you, form your complete policy. The policy wording contains the terms, conditions and exclusions. The policy schedule contains a summary of the healthcare services and associated limits of indemnity, and if applicable, any deductible or specific endorsements, and any optional extra cover selected. We will provide cover to the insured subject to the insured's payment and acceptance of the policy.

Some of the words used in this policy are specifically defined. These words and their meanings are explained in the definitions section on page 25. The headings used in the policy are included solely for reference and do not in any way amend the terms and conditions of the policy.

We have relied on information provided by the insured in the application form and other forms of disclosure in determining whether to enter into this contract of insurance and on what terms. If this information is incorrect, or the insured does not comply with and agree to the conditions of this policy, we may reject a claim or request for indemnity, reduce our liability or void this policy from inception.

### Who is the insurer?

Avant Insurance Limited ABN 82 003 707 471 AFS Licence 238 765 is the insurer and the issuer of this policy wording. Avant Insurance Limited is a wholly owned subsidiary of Avant Mutual Group Limited ABN 58 123 154 898.

## Summary of Cover

This policy is designed to cover the practice for the legal defence costs, and compensation amounts the insured may become liable to pay associated with allegations and complaints. The policy also covers the practice for legal fees associated with employment disputes and other matters, and there is an option to include public liability cover.

### Cover includes:

1. Part A – civil liability (clauses 1 and 2);
2. Part B – legal fees and other expenses (clause 3);
3. Part C – optional cover (clause 4) under Part A and B; and
4. Part D – public liability optional cover (clause 5).

## Who is covered under this policy

Cover is provided subject to the definitions, terms, conditions, limit of indemnity, public liability limit of indemnity (if shown in the policy schedule), any sub-limit of indemnity, deductibles, exclusions and endorsements of this policy, unless specifically expressed to the contrary.

### Insured

Means:

- a) the legal entity named in the policy schedule;
- b) any subsidiary of the legal entity including as provided by clause 2.14; and
- c) any insured person.

### Insured person

The following person(s), but only in respect of liability arising from or in connection with the provision of healthcare services, and only to the extent that they are not engaged in the provision of healthcare in their capacity as a medical practitioner (other than clause 5 public liability optional cover if the cover is specified on the policy schedule):

- a) **Volunteers, students or committee members** past, present or future of the insured's ethics or advisory committee;
- b) **Principal, partner, director or officer** past, present or future;
- c) **Employee of the insured** past, present or future;
- d) **Estates, heirs and legal representatives** – if any insured person entitled to cover under this policy dies or becomes incompetent, we will indemnify the estate, heir or legal representatives of that insured person to the same extent that the insured person would have been covered by this policy; and
- e) **Spousal liability** – if the spouse of any insured person is brought into a claim due to their legal status as spouse of the insured, then the spouse's liability will be deemed to be the insured's liability.

# Table of contents

<b>Key details about your policy</b>	<b>4</b>		
Summary of cover	5		
Type of insurance contract	5		
Your duty of disclosure	6		
Governing law	6		
<b>What we will cover</b>	<b>7</b>		
<b>Coverage Part A: Civil liability</b>	<b>8</b>		
<b>1. Civil liability</b>	<b>8</b>		
<b>2. Automatic extensions</b>	<b>8</b>		
2.1 Good samaritan act	8		
2.2 Breaches of privacy	8		
2.3 Breaches of consumer protection legislation	8		
2.4 Defamation	8		
2.5 Telehealth activities	8		
2.6 Intellectual property	8		
2.7 Actions of others	8		
2.8 Vicarious liability of the insured	8		
2.9 Cover for innocent insureds	8		
2.10 My Health Record	8		
2.11 Contractual liability	9		
2.12 Advice on goods sold	9		
2.13 Joint venture liability	9		
2.14 Newly created or acquired subsidiary	9		
2.15 Former subsidiary	<b>9</b>		
2.16 Employee dishonesty	9		
2.17 Participation in a clinical trial	9		
<b>Coverage Part B: Legal fees and other expenses</b>	<b>10</b>		
<b>3. Legal fees and other expenses</b>	<b>10</b>		
3.1 Medicare Benefits Scheme	10		
3.2 Legal fees for inquiries	10		
3.3 Reporting a healthcare professional or incident	10		
3.4 Employee disputes	10		
3.5 Tax audits	10		
3.6 Legal fees for commissions	10		
3.7 Court attendance costs	10		
3.8 Public relations expenses	10		
3.9 Statutory liability	10		
3.10 Loss of documents	11		
		3.11 Sexual misconduct defence	11
		<b>Coverage Part C: Optional cover under Part A and B</b>	<b>12</b>
		<b>4. Part C – Optional cover under Part A and B</b>	<b>12</b>
		4.1. Reinstatement	12
		4.2 Legal defence costs in addition to limit of indemnity	12
		<b>Coverage Part D: Public liability optional cover</b>	<b>13</b>
		<b>5. Public liability optional cover</b>	<b>13</b>
		5.1 Public liability	13
		5.2 Legal defence costs	13
		5.3 Advertising liability	13
		5.4 Property in care, custody and control	13
		5.5 Food, drink and advertising supplied in connection with healthcare services	13
		5.6 Cross liability	13
		5.7 Prior public liability occurrences and claims	13
		<b>6. Exclusions applicable to Part D public liability optional cover</b>	<b>14</b>
		6.1 Aircraft, hovercraft and watercraft	14
		6.2 Product liability	14
		6.3 Advertising liability	14
		6.4 Faulty workmanship	14
		6.5 Loss of use	14
		6.6 Professional services	14
		6.7 Property in care, custody or control	14
		6.8 Sexual molestation	14
		6.9 Tobacco	14
		6.10 Vehicles	14
		6.11 Workers' compensation and employment liability	14
		<b>General exclusions applicable to the entire policy</b>	<b>15</b>
		<b>7. General exclusions applicable to the entire policy</b>	<b>15</b>
		7.1 Asbestos	15
		7.2 Contractual liability	15
		7.3 Defamation	15
		7.4 Dishonest, criminal or fraudulent act	15
		7.5 Director and officer liability	15
		7.6 Fines, penalties or punitive damages	15
		7.7 Fraud	15
		7.8 Healthcare services not listed in policy schedule	15
		7.9 Intoxication or under the influence	15
		7.10 Insured vs insured	15
		7.11 Outside Commonwealth of Australia	15

7.12 Pollution	15	<b>Other information you need to know</b>	<b>22</b>
7.13 Prior, pending or outside period of insurance	15	Making changes to your policy	23
7.14 Product and public liability and property damage	16	Our dispute resolution process	23
7.15 Sexual misconduct, sexual harassment or discriminatory conduct	16	Privacy statement	23
7.16 Radioactive materials	16	Cooling off	23
7.17 Recovery of money or refund patient fees	16	Financial Claims Scheme	23
7.18 Terrorism	16	<b>Definitions</b>	<b>24</b>
7.19 War	16		
<b>General conditions</b>	<b>17</b>		
<b>8. General conditions</b>	<b>17</b>		
8.1 Information the insured has provided to us	17		
8.2 No admission	17		
8.3 Continuous cover	17		
8.5 Run-off cover	17		
8.6 Extended reporting period	17		
8.7 Loss prevention	17		
8.8 Subrogation and other insurance	17		
8.8 Fraud	18		
8.9 Requirements for insured persons and contractors	18		
8.10 Material change in risk	18		
8.11 Severability and non-imputation	18		
8.12 Payment of deductible	19		
8.13 Payment of premium	19		
8.14 Cancellation	19		
8.15 Medical records	19		
8.16 Currency	19		
8.17 GST	19		
<b>Additional conditions for claims and requests for indemnity</b>	<b>20</b>		
<b>9. Additional conditions for claims and requests for indemnity</b>	<b>20</b>		
9.1 The insured must notify us of a claim	20		
9.2 Other things of which the insured must notify us	20		
9.3 How much we will pay	20		
9.4 Conduct of claims and requests for indemnity	20		
9.5 We will appoint the lawyer or other person	21		
9.6 The insured must cooperate	21		
9.7 The insured must be reasonable in relation to settlement	21		
9.8 Appeals	21		
9.9 Claims acceptance	21		

---

# **Key details** about your policy

**Please read the policy before applying for, renewing or varying an Avant Insurance Limited insurance policy. Throughout the policy, any reference to 'we', 'us' or 'our' means Avant Insurance Limited ABN 82 003 707 471 AFSL 238 765.**

## Summary of cover

This policy is designed to cover the practice for the legal defence costs, and compensation amounts the insured may become liable to pay associated with allegations and complaints. The policy also covers the practice for legal fees associated with employment disputes and other matters, and there is an option to include public liability cover.

