

# RISKALERT

SPECIAL POLICY UPDATE EDITION DECEMBER 2018 NO 6/2018

## IN THIS EDITION

- A note on amendments made to the AIIF Master Policy for the 2018/2019 scheme year 1
- The amended AIIF Master Policy 2
- The AIIF Risk Management self-assessment questionnaire 9

## A note on amendments made to the AIIF Master Policy for the 2018/2019 scheme year

### PRACTITIONERS PLEASE NOTE THAT THE AIIF MASTER POLICY HAS BEEN AMENDED

**AIIF:** Thomas Harban, General Manager, Attorneys Insurance Indemnity Fund, 1256 Heuwel Avenue, Centurion 0127 • PO Box 12189, Die Hoewes 0163 • Docex 24, Centurion • Tel: 012 622 3900  
Website: [www.aiif.co.za](http://www.aiif.co.za) • Twitter handle: @AIIFZA

**Prescription Alert,** 2nd Floor, Waalburg Building, 28 Wale Street, Cape Town 8001 • PO Box 3062, Cape Town, 8000, South Africa, Docex 149 • Tel: (021) 422 2830 • Fax: (021) 422 2990  
E-mail: [alert@aiif.co.za](mailto:alert@aiif.co.za) • Website: [www.aiif.co.za](http://www.aiif.co.za)

**Attorneys Fidelity Fund,** 5th Floor, Waalburg Building, 28 Wale Street, Cape Town 8001 • PO Box 3062, Cape Town, 8000, South Africa, Docex 154 • Tel: (021) 424 5351 • Fax: (021) 423 4819  
E-mail: [attorneys@fidfund.co.za](mailto:attorneys@fidfund.co.za) • Website: [www.fidfund.co.za](http://www.fidfund.co.za)

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Please note that the Risk Alert Bulletin is intended to provide general information to practising attorneys and its contents are not intended as legal advice.



**Attorneys Insurance Indemnity Fund (NPC)**

Est. 1993 by the Attorneys Fidelity Fund



**LEGAL PRACTITIONERS FIDELITY FUND**

SOUTH AFRICA

**T**he Attorneys Insurance Indemnity Fund NPC (the AIIF) Master Policy has been amended. The amended policy has been included in this special policy update edition of the *Bulletin*.

Historically, the AIIF Master Policy extended cover to practitioners who were in possession of, or obliged to apply for, a Fidelity Fund certificate. This has now changed. **The amended policy comes into effect on 1 December 2018.**

The effect of the amendments is that only practitioners who are in possession of a valid Fidelity Fund certificate will be afforded indemnity if they had such a certificate on the date of the cause of action (the act, error or omission) giving rise to the claim. The aims of the amendment are to align the policy with the provisions of the Legal Practice Act 28 of 2014 (the Act), the general principles of insurance and the legal obligations of the AIIF and insured practitioners.

S 84(1) of the Act provides that every attorney and every advocate referred to in s 34(2)(b) who practices or is deemed to practice -

(a) for his or her own account either alone or in a partnership; or



**Thomas Harban,  
Editor**

(b) as a director of a practice which is a juristic entity, must be in possession of a Fidelity Fund certificate.

Rendering legal services in contravention of s 84(1) is an offence (see s94(8)) and a person convicted of contravening that section of the Act is liable:

- (a) to pay a fine or to imprisonment for a period of up to two years (or both such imprisonment and payment of a fine);
- (b) to be struck off the Roll of Legal Practitioners; and
- (c) is not entitled to any fee, reward or reimbursement in respect of legal services rendered.

## A note on amendments made to the AIF Master Policy for the 2018/2019 scheme year<sup>continued...</sup>

The AIF will not provide indemnity in respect of legal services rendered in violation of the Act as this would amount to the indemnification of illegal action carried out intentionally - insurance cover cannot be provided in respect of an intentional unlawful act.

As a registered short-term insurance company, the AIF must comply with the Financial Sector Regulatory Act 9 of 2017 (the Financial Sector Regulatory Act). The objects of the Financial Sector Regulatory Act include the prevention of financial crime (see s 7(e)).

The court in *NW Civil Contractors CC v Anton Ramaano Inc and Another* (993/2016) [2018] ZALMPHHC 1 (14 May 2018) found that the actions of an attorney who, in violation of s 41 of the Attorneys Act 53 of 1979 (the predecessor to s 84 of the Act), practised without a Fidelity Fund certificate were void *ab initio*.

The amendments to the Master Policy have been effected in the course of this insurance year in order to align the indemnity provided with the legal obligations of the company.

Regard must be had to the following

clauses in the policy which have been amended:

- XIV (the definition of Fidelity Fund certificate);
- XX (the definition of Legal Services);
- 5 and 6 (who is insured); and
- 16 (t) (the exclusion of claims arising from legal services carried out on violation of the Act).

Practitioners liable to practice with Fidelity Fund certificates must thus ensure that they timeously apply for such certificates in order to avoid contravening the Act and also to ensure that the legal services they provide fall within the ambit of the AIF Master Policy.

We have also included a copy of the risk management self-assessment questionnaire which practices must complete annually (clauses XXIV and 23 of the Master Policy). It is an opportune time to complete the risk management self-assessment at the same time that the application for the Fidelity Fund certificate is made.

The annual completion of this questionnaire is compulsory, both in terms of the Master Policy (see clauses XXIV and 23) and the South African Le-

gal Practice Council Rules (the Rules) made under the Act. The AIF will not provide indemnity when you have a claim, until you provide it with a copy of a questionnaire which has been completed in the applicable year. For attorneys, point 15 of the application for a Fidelity Fund certificate form (schedule 7A of the Rules) provides that this form must be completed. Advocates rendering legal services in terms of section 34(2)(b) of the Act must also complete this questionnaire annually (see point 13 of the application for a Fidelity Fund certificate form for advocates (schedule 7B of the Rules)). You will not be issued with a Fidelity Fund certificate if you have not complied with this requirement. Any reference to a firm in the form includes advocates referred to in section 34(2)(b) of the Act. The aim of the form is to collect risk management and underwriting information. The form must be completed even if your firm does not have any claims pending.

