



# CLAIMS-MADE PROTECTION

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# GLOSSARY

## ADVERSE INCIDENT

Any event or circumstance that might give rise to you seeking assistance and/or indemnity from us.

## CLAIM

A demand for monetary compensation or damages as a result of an adverse incident either through a lawyer's letter before action or service of proceedings, or a letter of demand from a patient or their representatives.

## CLAIMS-MADE PROTECTION

Protection for incidents that both occur and are reported during membership, or occur during membership, and are either reported in the 30-day window at the end of membership or during extended reporting benefits (ERBs).

## DISCRETION

Discretion allows us to respond to changes in the medicolegal environment and assist members with emerging problems that may not have been foreseen. All the benefits of membership of Medical Protection are discretionary, as set out in the Memorandum and Articles of Association.

## EXTENDED REPORTING BENEFITS (ERBs)

Enable you to report adverse incidents that occurred during your membership but that you only become aware of after your membership has ended.

## INDEMNITY

Protection against losses, damages, costs, charges and expenses connected with an action, proceeding, claim or demand against you arising from your professional practice.



# YOUR PROTECTION

## YOUR PROFESSIONAL PROTECTION

Having professional protection is essential to protect you against the potentially harmful costs of litigation, as well as the other challenges you might face throughout your career.

You need this protection at all times; while you practise, when you retire and even after your death. It is important to understand that claims are rarely made immediately after an adverse incident occurs.

This booklet contains information on how claims-made protection could work for you.

## CLAIMS-MADE PROTECTION

As a member-owned organisation, our purpose is to protect your career, reputation and financial security. We have therefore been seeking ways to continue to provide members with the quality and reassurance of our membership long into the future by offering an alternative to occurrence-based membership.

Claims-made protection gives members access to all of the benefits of Medical Protection membership – including expert medicolegal advice, support, and risk prevention tools and techniques – along with the right to request assistance with claims for damages, costs or compensation arising from adverse clinical incidents.

When we take on a member's case, we can take care of the legal costs and compensation payments up to a limit of HK\$ 150 million. This limit applies to all adverse incidents that are reported in that year, whether this is for one individual adverse incident, or for the total of all adverse incidents reported in a single membership year.

Unlike other indemnifiers, our claims-made protection is underpinned by the flexibility of discretionary indemnity, which means we can offer help in unusual circumstances or where new challenges arise in the medicolegal landscape.

There are some important differences between occurrence-based and claims-made protection, in particular around the reporting of incidents, indemnity provision upon retirement or ending membership, and how subscription prices are calculated. This booklet contains information on how claims-made protection could work for you.



# HOW DOES OUR CLAIMS-MADE PROTECTION WORK?

Accessing the benefits of membership with claims-made protection depends on two things:

1. the date on which an adverse incident occurs
2. the date that the matter is reported to Medical Protection.

Your annual membership subscription provides you with the right to seek assistance with complaints and claims arising from adverse incidents reported in that year of membership.

In order to request assistance, support and advice for complaints or claims resulting from your practice you must report an adverse incident to us as soon as possible. This should be immediately after it occurs, or when you become aware that it has occurred.

## **AND either**

You remain in continuous membership between the date on which the adverse incident occurs and the date you report it to us.

## **Or**

If your membership has ended, you have reported an adverse incident that occurred while you were in membership, within the 30-day notification period at the end of your membership.

## **Or**

If you have purchased Extended Reporting Benefits (ERBs), you have reported an adverse incident that occurred while you were in continuous membership, as soon as possible during the ERBs period.

You must tell us as soon as possible, if a complaint or claim is made against you.



# CLAIMS-MADE PROTECTION IN PRACTICE

Kono, a medical professional, becomes a Medical Protection member with claims-made protection. For his first year, Kono's membership subscription protects him against complaints and claims arising from adverse incidents in that year, provided that he reports the adverse incidents to us as soon as he becomes aware of them.

In Year 2 of his membership, Kono once again pays a subscription which protects him against complaints and claims from incidents arising in that year, so long as they are reported to us as soon as he becomes aware of them.

He also pays an extra amount within his subscription to protect himself against any Year 1 incidents which he becomes aware of and reports during Year 2 of membership.

Because he can report incidents from his Year 2 practice, and Year 1 practice, Kono's Year 2 subscription is more expensive than his first year.

Similarly, Kono's Year 3 subscription not only includes an amount to protect him against complaints and claims from incidents arising and reported in that year, but also against any Year 1 and Year 2 incidents which he is not yet aware of, and so has not reported to us. Each year, the pattern is repeated, with the cost of reporting any previous years' adverse incidents being added to Kono's current subscription rate.