Cover includes:

1. Part A – civil liability (clauses 1 and 2);
2. Part B – legal fees and other expenses (clause 3);
3. Part C – optional cover (clause 4) under Part A and B; and
4. Part D – public liability optional cover (clause 5).

## What we will not cover under this policy

It is important that the insured reads and understands what the policy will not cover. For full details of the cover, limits of indemnity, terms, exclusions and conditions under this policy, please read: Part A, B, C and D (clauses 1,2,3,4 and 5);

- a) Exclusions applicable to the Part D public liability – optional cover (clause 6) on page 14;
- b) General exclusions applicable to the entire policy (clause 7) on page 15;
- c) General conditions (clause 8) on page 17;
- d) Additional conditions for claims and requests for indemnity (clause 9) on page 20; and
- e) The policy schedule.

Some noteworthy exclusions are:

- a) Medical indemnity claims made against an insured or requests for indemnity under Part A, B and C (clauses 1,2,3 and 4):
  - i. arising from incidents that occurred prior to the retroactive date; and
  - ii. incidents notified to us outside the period of insurance;
- b) claims made, threatened or intimated against the insured prior to the period of insurance;
- c) public liability claims – optional cover Part D (clause 5) made against an insured arising from occurrences that occur outside the period of insurance, unless clause 5.7 (Prior public liability occurrences and claims) applies; and
- d) facts or circumstances of which the insured or an insured person first became aware prior to the period of insurance, and which the insured or an insured person knew or ought reasonably to have known had the potential to give rise to a claim or request for indemnity under this policy.

## Type of insurance contract

### Claims made and notified contract

Part A, B and C (clauses 1 to 4) of the policy covers compensation claims (including legal defence costs) made against the insured and notified during the period of insurance (where the incident giving rise to the claim occurred after the retroactive date). The retroactive date is a date agreed by us when the insured applies for cover and it will be specified in the policy schedule.

With the exception of Part D (clause 5 of this policy) this policy is a 'claims made and notified' liability insurance policy. This means that the policy responds to claims made by third parties against you and which you notify to us within the period of insurance.

Where you give notice in writing to us of any facts that might give rise to a claim against you as soon as reasonably practicable after you become aware of those facts, but before the expiry of the period of insurance, you may have rights under section 40(3) of the *Insurance Contracts Act 1984* (Cth) to be indemnified in respect of any claim subsequently made against you arising from those facts, notwithstanding that the claim is made after the expiry of the period of insurance. Any such rights arise under the legislation only and do not form part of this contract.

### Occurrence based contract (Public liability)

Part D (clause 5) of the policy is an occurrence based cover for public liability, and is optional cover that is only included if noted in the policy schedule. This means that we will cover the insured for occurrences giving rise to the public liability claims that occur during the period of insurance, while notification of the claim can occur outside the period of insurance.

---

## Your duty of disclosure

Under the *Insurance Contracts Act 1984* (Cth), before you enter a contract of insurance with us you have a duty to disclose every matter that you know, or could reasonably be expected to know, that is relevant to our decision to accept the risk of the insurance and, if so, on what terms. Your duty of disclosure to us continues up to the time that the contract of insurance is entered into. We will also ask you certain questions to determine whether to issue a policy and if so, on what terms.

You have the same duty to disclose those matters to us before you renew, extend or vary your insurance policy with us. Disclosure is not limited to matters applying to you under your insurance contract with us, but includes other past businesses or private insurances.

However, you do not have to tell us about:

- a matter that diminishes the risk undertaken by us;
- a matter that is considered to be common knowledge;
- facts that we know or should know in the ordinary course of our business; or
- matters that we tell you we do not need to know.

If in doubt, you should disclose a matter to us.

## Non-disclosure

If you fail to comply with your duty of disclosure, or make a misrepresentation to us, depending on the prejudice caused by your failure to comply, we may:

- reject your request for indemnity;
- reduce our liability in respect of a claim, complaint or matter; or
- cancel the policy.

If your non-disclosure is fraudulent, we may void the policy entirely (that is, we may treat the policy as never being of any force or effect).

## Governing law

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 in which the policy is issued.

A reference to a statute, regulation, code or other law, or a provision of any of them, or a professional body or organisation includes any amendment or replacement of it and/or another regulation or other statutory instrument made under it, or made under it as amended or replaced.



---

# What we will **cover**

# Coverage Part A:

## Civil liability

---

### 1. Civil liability

#### Healthcare services provided by the insured

We will indemnify the insured in respect of claims made against them and notified to us during the period of insurance, directly in connection with the provision of healthcare services occurring after the retroactive date, but not when the insured is engaged in their capacity as a medical practitioner, for:

- a) amounts the insured becomes legally liable to pay as compensation for a civil liability claim; and
- b) legal defence costs incurred by us in investigating, defending or settling a civil liability claim (subject to the payment of the deductible, which is the first amount that is to be paid towards legal defence costs).

### 2. Automatic extensions

The cover under clause 1 is extended to cover the following automatic extensions. These automatic extensions are subject to the definitions, terms, conditions, limit of indemnity, any sub-limit of indemnity, deductibles, exclusions and endorsements of this policy, unless specifically expressed to the contrary. We will indemnify the insured in respect of the following civil liability claims (and relevant legal defence costs) made against the insured, and notified to us during the period of insurance in relation to:

#### 2.1 Good samaritan act

a good samaritan act, error or omission by the insured, provided that the insured was not acting in a professional capacity for another employer, entity or practice at the time of the act, error or omission. Cover under this clause applies even if the claim is not directly in connection with healthcare services.

#### 2.2 Breaches of privacy

actual or alleged breaches of confidentiality or privacy legislation, provided the act, error or omission by the insured is unintentional and occurred directly in connection with the provision of healthcare services.

#### 2.3 Breaches of consumer protection legislation

actual or alleged breaches of Commonwealth consumer protection legislation provided the act, error or omission by the insured is unintentional and occurred directly in connection with the provision of healthcare services.

#### 2.4 Defamation

(notwithstanding clause 7.3), actual or alleged defamation provided the act, error or omission by the insured giving rise to the claim is unintentional, and occurred directly in connection with the provision of healthcare services.

#### 2.5 Telehealth activities

providing telehealth, provided the act, error or omission by the insured occurred directly in connection with the provision of healthcare services.

#### 2.6 Intellectual property

actual or alleged infringement of intellectual property rights, provided the act, error or omission by the insured is unintentional and occurred directly in connection with the provision of healthcare services.

#### 2.7 Actions of others

any liability incurred by the insured to the extent the insured's liability arises from healthcare services provided by a consultant, contractor, medical practitioner or any other person or entity that is not an insured under this policy. This clause is subject to the insured complying with clause 8.9 (Requirements for insured persons and contractors). This clause does not operate to indemnify any such consultant, contractor, medical practitioner or any other person or entity that is not the insured.

#### 2.8 Vicarious liability of the insured

any vicarious liability incurred by the insured, arising from the provision of healthcare services by an employee.

#### 2.9 Cover for innocent insureds

notwithstanding clause 7.4 (Dishonest, criminal or fraudulent act), 7.9 (Intoxication or under the influence) and 7.15 (Sexual misconduct, sexual harassment or discriminatory conduct), all innocent insureds who did not commit, contribute to, or condone the act, error or omission or had no prior knowledge of the act, error or omission.