**Thomas Harban**

**General Manager, AIF**

**Email: [thomas.harban@aiif.co.za](mailto:thomas.harban@aiif.co.za)**

**Telephone: (012) 622 3928**

## THE AMENDED AIF MASTER POLICY FOR THE 2018/2019 SCHEME YEAR



**Attorneys Insurance Indemnity Fund (NPC)**

Est. 1993 by the Attorneys Fidelity Fund

### Preamble

The **Attorneys Fidelity Fund**, as permitted by the Act, has contracted with the **Insurer** to provide professional indemnity insurance to the **Insured**, in a sustainable manner and with due regard for the interests of the public by:

- a) protecting the integrity, esteem, status and assets of the **Insured** and the legal profession;
- b) protecting the public against indemnifiable and provable losses arising out of **Legal Services** provided by the **Insured**, on the basis set out in this policy.

### Definitions:

- I **Act:** The Attorneys Act 53 of 1979 (as amended or as replaced by the Legal Practice Act 28 of 2014). Where there is any reference to a specific section of the current Act in this Policy, then such reference will be to a corresponding section in the Legal Practice Act when that section comes into effect;
- II **Annual Amount of Cover:** The total available amount of cover for the **Insurance Year** for the ag-

- gregate of payments made for all **Claims, Approved Costs** and **Claimants' Costs** in respect of any **Legal Practice** as set out in Schedule A;
- III **Approved Costs:** Legal and other costs incurred by the **Insured** with the **Insurer's** prior written permission (which will be in the **Insurer's** sole discretion) in attempting to prevent a **Claim** or limit the amount a **Claim**;
- IV **Attorneys Fidelity Fund:** As referred to in Section 25 of the **Act**;
- V **Bridging Finance:** The provision of short-term finance to a party to a **Conveyancing Transaction** before it has been registered in the Deeds Registry;
- VI **Claim:** A written demand for compensation from the **Insured**, which arises out of the **Insured's** provision of **Legal Services**; (For the purposes of this definition, a written demand is any written communication or legal document that either makes a demand for or intimates or implies an intention to demand compensation or damages from an **Insured**);
- VII **Claimant's Costs:** The legal costs the **Insured** is obliged to pay to a claimant by order of a court, arbitrator, or by an agreement approved by the **Insurer**;
- VIII **Conveyancing Transaction:** A transaction which:
- involves the transfer of legal title to or the registration of a real right in immovable property from one or more legal entities or natural persons to another; and/or
  - involves the registration or cancellation of any mortgage bond or real right over immovable property; and/or
  - is required to be registered in any Deeds Registry in the Republic of South Africa, in terms of any relevant legislation;
- IX **Cybercrime:** Any criminal or other offence that is facilitated by or involves the use of electronic communications or information systems, including any device or the internet or any one or more of them. (The device may be the agent, the facilitator or the target of the crime or offence);
- X **Defence Costs:** The reasonable costs the **Insurer** (or **Insured** - with the **Insurer's** consent) incurs in investigating and defending a **Claim** against an **Insured**;
- XI **Dishonest:** Bears its ordinary meaning but includes conduct which may occur without an **Insured's** subjective purpose, motive or intent, but which a reasonable legal practitioner would consider to be deceptive or untruthful or lacking integrity or conduct which is generally not in keeping with the ethics of the legal profession;
- XII **Employee:** A person who is or was employed or engaged by the **Legal Practice** to assist in providing **Legal Services**. (This includes in-house legal consultants, associates, professional assistants, candidate attorneys, paralegals and clerical staff but does not include an independent contractor who is not a **Practitioner**.);
- XIII **Excess:** The first amount payable by the **Insured** (or deductible) in respect of each and every **Claim** (including **Claimant's Costs**) as set out in schedule B.
- XIV **Fidelity Fund Certificate:** A certificate provided in terms of section 42 of the **Act**, or a certificate issued in terms of section 85(6) of the Legal Practice Act 28 of 2014 read with Rules 3, 47, 48 and 49 of the South African Legal Practice Council Rules made under the authority of section 95(1) of the Legal Practice Act;
- XV **Innocent Principal:** Each present or former **Principal** who:
- may be liable for the debts and liabilities of the **Legal Practice**;
  - did not personally commit or participate in committing the **Dishonest**, fraudulent or other criminal act and had no knowledge or awareness of such act;
- XVI **Insured:** The persons or entities referred to in clauses 5 and 6 of this policy;
- XVII **Insurer:** The Attorneys Insurance Indemnity Fund NPC, Reg. No. 93/03588/08;
- XVIII **Insurance Year:** The period covered by the policy, which runs from 1 July of the first year to 30 June of the following year;
- XIX **Legal Practice:** The person or entity listed in clause 5 of this policy;
- XX **Legal Services:** Work reasonably done or advice given in the ordinary course of carrying on the business of a **Legal Practice** in the Republic of South Africa in accordance with the provisions of section 33 of the Legal Practice Act. Work done or advice given on the law applicable in jurisdictions other than the Republic of South Africa are specifically excluded, unless provided by a person admitted to practise in the applicable jurisdiction;
- XXI **Practitioner:** Any attorney, advocate, notary or conveyancer as defined in the **Act**;
- XXII **Prescription Alert:** The computerised back-up diary system that the **Insurer** makes available to the **Insured**;
- XXIII **Principal:** A sole **Practitioner**, partner or director of a **Legal Practice** or any person who is publicly held out to be a partner or director of a **Legal Practice**;
- XXIV **Risk Management Questionnaire:** A self-assessment questionnaire which can be downloaded from or completed on the **Insurer's** website ([www.aiif.co.za](http://www.aiif.co.za)) and which must be completed annually by the senior partner or director or designated risk manager of the **Insured** as referred to in clause 5;
- XXV **Road Accident Fund claim (RAF):** A claim for compensation for losses in respect of bodily injury or death caused by, arising from or in any way connected with the driving of a motor vehicle (as defined in the Road Accident Fund Act 56 of 1996 or any predecessor or successor of that Act) in the Republic of South Africa;
- XXVI **Senior Practitioner:** A **Practitioner** with no less than 15 years' standing in the legal profession;
- XXVII **Trading Debt:** A debt incurred as a result of the undertaking of the **Insured's** business or trade. (Trading debts are not compensatory in nature and this policy deals only with claims for compensation.) This exclusion includes (but is not limited to) the following:
- a refund of any fee or disbursement charged by the **Insured** to a client;
  - damages or compensation or payment calcu-

# RISKALERT

- lated by reference to any fee or disbursement charged by the **Insured** to a client;
- c) payment of costs relating to a dispute about fees or disbursements charged by the **Insured** to a client; and/or
  - d) any labour dispute or act of an administrative nature in the **Insured's** practice.

