



Department of Health and MDA National Agreement

Department of Health Indemnity - Medical Practitioners and Consent

1. The Department of Health (DoH) indemnifies (subject to specified exclusions) medical practitioners against claims for damages, in respect of negligence or trespass occurring or allegedly occurring in the course of provision of medical services to public patients in public hospitals including the consent and warnings.
2. The consent process includes warnings of risks and complications of the procedure and the evidence of the decision by the patient to proceed with that procedure (see also Clause 8(c)(v) of the Terms and Conditions of DoH Indemnity.) The consent process can take place in the public hospital setting, the private rooms of the practitioner or elsewhere.
3. Allegations of failure to warn attach to the consent process. In cases where the patient is subsequently admitted as a public patient to a public hospital, such allegations fall within the scope of indemnified incidents under the DoH's Indemnity. This applies regardless of whether this is the only allegation made against the medical practitioner.
4. The DoH's Indemnity covers claims arising from incidents which occurred in the period after the medical practitioner's MDO or Insurer changed to 'claims made' cover, as long as the incident had not been notified to the MDO or Insurer prior to 1 July 2003. As an example, if the medical practitioner is a member of MDA National (which went "claims made" from 1 July 1997), the DoH's Indemnity provides IBNR cover for incidents relating to the treatment of public patients in public hospitals in the period 1 July 1997 to 30 June 2003 as long as the incident had not been notified to MDA National prior to 1 July 2003.
5. In respect of private patients treated in hospitals administered by the WA Country Health Service and the South West Health Board, the DoH's Indemnity covers claims (including allegations of failure to warn) arising from incidents which occurred on or after 1 July 2003, subject to the same qualifications noted above except where the incident was reported to the medical practitioner's MDO or insurer prior to 1 July 2004.
6. In the event of any inconsistency between this Agreement and the Terms & Conditions of the DoH Indemnity the latter will prevail.

Dr Neale Fong
A/Director General
Department of Health

Mr Peter Forbes
Chief Executive
MDA National

13 June 2005

June 2005