This clause does not operate to indemnify any insured who allegedly committed or condoned the act, error or omission.

#### 2.10 My Health Record

- a) actual or alleged infringement of a third party's intellectual property rights arising from the use of the My Health Record system; and
- b) defending a complaint that relates to a dispute with a government department, statutory authority or private authority and relates to the insured' practice as a healthcare professional;

provided the act, error or omission by the insured is unintentional and occurred directly in connection with the provision of healthcare services.

---

## 2.11 Contractual liability

(notwithstanding clause 7.2 (Contractual liability)), contractual liability directly in connection with the provision of healthcare services. This clause does not operate to indemnify any liability assumed by contract, waiver, guarantee or warranty, unless liability would have attached in the absence of such contract, waiver, guarantee or warranty.

## 2.12 Advice on goods sold

negligent advice provided by the insured during the sale of any goods or products provided the act, error or omission by the insured occurred directly in connection with the provision of healthcare services.

## 2.13 Joint venture liability

the insured's participation in a joint venture where the joint venture forms part of the insured's healthcare services, provided that:

- a) we will only be liable for the insured's portion of liability of the joint venture; and
- b) the joint venture was disclosed in writing to us and we have agreed in writing to cover the joint venture.

## 2.14 Newly created or acquired subsidiary

an insured creating or acquiring a subsidiary during the period of insurance. This policy will extend to cover any act, error or omission of the new subsidiary which occurred after the date of creation or acquisition. This clause does not operate if the healthcare services of the subsidiary are different to those listed in the policy schedule, and if the subsidiary has had any paid claims associated with the provision of healthcare services in the last five years. This clause is also subject to the insured complying with clause 8.10 (Material change in risk).

## 2.15 Former subsidiary

the insured disclosing to us and we have agreed in writing, any act, error or omission of a former subsidiary of the insured provided the acts, errors or omissions occurred prior to the date that the subsidiary ceased to be a subsidiary of the insured. This clause does not operate if the healthcare services of the subsidiary are different to those listed in the policy schedule.

## 2.16 Employee dishonesty

(notwithstanding clause 7.4 (Dishonest, criminal or fraudulent act)), all innocent insureds who did not commit or condone the act, error or omission or had no prior knowledge of the act, error or omission. This clause does not operate to indemnify any insured who allegedly committed or condoned the act, error or omission or had prior knowledge of the act, error or omission.

## 2.17 Participation in a clinical trial

a clinical trial, which arises out of or are in connection with any healthcare provided by the insured during phase III (three) or phase IV (four) of a clinical trial, but only if:

- a) the sponsor of the clinical trial has obtained, in each case, adequate insurance for claims arising from the clinical trial; and
- b) the insured has not assumed any liability to any third parties involved in the clinical trial, except to the extent that liability would have attached in the absence of such assumption; and
- c) the clinical trial does not involve pregnant women, gene therapy, the use of stem cells or people under the age of 18 years.

This clause does not provide cover in connection with or arising from:

- d) an insured's sponsorship of, initiating or administering the trial or project;
- e) adverse outcomes where an insured did not provide healthcare services;
- f) the trial or project protocol;
- g) an insured overseeing the trial or project or any act or omission by insured as a member of an ethics committee; or
- h) phase I (one), phase II (two) or any other phase of a clinical trial.

If the insured requires cover for phase I (one) or phase II (two), please contact us prior to participation in the clinical trial.

# Coverage Part B:

## Legal fees and other expenses

---

### 3. Legal fees and other expenses

We will indemnify the insured for legal fees and expenses incurred by us in relation to the following matters, provided they are directly in connection with the provision of healthcare services, but not when the insured is engaged in their capacity as a medical practitioner. This clause does not operate to indemnify the insured for civil liability, fines, penalties or costs awarded against the insured.

We will indemnify the insured in respect to:

#### 3.1 Medicare Benefits Scheme

legal fees incurred by us as a result of a complaint which is commenced, commissioned or ordered and notified to us in the period of insurance in relation to the Medicare Benefits Scheme including any alleged dishonest, fraudulent or criminal act, error or omission, but only where the alleged act, error or omission occurred directly in connection with the provision of healthcare services.

#### 3.2 Legal fees for inquiries

legal fees incurred by us as a result of a complaint which is commenced, commissioned or ordered and notified to us during the period of insurance in relation to:

- a) responding to an inquiry, inquest, investigation or complaint brought by or before a registration board, tribunal or complaints unit;
- b) defending or responding to a criminal inquiry, investigation or proceeding; or
- c) a coronial inquiry or inquest,

but only where the alleged act, error or omission occurred directly in connection with the provision of healthcare services.

#### 3.3 Reporting a healthcare professional or incident

legal fees incurred us as a result of a complaint which is commenced, commissioned or ordered and notified to us during the period of insurance that arises from the insured reporting an incident, healthcare professional, person or entity to a professional or statutory body or area health authority where the insured was required to do so as a result of an obligation imposed by law or in the public interest.

#### 3.4 Employee disputes

notwithstanding clause 7.10 (Insured vs insured), we will indemnify the insured for legal fees incurred by us as a result of defending a complaint which is commenced and notified to us during the period of insurance that arises from a dispute with an employee that relates to the contract or proposed contract of service under which the employee is or will be engaged, including a complaint under anti-discrimination or equal opportunity legislation.

#### 3.5 Tax audits

accounting fees and legal fees incurred by us responding to an audit of the insured entity commenced, commissioned or ordered by the Australian Taxation Office and notified to us during the period of insurance.

#### 3.6 Legal fees for commissions

legal fees incurred by us at a Commission of Inquiry or Royal Commission where an insured has been asked to attend and receives notice of required attendance and notifies us during the period of insurance.

#### 3.7 Court attendance costs

reasonable travel and accommodation costs if the insured is compelled to attend court, or attend a court at the lawyer's request in connection with a claim which is covered by this policy. We will only reimburse the insured for travel and accommodation costs upon production of evidence of payment satisfactory to us, unless we have agreed in writing to make a repayment prior to the costs being incurred.

#### 3.8 Public relations expenses

a public relations event, we will indemnify the insured in respect of fees and costs the we incur engaging a public relations consultant to create a response to the public relations event. We have discretion on whether to indemnify the insured under this clause and engage a public relations consultant on behalf of the insured. In order to support a claim for the appointment of a public relations consultant, the legitimate reasons will need to be documented and justified by the insured. We may decline a claim due to our relevant legitimate interest under our reinsurance arrangements.

#### 3.9 Statutory liability

legal fees incurred by us for proceedings commenced against the insured during the period of insurance in relation to workplace health and safety law, environmental law, consumer protection law or privacy law breaches which occurred directly in connection with the provision of healthcare services. This clause does not operate to indemnify the insured for the payment of any fine or civil penalty.

---

### 3.10 Loss of documents

costs incurred (that are not recoverable from any other source) by the insured to replace or restore documents which have been destroyed or damaged, where such loss or damage is sustained in the period of insurance while the documents are either in transit or in the insured's custody, or the custody of any person to whom the insured has entrusted them in the course of the normal conduct of the insured's business, but only when such a loss or damage is not:

- a) loss or damage as a result of normal wear and tear;
- b) lack of access to electronic data (including cyber attack and/or extortion demand);
- c) where the insured deliberately or wilfully caused the destruction or damage;

the cost to replace or restore the documents must be supported by detailed evidence.

### 3.11 Sexual misconduct defence

notwithstanding clause 7.15 (Sexual misconduct, sexual harassment or discriminatory conduct), we will indemnify the insured's legal fees for proceedings commenced against the insured during the period of insurance in relation to actual or alleged sexual harassment, sexual assault, sexual misconduct or physical abuse by an employee.

This clause does not operate to indemnify any insured who allegedly committed or condoned the act, error or omission.