## What cover is provided by this policy?

1. On the basis set out in this policy, the **Insurer** agrees to indemnify the **Insured** against professional legal liability to pay compensation to any third party:
  - a) that arises out of the provision of **Legal Services** by the **Insured**; and
  - b) where the **Claim** is first made against the **Insured** during the current **Insurance Year**.
2. The **Insurer** agrees to indemnify the **Insured** for **Claimants' Costs** and **Defence Costs** on the basis set out in this policy.
3. The **Insurer** agrees to indemnify the **Insured** for **Approved Costs** in connection with any **Claim** referred to in clause 1.
4. The **Insurer** will not indemnify the **Insured** in the current **Insurance Year**, if the circumstance giving rise to the **Claim** has previously been notified to the **Insurer** by the **Insured** in an earlier **Insurance Year**, on the basis set out in clause 38.

## Who is insured?

5. Provided that each **Principal** had a **Fidelity Fund Certificate** at the time of the circumstance, act, error or omission giving rise to the **Claim**, the **Insurer** insures all **Legal Practices** providing **Legal Services**, including:
  - a) a sole **Practitioner**;
  - b) a partnership of **Practitioners**;
  - c) an incorporated **Legal Practice**; and
  - d) an advocate referred to in section 34 (2)(b) of the **Legal Practice Act**.
6. The following are included in the cover, subject to the **Annual Amount of Cover** applicable to the **Legal Practice**:
  - a) a **Principal** of a **Legal Practice** providing **Legal Services**, provided that the **Principal** had a **Fidelity Fund Certificate** at the time of the circumstance, act, error or omission giving rise to the **Claim**;
  - b) a previous **Principal** of a **Legal Practice** providing **Legal Services**, provided that that **Principal** had a **Fidelity Fund Certificate** at the time of the circumstance, act, error or omission giving rise to the **Claim**;
  - c) an **Employee** of a **Legal Practice** providing **Legal Services** at the time of the circumstance, act, error or omission giving rise to the **Claim**;
  - d) the estates or legal representatives of the people referred to in clauses 6(a), 6(b) and 6(c).
  - e) subject to clause 16(c), a liquidator or trustee in an insolvent estate, where the appointment is or was motivated solely because the **Insured** is a **Practitioner** and the fees derived from such appointment are paid directly to the **Legal Practice**.

## Amount of cover

7. The **Annual Amount of Cover**, as set out in Schedule A, is calculated by reference to the number of **Principals** that made up the **Legal Practice** on the date of the circumstance, act, error or omission giving rise to the **Claim**.

A change during the course of an insurance year in the composition of a legal practice which is a partnership will not constitute a new legal practice for purposes of this policy and would not entitle that legal practice to more than one limit of indemnity in respect of that insurance year.
8. Schedule A sets out the maximum **Annual Amount of Cover** that the **Insurer** provides per **Legal Practice**. This amount includes payment of compensation (capital and interest) as well as **Claimant's Costs** and **Approved Costs**.
9. Cover for **Approved Costs** is limited to 25% of the **Annual Amount of Cover** or such other amount that the **Insurer** may allow in its sole discretion.

## Insured's excess payment

10. The **Insured** must pay the **Excess** in respect of each **Claim**, directly to the claimant or the claimant's legal representatives, immediately it becomes due and payable. Where two or more **Claims** are made simultaneously, each **Claim** will attract its own **Excess** and to the extent that one or more **Claims** arise from the same circumstance, act, error or omission the **Insured** must pay the **Excess** in respect of each such **Claim**;
11. The **Excess** is calculated by reference to the number of **Principals** that made up the **Legal Practice** on the date of the circumstance, act, error or omission giving rise to the **Claim**, and the type of matter giving rise to the **Claim**, as set out in Schedule B.
12. The **Excess** set out in column A of Schedule B applies:
  - a) in the case of a **Claim** arising out of the prescription of a **Road Accident Fund claim**. This **Excess** increases by an additional 20% if **Prescription Alert** has not been used and complied with by the **Insured**, by timeous lodgement and service of summons in accordance with the reminders sent by **Prescription Alert**;
  - b) in the case of a **Claim** arising from a **Conveyancing Transaction**.
13. In the case of a **Claim** where clause 20 applies, the **excess** increases by an additional 20%.
14. No **Excess** applies to **Approved costs** or **Defence costs**.
15. The **Excess** set out in column B of Schedule B applies to all other types of **Claim**.

## What is excluded from cover

16. This policy does not cover any liability for compensation:
  - a) arising out of or in connection with the **Insured's Trading Debts** or those of any **Legal Practice** or business managed by or carried