Over time, the risk of an adverse incident from Year 1 needing to be reported decreases, and as a result, the cost of including protection for this year in Kono's subscription also decreases, until eventually, the subscription we collect no longer includes an amount for his first year.

The same will subsequently be true for Years 2, 3, 4 and so on.

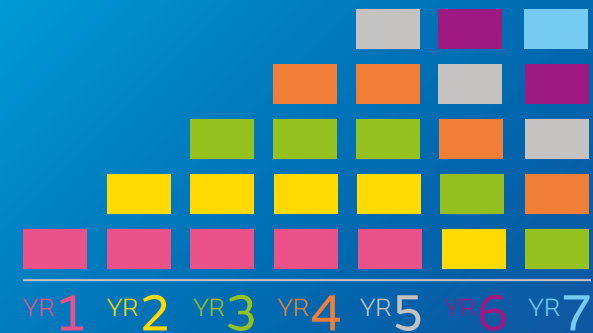
Membership subscriptions are usually lower than our occurrence-based protection in the early years. As time goes on and the accumulated risk increases, the cost of annual claims-made protection will typically rise in steps, until the annual subscription is broadly similar to the annual subscription that would be payable for an occurrence-based membership.

After many years, Kono decides to retire. There may still be adverse incidents that took place during his Medical Protection membership which may lead to a complaint or claim, but of which he remains unaware, and so has not reported to us.

In order to report adverse incidents that occurred while he was practising, but that he only became aware of after he had retired, Kono will need to apply to purchase ERBs from us. As he is retiring, Kono has two options, he can either apply for an annual or 10-year ERB, both are subject to availability and acceptance.

To learn more about ERBs and how they work, please go to pages 8-9.

## CLAIMS-MADE SUBSCRIPTIONS



\*Please note, annual increases will vary in line with our normal actuarial review and analysis of the claims environment and inflationary factors.



# LIMITS TO ASSISTANCE AND INDEMNITY

Where we do provide assistance or indemnity, there will be a financial limit for each membership year.

The limit is set in advance for each membership year and applies to all adverse incidents that are reported in that year. We currently have a robust limit of HK\$ 150 million, which gives us ample room to assist with multiple matters should they fall within the same year.

The limit applies whether this is for one individual adverse incident, or for the total of all adverse incidents reported in a single membership year.

## SOME EXAMPLES:

A single claim worth HK\$ 100 million will be below the limit.

Ten claims – worth HK\$ 10 million each – in a single year will be below the limit.

Two claims in a single year – one worth HK\$ 100 million and one worth HK\$ 60 million – will exceed the limit.

A single claim for HK\$ 155 million will exceed the limit.



# LEAVING CLAIMS-MADE PROTECTION

Our experience shows that claims are rarely made immediately after an adverse incident occurs. A patient can potentially make a complaint or claim against you even after you have stopped practising – whether through a career change, retirement or even after your death.

It is important that you have adequate indemnity in place to protect you when you leave Medical Protection membership.

## NOTIFICATION PERIOD

You will have a 30-day period at the end of your membership to report any adverse incidents that occurred during your continuous membership, but that you have only just become aware of. This 30-day notification period does not form part of your Medical Protection membership, and you will not be able to report or subsequently request assistance for any adverse incidents that occur during this time.

## PROTECTION AFTER PROFESSIONAL PRACTICE

When you decide to retire or stop your medical practice you should consider applying for ERBs from Medical Protection or arranging for alternative cover through a new provider. Without this you will not be protected for any adverse incidents that happened during your membership that you did not report to us during your membership period.

Granting ERBs is at the discretion of Medical Protection, in accordance with the Memorandum and Articles of Association.

In order to make an application please read section 8 which supplies more information on ERBs and how to apply.

## SWITCHING INDEMNITY SUPPLIERS

If you continue practising but wish to move to another indemnity provider in the future, you will not be able to purchase ERBs from us. You will therefore need to ensure your new provider offers you adequate protection for any unreported adverse incidents that occurred during your claims-made membership with us. This is known as 'nose cover'.



# EXTENDED REPORTING BENEFITS (ERBs)

Extended Reporting Benefits enable you to request assistance and report adverse incidents that occurred during your claims-made membership, but that you only become aware of after your Medical Protection membership ended.