# Coverage Part C:

## Optional cover under Part A and B

---

### 4. Part C – Optional cover under Part A and B

The following optional covers are only included if noted in the policy schedule.

#### 4.1. Reinstatement

In the event of exhaustion of the limit of indemnity specified in the policy schedule, we will reinstate the limit of indemnity once during the period of insurance, to the amount specified in the policy schedule, for all sums which the insured becomes legally liable to pay for subsequent claims and for subsequent legal defence costs that are notified to us during the period of insurance and that are unrelated to any prior claim notified to us during the period of insurance

#### 4.2 Legal defence costs in addition to limit of indemnity

Cover under clause 1 (b) is extended to cover legal defence costs in addition to the limit of indemnity in the event of the exhaustion of the limit of indemnity specified in the policy schedule by the total amount of compensation and/or claimants' costs required to dispose of the claim.

Our liability for legal defence costs under this clause will only be that proportion that the limit of indemnity bears to the total amount of compensation and/or claimants' costs' required to dispose of the claim.

# Coverage Part D:

## Public liability optional cover

---

### 5. Public liability optional cover

Public liability optional cover is only included if noted in the policy schedule.

This part of the policy is occurrence-based, which means that we will only cover an occurrence giving rise to a public liability claim that occurs during the period of insurance, while notification of the claim can occur outside the period of insurance.

#### 5.1 Public liability

We will indemnify the insured for amounts which the insured becomes legally liable to pay by way of compensation for a claim made against the insured in respect of personal injury or property damage as a result of an occurrence during the period of insurance which is directly in connection with healthcare services.

#### 5.2 Legal defence costs

We further agree to indemnify the insured for legal defence costs incurred by us in investigating, defending or settling a public liability claim. This is subject to the payment of the deductible which is the first amount to be paid towards defence costs.

#### 5.3 Advertising liability

We will indemnify the insured in respect of an occurrence during the period of insurance which gives rise to a claim made against the insured in respect of any advertising, by or on behalf of the insured, resulting in:

- a) a breach of the misleading or deceptive conduct provisions of the *Competition and Consumer Act 2010 (Cth)*, or Schedule 2 to the *Competition and Consumer Act 2010* (the Australian Consumer Law), or any Fair Trading or similar legislation;
- b) the passing off of a title or slogan that results in an infringement of copyright or trademark;
- c) unfair competition, piracy or idea misappropriation contrary to an implied contract; and
- d) breaches of privacy legislation or regulations.

Our liability under this clause for any one occurrence, or series of related occurrences shall not be cumulative with any other claim or request for indemnity under this policy for that occurrence.

#### 5.4 Property in care, custody and control

We will indemnify the insured in respect of an occurrence that occurs during the period of insurance and gives rise to a claim against the insured as a result of physical loss or damage to:

- a) premises (including the landlord's fixtures and fittings) which are tenanted by the insured;

- b) premises (including the contents thereof) not owned by, leased or rented to the insured, but temporarily occupied by the insured;
- c) vehicles not owned or belonging to the insured while in the insured's carpark, unless the carpark is operated for reward;
- d) directors', employees', patients' and visitors' personal effects; and
- e) other property that is not owned by the insured and that is in the insured's temporary care, custody and legal control.

Our liability under this clause during the period of insurance is limited to the sub-limit of indemnity specified in the policy schedule.

Clause 5.4 is subject to the following:

- f) there is no indemnity granted for liability in respect of damage to any property the insured has been or is working on; and
- g) there is no indemnity granted for any liability arising from the insured's failure to effect material damage insurance to the premises, property, contents or goods.

#### 5.5 Food, drink and advertising supplied in connection with healthcare services

We will indemnify the insured in respect of an occurrence during the period of insurance which gives rise to a claim against the insured as a result of personal injury in relation to the supply of food, drink or advertising, which are supplied free of charge and are directly related to healthcare services, provided that the insured was not aware of the defect in the food, drink or advertising.

#### 5.6 Cross liability

For the purposes of public liability cover under this clause 5 only and subject at all times to the terms and conditions of this policy, where the insured is comprised of more than one person or entity. Each of the parties will be considered as a separate and distinct unit and the cover afforded under clause 5 of this policy will be considered as applying to each party in the same manner as if a separate policy had been issued to each. Our total liability shall not exceed the public liability limit of indemnity.

#### 5.7 Prior public liability occurrences and claims

Notwithstanding that cover under clause 5 is occurrence based, we will extend cover under clause 5 to claims made against the insured during the period of insurance in respect of an occurrence that occurred outside of the period of insurance if:

- a) the insured held public liability cover on a claims-made basis with us at the time of the occurrence, and
- b) has continuously held public liability cover with us up until notification of the claim or request for indemnity.

## 6. Exclusions applicable to Part D public liability optional cover

We are not liable under public liability optional cover to indemnify the insured for any claim, legal defence costs, or request for indemnity which arises out of, or is in connection with:

### 6.1 Aircraft, hovercraft and watercraft

the loss, destruction or damage to aircraft, hovercraft or watercraft.

### 6.2 Product liability

- a) the manufacture, distribution or sale of goods or products (except as provided by clause 5.5); or
- b) services or advice provided in relation to the research, design, development, manufacture or distribution of such goods or products, or potential goods or products.

### 6.3 Advertising liability

liability under clause 5.3 resulting from:

- a) the failure of performance of any contract, however this exclusion shall not apply to claims for unauthorised appropriation based upon breach of an implied contract;
- b) infringement of copy mark or trademark, however this shall not apply to unintentional use of titles or slogans;
- c) incorrect description of any good or product;
- d) mistake in advertised price;
- e) any publication, utterance or testimonial used or made in accordance with the insured's direction and with the insured's knowledge of the inaccuracy or falsity of the publication; or
- f) the failure of the insured's products or services to conform with the performance, quality, fitness or durability advertised.

### 6.4 Faulty workmanship

damage to property as a result of improper work performed by the insured or on the insured's behalf, or by reason of materials or equipment that are defective or inadequate for such work, and require the property to be repaired, reconditioned or replaced. However, this exclusion does not apply to property damage resulting from such work.

### 6.5 Loss of use

the loss of use of tangible property which has not been physically damaged or destroyed, provided such loss of use is caused by a delay or lack of performance by the insured.

### 6.6 Professional services

the rendering of professional services or failure to render professional services by the insured, a medical practitioner or any contractor of the insured.

### 6.7 Property in care, custody or control

any premises, property, contents or goods owned or hired by, or leased or rented to the insured or otherwise in the insured's physical or legal control, except as provided by clause 5.4 (Property in care, custody and control).

### 6.8 Sexual molestation

any actual or alleged sexual assault, attempted sexual assault, abuse, molestation or attempted molestation, or sexual discrimination, or sexual harassment or inappropriate behaviour of a sexual nature.

### 6.9 Tobacco

the inhalation or ingestion of tobacco or tobacco smoke or products.

### 6.10 Vehicles

the ownership, possession, operation or use by the insured of vehicles, where the vehicle is required by law to be registered or required by law to have compulsory liability insurance in force. However, this exclusion does not apply to:

- a) personal injury for which no indemnity is available to the insured, provided that the insured complied with all obligations relating to vehicle legislation and road safety laws and obligations to insure;
- b) property damage relating to the loading and unloading of goods from vehicles; or
- c) property damage caused by any vehicle which is designed primarily for lowering, lifting, loading or unloading within the confines of the insured's premises.

### 6.11 Workers' compensation and employment liability

any personal injury to any person:

- a) incurred, contracted or occurring while under a contract of service or apprenticeship with the insured;
- b) for any breach of any obligation owed by the insured as an employer to any employee or to any persons deemed to be an employee under any workers' compensation law or scheme and/or similar legislation or arrangement; or
- c) for any claim in respect of which compensation is available under any workers' compensation law, or scheme and/or similar legislation, or arrangement or would have been available had the insured complied with the law, scheme and/or similar legislation or arrangement.