- b) on by the **Insured**;  
arising from or in connection with misappropriation or unauthorised borrowing by the **Insured** or **Employee** or agent of the **Insured** or of the **Insured's** predecessors in practice, of any money or other property belonging to a client or third party and/or as referred to in Section 26 of the **Act**;
- c) which is insured or could more appropriately have been insured under any other valid and collectible insurance available to the **Insured**, covering a loss arising out of the normal course and conduct of the business or where the risk has been guaranteed by a person or entity, either in general or in respect of a particular transaction, to the extent to which it is covered by the guarantee. This includes but is not limited to Misappropriation of Trust Funds, Personal Injury, Commercial and Cybercrime insurance policies;
- d) arising from or in terms of any judgment or order(s) obtained in the first instance other than in a court of competent jurisdiction within the Republic of South Africa;
- e) arising from or in connection with the provision of investment advice, the administration of any funds or taking of any deposits as contemplated in:
  - (i) the Banks Act 94 of 1990;
  - (ii) the Financial Advisory and Intermediary Services Act 37 of 2002;
  - (iii) the Agricultural Credit Act 28 of 1996 as amended or replaced;
  - (iv) any law administered by the Financial Sector Conduct Authority and/or the South African Reserve Bank and any regulations issued thereunder;
  - (v) the Medical Schemes Act 131 of 1998 as amended or replaced;
- f) arising where the **Insured** is instructed to invest money on behalf of any person, except for an instruction to invest the funds in an interest-bearing account in terms of section 78(2A) of the **Act**, and if such investment is done pending the conclusion or implementation of a particular matter or transaction which is already in existence or about to come into existence at the time the investment is made;  
This exclusion does not apply (subject to the other provisions of this policy) to funds which the **Insured** is authorised to invest in his or her capacity as executor, trustee, curator or in any similar representative capacity;
- g) arising from or in connection with any fine, penalty, punitive or exemplary damages awarded against the **Insured**, or from an order against the **Insured** to pay costs *de bonis propriis*;
- h) arising out of or in connection with any work done on behalf of an entity defined in the Housing Act 107 of 1997 or its representative, with respect to the National Housing Programme provided for in the Housing Act; directly or indirectly arising from, or in connection with or as a consequence of the provision of **Bridging Finance** in respect of a **Conveyancing Transaction**. This exclusion does not apply where **Bridging Finance** has been provided for the payment of:
  - (i) transfer duty and costs;
  - (ii) municipal or other rates and taxes relating to the immovable property which is to be transferred;
  - (iii) levies payable to the body corporate or homeowners' association relating to the immovable property which is to be transferred;
- i) arising from the **Insured's** having given an unqualified undertaking legally binding his or her practice, in matters where the fulfilment of that undertaking is dependent on the act or omission of a third party;
- j) arising out of or in connection with a breach of contract unless such breach is a breach of professional duty by the **Insured**;
- k) arising where the **Insured** acts or acted as a business rescue practitioner as defined in section 128 (1) (d) of the Companies Act 71 of 2008;
- l) arising out of or in connection with the receipt or payment of funds, whether into or from trust or otherwise, where that receipt or payment is unrelated to or unconnected with a particular matter or transaction which is already in existence or about to come into existence, at the time of the receipt or payment and in respect of which the **Insured** has received a mandate;
- m) arising out of a defamation **Claim** that is brought against the **Insured** ;
- n) arising out of **Cybercrime**;
- o) arising out of a **Claim** against the **Insured** by an entity in which the **Insured** and/or related or interrelated persons\* has/have a material interest and/or hold/s a position of influence or control.\*\*
  - \* as defined in section 2(1) of the Companies Act 71 of 2008
  - \*\* as defined in section 2(2) of the Companies Act 71 of 2008
- p) For the purposes of this paragraph, "material interest" means an interest of at least ten (10) percent in the entity;
- q) arising out of or in connection with a **Claim** resulting from:
  - (i) War, invasion, act of foreign enemy, hostilities or warlike operations (whether war is declared or not) civil war, mutiny, insurrection, rebellion, revolution, military or usurped power;
  - (ii) Any action taken in controlling, preventing, suppressing or in any way relating to the excluded situations in (i) above including, but not limited to, confiscation, nationalisation, damage to or destruction of property by or under the control of any Government or Pub-

- lic or Local Authority;
- (iii) Any act of terrorism regardless of any other cause contributing concurrently or in any other sequence to the loss;
- For the purpose of this exclusion, terrorism includes an act of violence or any act dangerous to human life, tangible or intangible property or infrastructure with the intention or effect to influence any Government or to put the public or any section of the public in fear;
- r) arising out of or in connection with any **Claim** resulting from:
- (i) ionising radiations or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion or use of nuclear fuel;
- (ii) nuclear material, nuclear fission or fusion, nuclear radiation;
- (iii) nuclear explosives or any nuclear weapon;
- (iv) nuclear waste in whatever form;
- regardless of any other cause or event contributing concurrently or in any other sequence to the loss. For the purpose of this exclusion only, combustion includes any self-sustaining process of nuclear fission or fusion;
- s) arising out of or resulting from the hazardous nature of asbestos in whatever form or quantity; and
- t) **Legal Services** carried out in violation of the **Act** and the **Rules**.

## Fraudulent applications for indemnity

17. The **Insurer** will reject a fraudulent application for indemnity.

## Claims arising out of dishonesty or fraud

18. Any **Insured** will not be indemnified for a **Claim** that arises:
- a) directly or indirectly from any **Dishonest**, fraudulent or other criminal act or omission by that **Insured**;
- b) directly or indirectly from any **Dishonest**, fraudulent or other criminal act or omission by another party and that **Insured** was knowingly connected with, or colluded with or condoned or acquiesced or was party to that dishonesty, fraud or other criminal act or omission.
- Subject to clauses 16, 19 and 20, this exclusion does not apply to an **Innocent Principal**.
19. In the event of a **Claim** to which clause 18 applies, the **Insurer** will have the discretion not to make any payment, before the **Innocent Principal** takes all reasonable action to:
- a) institute criminal proceedings against the alleged **Dishonest** party and present proof thereof to the **Insurer**; and/or
- b) sue for and obtain reimbursement from any such alleged **Dishonest** party or its or her or his estate or legal representatives;
- Any benefits due to the alleged **Dishonest** party held by the **Legal Practice**, must, to the extent allowable by law, be deducted from the **Legal**

## Practice's loss.

20. Where the **Dishonest** conduct includes:
- a) the witnessing (or purported witnessing) of the signing or execution of a document without seeing the actual signing or execution; or
- b) the making of a representation (including, but not limited to, a representation by way of a certificate, acknowledgement or other document) which was known at the time it was made to be false;
- The **Excess** payable by the **Innocent Insured** will be increased by an additional 20%.
21. If the **Insurer** makes a payment of any nature under the policy in connection with a **Claim** and it later emerges that it wholly or partly arose from a **Dishonest**, fraudulent or other criminal act or omission of the **Insured**, the **Insurer** will have the right to recover full repayment from that **Insured** and any party knowingly connected with that **Dishonest**, fraudulent or criminal act or omission.