It is important to consider purchasing Extended Reporting Benefits as it is not always obvious that an adverse incident has occurred and it is likely you will only be made aware of this when a claim or complaint is received, which could be years later, after you have ceased practice or even after you have retired.

If you do not purchase ERBs and later learn that there were adverse incidents that you were unaware of during your membership (or in the 30-day post membership notification period), and therefore had not reported these to Medical Protection, you would not have the right to request assistance with any subsequent claims that related to these adverse incidents.

## QUALIFYING CRITERIA

### RETIREMENT

If you choose to retire and permanently stop clinical practice, you may wish to apply to purchase ERBs. You will be able to apply for an annual or 10 year ERB. You can apply for ERBs by contacting [mps@hkma.org](mailto:mps@hkma.org)

### MAKING CHANGES TO YOUR PRACTICE

If you permanently change your practice and move to a speciality for which claims made membership is not currently available, for example by ending obstetric practice and moving to gynaecology, then ERBs will allow you to report adverse incidents that relate to your obstetric practice, but that you only become aware of after your obstetric membership period has ended.

ERBs in such circumstances are currently available to purchase on an annual basis.

### MOVING OVERSEAS TO PRACTISE

If you stop practising in Hong Kong to move overseas, ERBs will allow you to report incidents that occurred while you were a member in Hong Kong, but that you only become aware of after your claims-made protection has ended. You will also need to make sure you have suitable protection in the country you choose to practise in, in line with that country's indemnity or insurance requirements.

ERBs in this circumstance are currently available to purchase on an annual basis.



#### EXTENDED BREAK FROM PRACTICE

If you wish to take a career break, or are unable to practise for a period of up to 12 months, for example to go on parental leave, you will need to continue paying an adjusted membership subscription. This will allow you to report adverse incidents that occurred from past practice.

You may be eligible to pay a reduced amount during your extended break from practice because you are only seeking protection against the risks of earlier adverse incidents, as you will not be exposed to new risk while on an extended break.

If you take an extended break from practice, or are otherwise unable to practise for more than 12 months, ERBs in this circumstance may be available on an annual basis, subject to approval.

Please contact us to discuss your individual circumstances.

#### DEATH WHILE IN MEMBERSHIP

In the event of your death while in membership with claims-made protection, your personal representatives can act on behalf of your estate to report complaints or claims which you would have been entitled to report. Your personal representatives can also apply, within 90 days of your death, to purchase ERBs.

ERBs in this circumstance are available to purchase annually or to cover a 10 year period.

#### DEATH AFTER YOUR MEMBERSHIP HAS ENDED

If you are no longer a member with claims-made protection at the time of your death but have previously purchased ERBs, your personal representatives can continue to report any complaints or claims.

If you leave membership, but die within 30 days of leaving, then your personal representatives will have 90 days from your last day of membership to apply to purchase ERBs.

If at the time of your death you had left membership and had not purchased ERBs in the 30 days following the end of your membership, your personal representatives will not be able to apply to purchase ERBs or report any adverse incidents. Hence, they will become liable for any claims that are later brought against you and your estate.



# APPLYING FOR AND PURCHASING EXTENDED REPORTING BENEFITS (ERBs)

## APPLYING FOR ERBs

You can apply to purchase ERBs if you meet one of the qualifying criteria outlined in section 8.

To be considered, your application must be received within 30 days of the end of your membership with claims-made protection. In the event of your death, your personal representatives must submit an application to purchase ERBs within 90 days of your death.

If you purchase a 10 year or annual ERB and want to purchase further ERBs, this must be done within 30 days of the end date of your current ERB period. Granting ERBs is at the discretion of Medical Protection, in accordance with the Memorandum and Articles of Association.

[medicalprotection.org/memoarts](https://www.medicalprotection.org/memoarts)

In order to make an application, please contact  
[mps@hkma.org](mailto:mps@hkma.org)

## COST OF ERBs


Costs for ERBs are determined on an individual basis.

Predicting the final price of a period of ERBs is difficult because of the rapidly changing claims environment and because it will also depend upon the length of your career and practice history.

We do understand the desire to know what the likely cost will be. For illustrative purposes, we would say that if you are considering retiring, provided the litigation environment remains as it is now, and the basis upon which we are able to offer ERBs remains unchanged, we do not anticipate that the cost of a 10 year ERB will be more than three times your final, full year membership subscription with claims-made protection.



## HOW TO GET IN TOUCH

 800 908 433

 [mps@hkma.org](mailto:mps@hkma.org)

[medicalprotection.org](https://www.medicalprotection.org)

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