This exclusion will not apply to any claim arising out of any personal injury of an employee while a patient of the insured, which is caused by any negligent act, error or omission of the insured, not involving the provision of medical treatment by a healthcare professional.



# General exclusions

## applicable to the entire policy

---

7 We are not liable under this policy to indemnify the insured for any claim or request for indemnity which arises out of, or is in connection with:

### 7.1 Asbestos

any actual or alleged liability whatsoever for any claim, or claims in respect of loss or losses directly or indirectly arising out of, resulting from, or in consequence of, or in any way involving asbestos, or any materials containing asbestos in whatever form or quantity. However, this exclusion will not apply to a claim arising from the treatment of a person or persons as a result of an illness or condition in any way involving asbestos.

### 7.2 Contractual liability

any liability that the insured assumed by contract, waiver, guarantee or warranty, except as provided by clause 2.11 (Contract liability).

### 7.3 Defamation

defamation, libel or slander, except as provided by clause 2.4 (Defamation).

### 7.4 Dishonest, criminal or fraudulent act

any criminal, dishonest act or omission, or deliberate or wilful breach of any statute, regulation, contract or duty of care of the insured, except as provided by clause 2.9 (Cover for innocent insureds) and clause 2.16 (Employee dishonesty).

### 7.5 Director and officer liability

the insured's actions in their capacity or in respect of their functions or duties as a director, officer, principal, trustee, associate or shareholder.

### 7.6 Fines, penalties or punitive damages

any punitive, aggravated or exemplary damages, fines or civil penalties.

### 7.7 Fraud

any fraudulent claim or request for indemnity, or any part of a claim or request for indemnity that is fraudulent or is supported by fraudulent, untrue or exaggerated evidence.

### 7.8 Healthcare services not listed in policy schedule

any act, error, or omission or occurrence not directly in connection with the provision of healthcare services.

### 7.9 Intoxication or under the influence

any breach of duty or obligation that is attributable to, or may be attributable to an insured person being under the influence of any drug, alcohol, intoxicant, narcotic or illegal substance except as provided by clause 2.9 (Cover for innocent insureds).

### 7.10 Insured vs insured

a claim, proceeding or matter initiated by a contractor, insured or any entity that is operated or controlled by an insured, except:

- a) as provided by clause 3.4 (Employee dishonesty) or clause 5.6 (Cross liability);
- b) for a cross claim or a third party claim otherwise insured under this policy; or
- c) for a claim by a contractor or insured person in their capacity as a patient.

### 7.11 Outside Commonwealth of Australia

any act, error or omission committed or allegedly committed outside the Commonwealth of Australia; or any court or tribunal proceedings outside the Commonwealth of Australia, or any court or tribunal in Australia which is applying the law of a country other than the law of the Commonwealth of Australia.

### 7.12 Pollution

pollution, however, this exclusion does not apply to an identifiable unintended or unexpected pollution occurrence which takes place in its entirety at a specific time and place.

### 7.13 Prior, pending, outside period of insurance, or known circumstance

any:

- a) act, error or omission that occurred, or healthcare services provided prior to the retroactive date which resulted in a medical indemnity claim;
- b) occurrence which happened prior to the retroactive date, except as provided by clause 5 (Public liability);
- c) act, error, omission or occurrence which should have been notified to us in the application form or otherwise in accordance with the duty of disclosure;
- d) claim, complaint or request for indemnity notified to us outside the period of insurance, except as provided by clause 8.6 (Extended reporting period) and clause 5 (Public liability) ; or
- e) known circumstance except as provided by clause 8.3 (Continuous cover).

---

#### 7.14 Product and public liability and property damage

- a) the design, manufacture, distribution or sale of any goods or products, except as provided by clause 2.12 (Advice on goods sold);
- b) any physical loss of, or damage to property, or any loss or damage which results from that loss or damage, except as provided by clause 5 (Public liability); or
- c) the ownership, use or occupation or state of premises, or the contents of such premises, or anything done or omitted to be done in respect of the state of any premises owned, leased or occupied by the insured or the contents of such premises, except as provided by clause 5 (Public liability).

#### 7.15 Sexual misconduct, sexual harassment or discriminatory conduct

sexual harassment, sexual misconduct or any form of discriminatory conduct except as provided by clause 2.9 (Cover for 'innocent' insureds) and clause 3.11 (Sexual misconduct defence).

#### 7.16 Radioactive materials

the:

- a) use of nuclear reactors such as atomic piles, particle accelerators or generators, or similar devices;
- b) use, handling or transportation of radioactive materials; or
- c) use, handling or transportation of any weapon of war or explosive device employing nuclear fission or fusion.

However, this exclusion will not apply to a claim arising from the treatment of a person or persons in the ordinary course of radiotherapy, radiology or nuclear medicine.

#### 7.17 Recovery of money or refund patient fees

any action in relation to the recovery of money except as provided by clause 3.4 (Employee disputes), or a request by a patient to refund fees they have paid to the insured or to waive fees due to the insured.

#### 7.18 Terrorism

any act of terrorism, regardless of any other cause contributing concurrently or in any other sequence to the loss, damage or expense. For the purpose of this exclusion, an act of terrorism includes any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons, whether acting alone or on behalf of, or in connection with any organisation(s) or government(s) de jure or de facto.

The policy also excludes death, injury, illness, loss, damage, cost or expense directly or indirectly caused by, contributed to by, resulting from, or arising out of, or in connection with any action in controlling, preventing, suppressing, retaliating against, or responding to any act of terrorism.

However, this exclusion will not apply to a claim arising from the treatment of a person or persons as a result of any act of terrorism as defined above.

#### 7.19 War

any of the following:

- a) war, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not), civil war; or
- b) mutiny, civil commotion assuming the proportions of, or amounting to a popular rising, military rising, insurrection, rebellion, revolution, military or usurped power.

However, this exclusion will not apply to a claim arising from the treatment of a person or persons as a result of any act of war as defined above.

# General conditions

---

8 These conditions (and the conditions listed in clause 9 (Additional conditions for claims and requests for indemnity) apply to the policy. By accepting the offer of insurance, the insured agrees to comply with the following:

## 8.1 Information the insured has provided to us

We have relied on information provided by the insured in the application form and other forms of disclosure in determining whether to enter into this contract of insurance, and on what terms. If this information is incorrect, or the insured makes a misrepresentation or does not comply with and agree to the conditions of this policy, we may be able to reject a claim or request for indemnity, reduce our liability or void this policy from inception.

## 8.2 No admission

The insured must not make, and make all reasonable efforts to ensure that any insured person does not make, any admission, offer or compromise in relation to any claim or request for indemnity covered by this policy without our prior written consent.

## 8.3 Continuous cover

Notwithstanding clause 7.13 (Prior, pending or outside period of insurance), we will indemnify the insured where:

- a) the insured failed to tell us about an incident which the insured knew about, or a person in the insured's position should reasonably have known, might result in a claim or request for indemnity;
- b) we were the insurer of the insured at the time the insured first knew or ought to have known of the incident;
- c) we continued without interruption to be the insurer of the insured from the time the insured knew or ought to have known of the incident to the date of actual notification to us;
- d) the incident is notified to us by the insured under this policy and the incident is covered under this policy;
- e) had we been notified by the insured of the incident when the insured first knew of it, the insured would have been covered under the policy in force at that time; and
- f) the incident has not been previously notified to us.

Our liability will not exceed the lesser of the limit of indemnity under this policy, or the limit of indemnity under the previous policy under which the incident should have been notified.

We, acting reasonably, may reduce our liability to the extent of any prejudice we may suffer in connection with the insured's failure to notify us as soon as practicable after the insured first knew of the claim or circumstance.

## 8.5 Run-off cover

If during the period of insurance, the insured entity ceases to exist, operate or is merged or acquired by another entity, this policy will continue to exist until the end of the period of insurance. This will not operate to indemnify any act, error or omission which occurred after the date that the entity ceased to exist or operate, or the date the entity was merged or acquired.