## The Insured's rights and duties

22. The **Insured** must;
- a) give immediate written notice to the **Insurer** of any circumstance, act, error or omission that may give rise to a **Claim**; and
- b) notify the **Insurer** in writing as soon as practicable, of any **Claim** made against them, but by no later than one (1) week after receipt by the **Insured**, of a written demand or summons/counterclaim or application. In the case of a late notification of receipt of the written demand, summons or application by the **Insured**, the **Insurer** reserves the right not to indemnify the **Insured** for costs and ancillary charges incurred prior to or as a result of such late notification.
23. Once the **Insured** has notified the **Insurer**, the **Insurer** will require the **Insured** to provide a completed **Risk Management Questionnaire** and to complete a claim form providing all information reasonably required by the **Insurer** in respect of the **Claim**. The **Insured** will not be entitled to indemnity until the claim form and **Risk Management Questionnaire** have been completed by the **Insured**, to the **Insurer's** reasonable satisfaction and returned to the **Insurer**.
24. The **Insured**:
- 24.1. shall not cede or assign any rights in terms of this policy;
- 24.2. agrees not to, without the **Insurer's** prior written consent:
- a) admit or deny liability for a **Claim**;
- b) settle a **Claim**;
- c) incur any costs or expenses in connection with a **Claim** unless the sum of the **Claim** and **Claimant's Costs** falls within the **Insured's Excess**;
- failing which, the **Insurer** will be entitled to reject the **Claim**, but will have sole discretion to agree to provide indemnity, wholly or partly.
25. The **Insured** agrees to give the **Insurer** and any of its

appointed agents:

- 25.1. all information and documents that may be reasonably required, at the **Insured's** own expense.
- 25.2. assistance and cooperation, which includes, but not limited to, preparing, service and filing of notices and pleadings by the **Insured** as specifically instructed by the **Insurer** at the **Insurer's** expense, which expenses must be agreed to in writing.
26. The **Insured** also gives the **Insurer** or its appointed agents the right of reasonable access to the **Insured's** premises, staff and records for purposes of inspecting or reviewing them in the conduct of an investigation of any **Claim** where the **Insurer** believes such review or inspection is necessary.
27. Notwithstanding anything else contained in this policy, should the **Insured** fail or refuse to provide information, documents, assistance or cooperation in terms of this policy, to the **Insurer** or its appointed agents and remain in breach for a period of ten (10) working days after receipt of written notice to remedy such breach (from the **Insurer** or its appointed agents) the **Insurer** has the right to:
  - a) withdraw indemnity; and/or
  - b) report the **Insured's** conduct to the regulator; and/or
  - c) recover all payments and expenses incurred by it.For the purposes of this paragraph, written notice will be sent to the address last provided to the **Insurer** by the **Insured** and will be deemed to have been received five (5) working days after electronic transmission or posting by registered mail.
28. By complying with the obligation to disclose all documents and information required by the **Insurer** and its legal representatives, the **Insured** does not waive any claim of legal professional privilege or confidentiality.
29. Where a breach of, or non-compliance with any term of this policy by the **Insured** has resulted in material prejudice to the handling or settlement of any **Claim** against the **Insured**, the **Insured** will reimburse the **Insurer** the difference between the sum payable by the **Insurer** in respect of that **Claim** and the sum which would in the sole opinion of the **Insurer** have been payable in the absence of such prejudice. It is a condition precedent of the **Insurer's** right to obtain reimbursement, that the **Insurer** has fully indemnified the **Insured** in terms of this policy.
30. Written notice of any new **Claim** must be given to:

**Attorneys Insurance Indemnity Fund NPC**  
1256 Heuwel Avenue|Centurion|0127  
PO Box 12189|Die Hoewes|0163  
Docex 24 | Centurion  
**Email:** [claims@aiif.co.za](mailto:claims@aiif.co.za)  
**Tel:**+27(0)12 622 3900
31. The **Insured** agrees that:
  - a) the **Insurer** has full discretion in the conduct of the **Claim** against the **Insured** including, but not limited to, its investigation, defence, settlement or appeal in the name of the **Insured**;
  - b) the **Insurer** has the right to appoint its own legal representative(s) or service providers to act in the conduct and the investigation of the **Claim**;  
The exercise of the **Insurer's** discretion in terms of a) will not be unreasonable.
32. The **Insurer** agrees that it will not settle any **Claim** against any **Insured** without prior consultation with that **Insured**. However, if the **Insured** does not accept the **Insurer's** recommendation for settlement:
  - a) the **Insurer** will not cover further **Defence Costs** and **Claimant's Costs** beyond the date of the **Insurer's** recommendation to the **Insured**; and
  - b) the **Insurer's** obligation to indemnify the **Insured** will be limited to the amount of its recommendation for settlement or the **Insured's** available **Annual Amount of Cover** (whichever is the lesser amount).
33. If the amount of any **Claim** exceeds the **Insured's** available **Annual Amount of Cover** the **Insurer** may, in its sole discretion, hold or pay over such amount or any lesser amount for which the **Claim** can be settled. The **Insurer** will thereafter be under no further liability in respect of such a **Claim**, except for the payment of **Approved Costs** or **Defence Costs** incurred prior to the date on which the **Insurer** notifies the **Insured** of its decision.
34. Where the **Insurer** indemnifies the **Insured** in relation to only part of any **Claim**, the **Insurer** will be responsible for only the portion of the **Defence Costs** that reflects an amount attributable to the matters so indemnified. The **Insurer** reserves the right to determine that proportion in its absolute discretion.
35. In the event of the **Insured's** material non-disclosure or misrepresentation in respect of the application for indemnity, the **Insurer** reserves the right to report the **Insured's** conduct to the regulator and to recover any amounts that it may have incurred as a result of the **Insured's** conduct.
36. If the **Insurer** makes payment under this policy, it will not require the **Insured's** consent to take over the **Insured's** right to recover (whether in the **Insurer's** name or the name of the **Insured**) any amounts paid by the **Insurer**;
37. All recoveries made in respect of any **Claim** under this policy will be applied (after deduction of the costs, fees and expenses incurred in obtaining such recovery) in the following order of priority:
  - a) the **Insured** will first be reimbursed for the amount by which its liability in respect of such **Claim** exceeded the **Amount Of Cover** provided by this policy;
  - b) the **Insurer** will then be reimbursed for the amount of its liability under this policy in-

## The Insurer's rights and duties

# RISKALERT

- c) spect of such **Claim**;  
any remaining amount will be applied toward the **Excess** paid by the **Insured** in respect of such **Claim**.