## 8.6 Extended reporting period

Under clauses 1-3, the insured may continue to notify us of claims up to 60 days after the expiry of the period of insurance where the claim was first made against the insured during the period of insurance, provided always that the claim is a result of an act, error or omission or alleged act, error or omission that occurred prior to the expiry of the period of insurance.

If this notification occurs in the 60-day period, we will treat the claim as if it were notified during the period of insurance.

## 8.7 Loss prevention

The insured must not do, and make all reasonable efforts to ensure that any insured person does not do anything recklessly or wilfully that might give rise to a claim or request for indemnity. The insured must take all reasonable care to avoid or reduce the chance of any claim or request for Indemnity, and to mitigate the cost or other adverse impact of any claim or request for indemnity. The insured must not do, or fail to do anything which the insured knows or should reasonably be expected to know will result in any claim or request for Indemnity.

## 8.8 Subrogation and other insurance

If we make a payment or incur legal costs and expenses under this policy, we will be subrogated to all the insured's rights of contribution, indemnity or recovery without the need for consent of the insured. The insured agrees not to surrender any right to, or settle any claim for, contribution, indemnity or recovery without our prior written consent.

The insured must notify us in writing when making a claim or a request for indemnity if the insured has any other insurance policies or entitlement to indemnity which may also cover the insured in respect of anything covered by this policy.

To the extent allowed by law, we will not pay under this policy any part of a liability to which the insured is entitled to be indemnified under another policy of insurance.

## 8.8 Fraud

We may recover from the insured any payments that have been made by us to a third party based on the insured's fraudulent, untrue or exaggerated claim or request for indemnity.

---

## 8.9 Requirements for insured persons and contractors

- 8.9.1 The insured must ensure during the period of insurance, that each insured person:
- a) holds the requisite qualifications, registration, authorisations and licences; and
  - b) in the event the insured person is a medical practitioner, holds a current professional indemnity insurance covering the types of healthcare they provide.
- 8.9.2 The insured must ensure at all times during the period of insurance that any person contracted or engaged by the insured who is a medical practitioner or a healthcare professional:
- a) holds the requisite qualifications, registration, authorisations and licences; and
  - b) holds current professional indemnity insurance covering the types of healthcare they provide.
- 8.9.3 The insured must maintain accurate records and obtain copies of such qualifications, registrations, authorisations, licences and insurances mentioned in clause 8.9.1 and clause 8.9.2 above during the period of insurance, and retain these records and copies for at least seven years from the expiry date of this policy.

## 8.10 Material change in risk

- 8.10.1 The insured must notify us in writing within 30 days after they become aware of any change that materially varies a matter relevant to the risk or alters the risk covered by this policy. Notification includes, but is not limited to, the following matters:
- a) any merger between the insured and another company or business, any acquisition by the insured of another company or business, or if the insured is acquired by another company or business;
  - b) the establishment by the insured of a subsidiary company (notwithstanding clause 2.14 (Newly created subsidiary)) or another branch office;
  - c) addition of a new premises, or the extension or expansion of the business premises;
  - d) the bankruptcy, administration, receivership, liquidation, appointment of a receiver or bankruptcy or winding-up proceedings that relate to the insured;
  - e) any material changes in the nature of the business or of the healthcare services provided by the insured;
  - f) an increase by more than 10% of those declared in the proposal in relation to the number of:
    - i. beds operated by the insured;
    - ii. insured persons;

- iii. contractors engaged by the insured; or
  - iv. medical practitioners engaged by the insured;
- g) the cancellation or modification of, or failure to maintain, accreditation or a licence of any hospital, clinic or other establishment forming part of, or operated by the insured.

8.10.2 Failure to notify us of any material change in risk shown in clause 8.10.1 within 30 days, may mean that we are not liable under this policy to indemnify the insured for a claim or request for indemnity.

- 8.10.3 If a material change in the risk occurs, we are entitled to:
- a) amend the terms and conditions of this policy and/or charge an additional premium;
  - b) cancel the policy if we cannot reach an agreement with the insured on altered terms and conditions and/or premium; or
  - c) cancel the policy if we are no longer prepared to cover an insured because there has been a material change to the risk.

## 8.11 Severability and non-imputation

Where this policy insures more than one party:

- a) any non-disclosure or misrepresentation (whether fraudulent or otherwise) by one party (collectively a failure) will not affect any other party insured under this policy provided that:
  - i. the failure was not made with any involvement or knowledge of the second mentioned party; and
  - ii. as soon as practicable after the second mentioned party becomes aware of any such failure, the second mentioned party advises us in writing during the period of insurance of all the relevant circumstances of the failure.
- b) This policy operates, except in relation to limits, in the same manner as if there were a separate policy of insurance covering each party.

---

## 8.12 Payment of deductible

The following conditions apply to the payment of the deductible set out in the policy schedule or in a clause in this policy:

- a) the insured shall pay the amount of the deductible at the insured's own risk;
- b) where the we have paid all or part of any deductible on the insured's behalf, the insured must reimburse us all or any part of the deductible the insured owes the insurer within 14 days from the date we requested payment from the insured;
- c) in the event that the insured fails to reimburse us in response to a request under clause 8.12(b) the sum requested will, at the expiration of 14 days after the request, become a debt due and payable to us; and
- d) in the event that the insured fails to reimburse us in response to a request under clause 8.12(b), 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 the insured's failure or refusal to reimburse all or part of the deductible.

## 8.13 Payment of premium

The insured will not be covered by this policy if the insured does not pay the premium for this policy or for any earlier policy in full. It is a condition of this policy that the insured pay the current premium and any premium that remains outstanding from any prior policy.

## 8.14 Cancellation

8.14.1 The insured may cancel this policy at any time by notice in writing, in which case we will refund the premium on a pro rata basis. If the insured has notified a claim or incident during the period of insurance there will be no pro rata refund. We may cancel this policy by giving the insured 14 days' notice in writing:

- a) if the insured has not paid the premium within 30 business days of the period of insurance commencing in full; or
- b) if the insured is in breach of any of the conditions of this policy;
- c) if a material change in risk occurs; or
- d) for any other reason available to us under the *Insurance Contracts Act 1984* (Cth).

8.14.2 If we give notice to cancel the policy then we must give that notice to the insured personally, or send it to the insured by certified mail at the last address of which the insured notified the insurer. Unless the insured proves otherwise, the insured will be deemed to have received the notice when it would have arrived in the ordinary course of the post.

## 8.15 Medical records

The insured must ensure that adequate standards of medical record keeping take place, and that such records are kept safe and retained for the statutory periods required for such records issued.

## 8.16 Currency

All premiums, limits, deductibles and other amounts under this policy are expressed and payable in Australian currency.

## 8.17 GST

The premium is exclusive of GST. The GST component will be reflected in the policy schedule. The limit of indemnity, public liability limit of indemnity and sub-limit of indemnity are GST exclusive.

# Additional conditions

## for claims and requests for indemnity

---

### 9. Additional conditions for claims and requests for indemnity

#### 9.1 The insured must notify us of a claim

The insured must notify us in writing as soon as practicable of any claim or incident including but not limited to, an incident in respect of which:

- a) a patient suffers a major complication;
- b) there is an error made in providing healthcare services causing harm;
- c) an adverse outcome results in significant anger from a patient or their family;
- d) the insured receives a letter from a solicitor indicating dissatisfaction or requesting a patient record; or
- e) the insured is concerned that an incident has occurred which the Insured thinks may lead to a claim or request for indemnity.

If the insured does not notify us of a claim or incident as soon as practicable, the insured may not be covered under this policy and the insured's right to indemnity may be prejudiced to the extent that we were prejudiced by the insured's non disclosure.

To report a claim or incident, the insured must notify the insurer in writing to:

Avant Insurance Limited  
PO Box 746  
Queen Victoria Building NSW 1230

or [nca@avant.org.au](mailto:nca@avant.org.au)

The notification must include the insured's details, the details of the claim or incident, including the date of the incident, the patient's name and the details of any claim or incident.

#### 9.2 Other things of which the insured must notify us

The insured must notify the insurer in writing as soon as practicable of any civil or criminal action, prosecution, inquiry, inquest, investigation or complaint, judgement, appeal or tax audit brought or made by a registration board, tribunal, complaints unit, criminal court, civil court, coronial court, Medicare Australia or the Australian Taxation Office, directly relating to the insured and/or an insured person's practice as a healthcare professional.

If the insured does not notify us of the matters set out in clause 9.2 above as soon as practicable, the insured may not be covered under the policy and the insured's right to indemnity may be prejudiced.

#### 9.3 How much we will pay

- a) The most we will pay for any one claim or request for indemnity under this policy, and in the aggregate for all claims and requests for indemnity in the period of insurance is the limit of indemnity that are specified in the policy schedule. Please refer to the policy schedule, which will show:
  - i. the limit of indemnity;
  - ii. the sub-limits that will apply;
  - iii. whether the insured has cover under Part C (clause 4) – optional cover and any applicable sub-limits;
  - iv. whether the insured has cover under Part D (clause 5) – the public liability limit of indemnity, sub-limit and any applicable deductibles.

If the insured selected Part C (clause 4) – optional cover under parts A and B (clauses 1-3) and/or Part D (clause 5) (Public liability – optional cover), the public liability limit of indemnity is the most we will pay for any one claim or series of claims arising out of any one occurrence.

- b) Any sub-limit of indemnity that applies is the most we will pay against that cover in the aggregate in the period of insurance; and in such cases the sub-limit of indemnity applies in place of the limit of indemnity. Any sub-limit of indemnity will be specified in the policy schedule.
- c) The limit of indemnity, public liability limit of indemnity and sub-limit of indemnity are exclusive of the deductible.
- d) The limit of indemnity and public liability limit of indemnity are inclusive of legal defence costs, unless the insured has cover under clause 4.2.
- e) Nothing in this policy operates to increase the limit of indemnity, public liability limit of indemnity or sub-limit of indemnity, unless the insured has selected cover under Part C clause 4.1 or clause 4.2 as shown on your policy schedule
- f) All claims or requests for indemnity 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 request for indemnity.

#### 9.4 Conduct of claims and requests for indemnity

- 9.4.1 The insured agrees that we have conduct of a claim or request for indemnity covered under this policy including its investigation, pursuit, defence, avoidance, reduction or settlement and we may do so in the insured's name.
- 9.4.2 We may defend or settle a claim, complaint or matter as we deem fit.

---

9.4.3 The insured may defend any claim or request for indemnity which we believe should be settled, but we will not pay any more in relation to that claim or request for indemnity, legal defence costs or professional or other fees than we would have been required to pay if it had been settled or resolved as we believed it could or should have been.

## 9.5 We will appoint the lawyer or other person

9.5.1 We will appoint the lawyer or other person to provide services to us for the benefit of the insured. When we appoint the lawyer or other person, we do so in our own capacity and not as an agent for the insured. We are entitled to appoint Avant Law Pty Ltd (ACN 136 429 153), being a wholly owned subsidiary of the insurer, to represent you in any proceedings.

9.5.2 The lawyer or other person appointed by us supplies services to us and not to the insured 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 other person.

## 9.6 The insured must cooperate

- 9.6.1 The insured must cooperate with us (including the lawyer and other person appointed by us) in resolving the claim or request for indemnity or appeal. In particular, the insured must:
- a) give us and the lawyer a full and truthful account of the relevant facts;
  - b) give us and the lawyer any relevant information or documents in the insured's possession that they ask for;
  - c) obtain any other relevant information or documents that the insured can;
  - d) execute any documents we or the lawyer ask the insured to;
  - e) attend any meetings we or the lawyer ask the insured to;
  - f) adhere to our instructions, including providing all information, documents and assistance required;
  - g) waive any claim for legal professional privilege or confidentiality to the extent only that the privilege or confidentiality would otherwise prevent the lawyer from disclosing information to us;
  - h) follow the advice of us or the lawyer; and
  - i) cooperate with us or the lawyer in resolving the matter in a satisfactory, timely and cost-effective way, and not cause a delay which, in our reasonable opinion, prejudices the outcome of the case.

Notwithstanding that the insured agrees that we have the conduct of a claim or request for indemnity, the insured must not act unreasonably in rejecting a settlement, compromise or an offer of settlement, which we or the lawyer recommend to the insured. This includes circumstances if the insured refuse to make an offer of settlement. The insured must also agree to accept outcomes that, in our sole opinion, we believe are reasonable in the resolution of the matter.

If the insured does not cooperate with us then we will not be liable for legal fees and other expenses, and will not cover the insured and can withdraw assistance. This will mean that the insured will be responsible for the insured's own legal fees and expenses.

## 9.7 The insured must be reasonable in relation to settlement

Notwithstanding clause 9.4.2 (we may defend or settle a claim, complaint or matter as we deem fit) the insured must not act unreasonably in rejecting a settlement, compromise or an offer of settlement, which we or the lawyer recommend to the insured.

## 9.8 Appeals

- 9.8.1 If the insured is dissatisfied with any decision by a court or other decision-making body, and the insured seeks to appeal against that decision, then the insured must request our consent prior to the appeal within 14 days after the date of the decision, or such earlier period having regard to the time for any appeal.
- 9.8.2 The application must be in writing and must fully set out the reasons for bringing an appeal. We will inform the insured in writing if we consent to the appeal.
- 9.8.3 If we do not consent to the bringing of an appeal, the insured may conduct the appeal at the insured's own expense.
- 9.8.4 If we decide to appeal against any decision made in respect of a claim or request for indemnity, then the insured must reasonably cooperate with us in bringing such an appeal.

## 9.9 Claims acceptance

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

---

# **Other information** you need to know



---

## Making changes to your policy

The insured must let us know within 30 days if there has been a material change in risk (see clause 8.10).

If the insured fails to do so, this may mean that we are not liable under this policy to indemnify the insured for a claim or request for indemnity. The insured can notify us by contacting us on **1800 128 268**. If we require notification in writing, we will inform the insured once the insured contacts us.

## Our dispute resolution process

If you have any complaints about the product or service provided to you, then you should inform us immediately. Our service staff should be able to resolve the issues you raise satisfactorily. However, if the matter has not been resolved to your satisfaction you may, under our internal dispute resolution (IDR) process, forward a complaint to us. A copy of our dispute resolution procedure can be obtained either from our website or by contacting us on **1800 128 268**.

If your complaint is not satisfactorily resolved or answered by our IDR process you may refer the matter to the Australian Financial Complaints Authority (AFCA):

Website [afca.org.au](http://afca.org.au)

Email [info@afca.org.au](mailto:info@afca.org.au)

Telephone **1800 931 678** (free call)

In writing to:

Australian Financial Complaints Authority  
GPO Box 3  
Melbourne VIC 3001

## Privacy statement

Please refer to our website at [avant.org.au/Privacy-Policy](http://avant.org.au/Privacy-Policy) to view our privacy policy. You may request a copy of our privacy policy by contacting us.

## Financial Claims Scheme

This policy may be a protected policy under the Federal Government's Financial Claims Scheme (FCS) which is administered by the Australian Prudential Regulation Authority (APRA).

The FCS only applies in the extremely unlikely event of an insurer becoming insolvent and the Federal Treasurer making a declaration that the FCS will apply to that insurer.

The FCS entitles certain persons, who have valid claims connected with certain protected policies issued by that insurer to be paid certain amounts by APRA subject to eligibility criteria set by APRA.

Information about the FCS can be obtained from APRA at [apra.gov.au](http://apra.gov.au) or by calling **1300 558 849**.

## Cooling-off period

Please read the documents that make up your policy carefully. If you decide that your policy does not meet your requirements, you can cancel it by notifying us by email or by post within 21 days, starting after the day on which the policy was issued or sold to you.

When we receive your notification in writing to cancel your policy within the cooling-off period, we will refund to you any premium paid.