38. If the **Insured** gives notice during an **Insurance Year**, of any circumstance, act, error or omission (or a related series of acts, errors or omissions) which may give rise to a **Claim** or **Claims**, then any **Claim** or **Claims** in respect of that/those circumstance/s, act/s, error/s or omission/s subsequently made against the **Insured**, will for the purposes of this policy be considered to fall within one **Insurance Year**, being the **Insurance Year** of the first notice.

39. This policy does not give third parties any rights against the **Insurer**.

### How the parties will resolve disputes

40. Subject to the provisions of this policy, any dispute or disagreement between the **Insured** and the **Insurer** as to any right to indemnity in terms of this policy or as to any matter arising out of or in connection with this policy, must be dealt with in the following order:

- written submissions by the **Insured** must be referred to the **Insurer's** internal complaints/dispute team at [disputes@aiif.co.za](mailto:disputes@aiif.co.za) or to the address set out in clause 30 of this policy, within thirty (30) days of receipt of the written communication from the **Insurer** which has given rise to the dispute;
- should the dispute not have been resolved within thirty (30) days from the date of receipt by the **Insurer** of the submission referred to in a) then the parties must agree on an independent **Senior Practitioner**, to which the dispute can be referred for a determination. Failing an agreement, the choice of such **Senior Practitioner** must be referred to the President of the Law Society (or his/her successor in title) having jurisdiction over the **Insured**;
- the parties must make written submissions which will be referred for determination to the **Senior Practitioner** referred to in b). The costs incurred in so referring the matter and the costs of the **Senior Practitioner** will be borne by the unsuccessful party;
- the unsuccessful party must notify the successful party in writing, within thirty (30) days of the determination by the **Senior Practitioner**, if the determination is not accepted; The procedures in a) b) c) and d) above must be completed before any legal action is undertaken by the parties.

Complaints may be lodged with the:

Short Term Insurance Ombudsman

Tel: 011 726-8900

Fax: 011 726-5501

Share call: 0860 726 980

E-mail [info@osti.co.za](mailto:info@osti.co.za)

Web: <http://osti.co.za>

Physical Address: Sunnyside Office Park, 5<sup>th</sup>

Floor, Building D, 32 Princess of Wales, Terrace, Parktown

Postal Address: PO Box 32334, Braamfontein, 2017

### SCHEDULE A

Period of Insurance: 1<sup>st</sup> July 2018 to 30<sup>th</sup> June 2019 (both days inclusive)

No of Principals	Annual Amount of Cover for Insurance Year
1	R1 562 500
2	R1 562 500
3	R1 562 500
4	R1 562 500
5	R1 562 500
6	R1 562 500
7	R1 640 625
8	R1 875 000
9	R2 109 375
10	R2 343 750
11	R2 578 125
12	R2 812 500
13	R3 046 875
14 and above	R3 125 000

### SCHEDULE B

Period of Insurance: 1<sup>st</sup> July 2018 to 30<sup>th</sup> June 2019 (both days inclusive)

No of Principals	Column A Excess for prescribed RAF* and Conveyancing Claims**	Column B Excess for all other Claims**
1	R35 000	R20 000
2	R63 000	R36 000
3	R84 000	R48 000
4	R105 000	R60 000
5	R126 000	R72 000
6	R147 000	R84 000
7	R168 000	R96 000
8	R189 000	R108 000
9	R210 000	R120 000
10	R231 000	R132 000
11	R252 000	R144 000
12	R273 000	R156 000
13	R294 000	R168 000
14 and above	R315 000	R180 000

\*The applicable **Excess** will be increased by an additional 20% if **Prescription Alert** is not used and complied with.

\*\*The applicable **Excess** will be increased by an additional 20% if clause 20 of this policy applies.



## The AIIF Risk Management self-assessment questionnaire

### RISK MANAGEMENT SELF-ASSESSMENT QUESTIONNAIRE

#### IMPORTANT NOTES AND FAQ'S

*NB: If you have already completed one of these questionnaires in the year prior to notifying us of a claim/circumstance, you may submit that document and need not complete a new one.*

#### WHEN MUST I COMPLETE THE QUESTIONNAIRE?

As from 1 July 2016, the questionnaire MUST BE COMPLETED AT LEAST ONCE PER YEAR. The AIIF will not provide indemnity when you have a claim, until you provide it with a copy of a questionnaire which has been completed within the past year.

You may complete the questionnaire at any time, even if your firm does not have any claims pending. (In order to make it easier and save time, you might wish to complete it at the time when you complete your top-up insurance proposal or Fidelity Fund Certificate application. That way, you will have much of the information at your fingertips.)

#### WHERE DO I GET A COPY OF THE QUESTIONNAIRE?

1. You can complete a hard copy and send it to us. (You can obtain a copy from the AIIF or download it from our website ([www.aiif.co.za](http://www.aiif.co.za));
2. You can complete it online ([www.aiif.co.za](http://www.aiif.co.za)).

#### WHAT IS EXPECTED OF MY FIRM?

1. Every practice MUST **properly** complete this assessment every year and must submit it together with the claim form to the AIIF before indemnity can be provided.
2. It must be completed by a SENIOR PARTNER/SOLE PRACTITIONER/RISK and/or COMPLIANCE OFFICER or MANAGER/CHAIR OF THE RISK COMMITTEE.
3. When answering certain questions, you will come across the following request:

*"If no, see Risk Management Tips on Website [www.aiif.co.za](http://www.aiif.co.za)." If you do not have access to the internet and would like a copy of these tips, we can send you one by e-mail on request.*

#### SOME OF THE QUESTIONS DON'T REALLY APPLY TO ME AS I AM A SINGLE PRACTITIONER WITH NO STAFF/FEW STAFF. WHAT SHOULD I DO?

The questionnaire is aimed at practices of all sizes and types. Inevitably, there will be some questions that are not applicable to your practice. If that is the case, by all means answer "n/a".

NB: If you have already completed one of these questionnaires in the year prior to notifying us of a claim/circumstance, you may submit that document and need not complete a new one.

*Please read the following before the self-assessment is done:*

#### WHY DO YOU WANT THE INFORMATION?

The information which we ask for in this assessment will be treated as strictly confidential. It will not be disclosed to any other person, without your practice's WRITTEN permission. It will also not be used by the AIIF in any way to affect your practice's claims records or individual cover. An analysis of information and trends revealed by your answers may be used by the AIIF for GENERAL underwriting and risk management purposes. I elaborate below:

- To assist the insurer when setting and structuring deductibles and limits of indemnity for the profession as a whole, deciding on policy exclusions, conditions and possible premium setting.
- To raise awareness about risk management and to get practitioners thinking about risk management tools/procedures for their practices.
- To obtain relevant and usable general information and statistics about workloads, staff numbers, types of matters dealt with, stress levels, risk management/practice management and claims history.

# RISKALERT

To gain insight into which risk management/practice management procedures are in place/need to be in place in practices.

- To assist in the selection and formulation of the most effective risk management interventions.
- To assist in formulating a strategy to improve risk management/practice management at all levels.

## PRACTICE SELF-ASSESSMENT FORM

**THIS ASSESSMENT MUST BE COMPLETED ANNUALLY BY ONE OF THE FOLLOWING:**

**A SENIOR PARTNER/SOLE PRACTITIONER/RISK MANAGER/COMPLIANCE OFFICER/CHAIR OF THE RISK COMMITTEE**

### SECTION 1

#### 1. General practice information:

- I. Name under which practice is conducted .....
- II. Practice number .....
- III. Law Society membership .....
- IV. Is your practice a Sole Practice/Partnership/Incorporated Company?
- V. Have there been any significant changes to the constitution of your firm during the past three years?  
YES/NO  
If yes, please provide details of these changes.....  
.....  
.....

#### 2. Principal office details:

- I. Address and postal code .....
- II. Telephone .....
- III. Email .....
- IV. Docex .....
- V. Website .....
- VI. Details of any other physical address at which the practice will be carried on and name of practitioner in direct control .....
- .....
- .....

#### 3. Contact details of person completing this assessment.

- I. Capacity:  
Select one of the following: Senior Partner/Risk Manager/Chair of Risk Committee/Compliance Officer:
- II. Telephone .....
- III. Cell phone.....
- IV. E-mail address.....

#### 4. Composition of the practice.

Number of:

- I. Partners/directors.....  
Associates.....
- II. Candidate Attorneys.....
- III. Paralegals.....

IV. Other staff including secretaries.....

V. Total.....

**VI. DOES YOUR PRACTICE HAVE ANY LEGAL PROCESS OUTSOURCING (LPO) ARRANGEMENTS WITH OFFSHORE COMPANIES OR FIRMS OF ATTORNEYS? YES/NO**

If yes, please provide details of these arrangements and the numbers of professional staff and support staff involved .....

.....  
 .....

**VII. (For practices with fewer than 10 directors/partners) in the table below, list all partners/directors by name, together with their number of years in practice and their areas of specialisation.**

PARTNER/DIRECTOR'S NAME	PARTNER'S PRACTICE NO	YEARS IN PRACTICE	AREA OF SPECIALISATION

5. For the past financial year, please provide approximate percentages of total fees earned in the following categories of legal work:

- i. Conveyancing
  - ii. Commercial
  - iii. Criminal
  - iv. Debt collection
  - v. Estates - trustees executors administrators
  - vi. Insurance
  - vii. Investments
  - viii. Liquidations
  - ix. Marine
  - x. Matrimonial
  - xi. Patents & Trademarks
  - xii. Personal injury MVA
  - xiii. Medical malpractice
  - xiv. General litigation
  - xv. Legal Process Outsourcing (LPO)
  - xvi. Other (please specify any type of work that makes up a significant percentage of your fees)
- .....

SECTION 2

Risk Management Information

6. Does your practice have a specific individual responsible for risk management and/or quality control within the practice? YES/NO

If this is someone other than you, please give name, position, qualifications and contact details. That person should complete the Risk Management Section below, or assist you in completing it.

# RISKALERT

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7. When **engaging new employees**, does your practice always require and check references carefully? YES/NO/n/a

7.1 Do you check for unexplained gaps in employment history? YES/NO/n/a

7.2 Do you include criminal checks? YES/NO/n/a

8. Does your practice have in place **Minimum Operating Standards (MOS)** or a uniform set of standards of best practice for staff? YES/NO

*If no, see Risk Management Tips on Website [www.aiif.co.za](http://www.aiif.co.za)*

If yes:

I. are they (choose the correct one) for professional staff only/administrative staff only/both professional and administrative staff?