However, your cancellation rights do not apply if, during the cooling-off period, you:

- have made a request for indemnity under the policy; or
- notified us of a claim or of facts that might give rise to a claim.

---

# Definitions

---

## Advertising

Advertising includes advertisements, publicity articles, promotional material, broadcasts or telecasts relating to advertising activities, which are directly related to healthcare services.

## Claim

A demand for, or an assertion of a right to compensation or damages, or an intimation of an intention to seek compensation or damages which:

- a) is first made against the insured in the period of insurance; and
- b) is notified to us in writing in the period of insurance.

## Clinical trial

A clinical trial or research project approved by the Australian Health Ethics Committee (AHEC) in accordance with National Health and Medical Research Guidelines, and conducted in accordance with any conditions and approvals made by the AHEC.

## Complaint

An allegation of unlawful or actionable conduct, misconduct, unsatisfactory conduct or inappropriate practice.

## Deductible

The deductible is the amount set out in the policy schedule, which is the amount the insured must pay at the insured's own risk in respect of any relevant claim or request for indemnity under this policy.

## Documents

A document of any nature whether written, printed or reproduced by any method including computer records or electronic data in the possession of, or control of the insured, but does not include money or negotiable instruments.

## Employee

A person who is employed under a contract of service, but only in his or her capacity as an employee of the legal entity named in the policy schedule.

## Healthcare

Any treatment, advice, service or goods provided by, or on behalf of the insured, in connection with healthcare services in respect of the physical or mental health of a patient under the insured's care.

## Healthcare services

The provision of healthcare services by, or on behalf of the insured as described in the policy schedule. For clarification, it does not include any other healthcare services that are not listed in the policy schedule.

## Incident

Any act, error or omission, or circumstance in relation to the provision of healthcare services that may give rise to a claim or request for indemnity under this policy.

## Insured

Means:

- a) the legal entity named in the policy schedule;
- b) any subsidiary of the legal entity including as provided by clause 2.14; and
- c) any insured person.

## Insured person

the following person(s), but only in respect of liability arising from or in connection with the provision of healthcare services, and only to the extent that they are not engaged in the provision of healthcare in their capacity as a medical practitioner (other than Part E, clause 5 public liability optional cover if the cover is specified on the policy schedule):

- a) **Volunteers, students or committee members** past, present of the insured's ethics or advisory committee;
- b) **Principal, partner, director or officer** past, present or future;
- c) **Employee of the insured** past, present or future;
- d) **Estates, heirs and legal representatives** – if any insured person entitled to cover under this policy dies or becomes incompetent, we will indemnify the estate, heir or legal representatives of that insured person to the same extent that the insured person would have been covered by this policy; and
- e) **Spousal liability** – if the spouse of any insured person is brought into a claim due to their legal status as spouse of the insured, then the spouse's liability will be deemed to be the insured's liability.

## Known circumstance

Any fact, situation or circumstance which might result in someone making a claim or allegation against the insured in respect of a liability, which might be covered by this policy and either:

- i. the insured knew of such a fact, situation or circumstance before this policy commenced; or
- ii. a reasonable person in the insured's position before this policy commenced would have considered that such a fact, situation or circumstance might result in such a claim or allegation.

## Legal fees

The necessary and reasonable legal costs that we incur investigating, defending or resolving any legal proceedings or complaint made against the insured and covered by this policy.

## Legal defence costs

Legal costs and disbursements that we incur or the insured incurs with our prior written consent in defending a claim that is covered by this policy.

## Limit of indemnity

The amount specified in the policy schedule for Part A and B (clauses 1-3)

---

## Medical indemnity claim

Means a claim under clauses 1 to 4 of this policy, excluding a public liability claim.

## Medical practitioner

A person registered as a medical practitioner under the laws of the Commonwealth or a state or territory of Australia that provides for the registration of medical practitioners.

## Occurrence

An event, or series of events, which results in personal injury or property damage which was unexpected and unintended by the insured. Events which arise from, or are attributable to, a single event, including continuous or repeated exposure, or related single events will be treated under this policy as one occurrence.

## Other person

A person including, but not limited to an accountant, an actuary, an expert witness, a witness as to fact, or any other person required to assist us in any matter covered by this policy.

## Period of insurance

Means the period of insurance specified in the policy schedule.

## Personal injury

Bodily injury, death, illness, disability, shock, fright, mental anguish or mental injury of any person; also includes:

- a) false arrest, wrongful detention, false imprisonment, wrongful eviction or malicious prosecution; and
- b) assault and battery not committed by, or at the insured's direction unless reasonably committed for the purpose of preventing or eliminating danger to persons or property.

## Policy

This practice medical indemnity policy wording and the policy schedule.

## Policy schedule

The current policy schedule to this policy.

## Premium

The amount the insured is required to pay for insurance under this policy for the full policy period of insurance as specified in the insured's policy schedule. This includes the base premium, any premium for retroactive cover, instalment fees, government taxes and levies.

## Property damage

Physical damage, loss, use or destruction to tangible property, including any resulting loss from that property, provided it resulted from an occurrence.

## Public liability claim

Means a claim under clause 5 of this policy.

## Public liability limit of indemnity

Means the amount specified in the policy schedule for public liability optional cover.

## Request for indemnity

Any request by the insured for indemnity under this policy, in relation to a matter or claim that is covered under this policy, including a request for legal fees cover or cover under the optional covers.

## Public relations event

An event which in the insurer's opinion has the potential to seriously damage the reputation of the insured, which occurs in connection with the provision of healthcare services.

## Retroactive date

The retroactive date specified in the policy schedule. The retroactive date is the date on, or after which an incident must have occurred to constitute a valid claim under Part, A, B and C (clauses 1 – 4) of this policy.

## Spouse

Lawful spouse, any person deriving status of spouse (under common law or statute law) or domestic partner (including same sex partner).

## Telehealth

Healthcare services to, or in respect of a patient who is not in the same place, that use any form of technology, to enable them to be provided, including video-conferencing, internet and telephone.

## Us, we, our

Avant Insurance Limited ABN 82 003 707 471 and AFS Licence 238 765.



# Contact us

---

## Australian Capital Territory office

Unit 10, George Turner House, 11 McKay Gardens  
Turner ACT 2612  
**Telephone** 03 9026 5961  
**Fax** 03 8673 5015

## New South Wales office

Level 6, Darling Park 3, 201 Sussex Street  
Sydney NSW 2000  
PO Box 746, Queen Victoria Building NSW 1230  
**Telephone** 02 9260 9000 **Fax** 02 9261 2921

## Queensland office

Level 18, 345 Queen Street  
Brisbane QLD 4000  
GPO Box 5252, Brisbane QLD 4001  
**Telephone** 07 3309 6800 **Fax** 07 3309 6850

## South Australia office

Level 1, 195 Melbourne Street  
North Adelaide SA 5006  
PO Box 1263, Adelaide SA 5001  
**Telephone** 08 7071 9800 **Fax** 08 7071 5250

## Tasmania office

Suite 4, 147 Davey Street  
Hobart TAS 7000  
PO Box 895, Hobart TAS 7001  
**Telephone** 03 6223 5400 **Fax** 1800 228 268

## Victoria office

Level 36, Melbourne Central Tower, 360 Elizabeth Street  
Melbourne VIC 3000  
GPO Box 1606, Melbourne VIC 3001  
**Telephone** 03 9026 5900 **Fax** 03 8673 5015

## Western Australia office

Level 1, Schiavello, 1315 Hay Street  
West Perth WA 6005  
PO Box 950, West Perth WA 6872  
**Telephone** 08 6189 5700 **Fax** 08 6189 5713

 **1800 128 268**  [avant.org.au/pmip](http://avant.org.au/pmip)

**Avant Insurance Limited** ABN 82 003 707 471 AFSL 238 765  
A subsidiary of Avant Mutual Group Limited ABN 58 123 154 898

**Version 4.0**  
**1 April 2021**

MJN-637 03/21 (DT-1801)