II. are they reduced to writing and available to staff in either electronic or hard copy? YES/NO

III. do you have a system in place to measure and ensure compliance with your MOS? YES/NO

9. Do you know your clients? Do you have systems and checks in place to ensure that FICA requirements are always followed before any work is done or any deposit is taken from a prospective client or money is paid out to a third party? YES/NO

*If no, see The Financial Intelligence Centre Act 38 of 2001/FIC website [www.fic.gov.za/LSSA](http://www.fic.gov.za/LSSA) website and Risk Management Tips on AIIF Website [www.aiif.co.za](http://www.aiif.co.za)*

10. Many claims arise out of practices having taken on “problem” clients. Does your practice **screen prospective clients** before taking on a mandate? YES/NO

*If no, see Risk Management Tips on Website [www.aiif.co.za](http://www.aiif.co.za)*

If yes,

I. does your practice have any uniform system in place for this? YES/NO

II. does this include a conflict of interest check? YES/NO

III. does this include any checks whether other attorneys have previously been instructed on respect of the same matter? YES/NO

IV. does this include obtaining comprehensive contact details for the client and family or employers? YES/NO (see *Mlenzana v Goodricke & Franklin Inc* 2012 (2) SA 433 FB)

11. Claims sometimes arise out of practitioners’ having acted for family/ friends/acquaintances. Does your practice have any policy that regulates acting for them? YES/NO

12. Does your practice have a policy that formal **Letters of Engagement** must be signed by clients? YES/NO

If yes:

I. Is your policy strictly enforced? YES/NO

II. Does the format ensure that, prior to taking on the mandate, client’s requirements are clearly identified and can be met by your practice? YES/NO

III. Does it deal fully with your billing rates and policies? YES/NO

IV. Does your policy include amending the letter of engagement as circumstances change? YES/NO

V. Does your policy include the use of letters of non-engagement? ( letters sent to prospective clients confirming that you have not accepted the mandate eg. where there is a conflict) YES/NO

*If no, see Risk Management Tips - Letters of Engagement on website [www.aiif.co.za](http://www.aiif.co.za)*

13. Does your practice use **Checklists** for matters where appropriate? YES/NO

14. Does your practice have a policy that requires staff to draw up a **Working Plan** (plan on steps to be taken to implement and manage their planned strategy) for their matters? YES/NO

If yes:

- does the policy stipulate that the Working Plan should be updated as circumstances change? YES/NO
- does the policy provide that the Working plan should be communicated to client? YES/NO

If no, see Risk Management Tips on Website [www.aiif.co.za](http://www.aiif.co.za)

15.

- Is all advice confirmed in writing? YES/NO
- Are all instructions confirmed in writing? YES/NO

If no, see Risk Management Tips on Website [www.aiif.co.za](http://www.aiif.co.za)

16. Claims can arise out of matters having been transferred from one attorney to another (either within or from outside the practice.) Does your practice have a policy dealing with this situation? YES/NO

If yes, briefly describe your system

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.....  
.....  
.....

If no, see Risk Management Tips on Website [www.aiif.co.za](http://www.aiif.co.za)

17. Claims against practitioners sometimes arise out of ineffective delegation. Does your practice have policies in place with regard to delegation? YES/NO/n/a

If yes, describe them

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.....  
.....

If no, see Risk Management Tips on Website

18. Many claims against practitioners arise out of a lack of or poor supervision.

18.1 Does your practice have policies in place with regard to the supervision of all staff including attorneys, support staff and candidate attorneys? YES/NO/n/a

If yes, describe them

.....  
.....

If no, see Risk Management Tips on Website

18.2 Do you allow candidate attorneys, paralegals or newly-qualified attorneys to handle their own matters without close supervision? YES/NO/n/a

18.3 Do they have authority to “sign-off” advice to client? YES/NO/n/a

If yes, is the advice checked by a partner/director before it is conveyed to client? YES/NO/n/a

18.4 Do you impose fee targets on your candidate attorneys? YES/NO/n/a

If yes, are you satisfied that they are able to deal with the personal pressure of these targets? YES/NO/n/a

18.5 Does your firm have a substantial debt collection practice? YES/NO

If so, is it run by a director/partner/associate with a minimum of 2 years’ experience? YES/NO

If not, is it supervised by a director/partner/associate with a minimum of 2 years’ experience? YES/NO

If yes, specify whether the matters are run by a candidate attorney / paralegal.

19. Does your practice have a policy in place with regard to the drafting of documents? YES/NO

If yes, describe it

# RISKALERT

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*If no, see Risk Management Tips on Website*

20. Does your practice have a policy in place for training of;
- professional staff? YES/NO
  - support staff? YES/NO

If yes, does it include the following?

- Vocational (including legal developments) YES/NO
- Risk management YES/NO
- Ethical YES/NO
- Best business practice YES/NO
- Basic legal procedures YES/NO
- Your firm's ethos YES/NO
- Quality standards YES/NO
- Client care YES/NO
- Fraud and money laundering YES/NO
- Other (PLEASE SPECIFY)

.....  
.....  
.....

21. Are partners, directors, professional and support staff trained to be made aware of :
- your risk management structure and procedures, YES/NO/n/a
  - the chain of responsibility and authority YES/NO/n/a
  - their individual responsibilities to report all issues and concerns to the responsible person? YES/No/n/a

22. 1 Many claims arise out of the failure of or non-existence of a diary system. Does your practice have an effective diary system FOR FILES in place? YES/NO

If yes, does it include;

- the use of a dual system YES/NO
- the use of a centralised system YES/NO
- the use of checks and balances to ensure that diarised matters are attended to YES/NO
- the use of Prescription Alert YES/NO

Briefly describe your system:

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.....  
.....

22.2 Does your practice have an effective diary system FOR COURT AND IMPORTANT DATES in place? YES/NO

If yes, describe it

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.....  
.....

23. Does your practice have a system of client file audits and reviews? YES/NO

If yes, do you use it effectively for:

- risk management YES/NO
- performance assessment YES/NO

Describe your system briefly

.....  
.....  
.....  
.....

*If no, see Risk Management Tips on Website and a practical guide in Risk Alert Bulletin (May) 2/2015 p 4 or the AIIF website: <http://www.aiif.co.za/file-audits>*

24. Does your practice have regular meetings of professional staff to discuss problem matters? YES/NO/n/a

25. Does your practice have effective policies on uniform file order? YES/NO

If yes, describe them

.....  
.....  
.....  
.....

*If no, see Risk Management Tips on Website*

25.2 Does your practice have policies on file storage and retrieval? (Procedures to ensure that files are not lost or misplaced or overlooked)

If yes, describe them

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.....  
.....

26. A director of a large practice in Pretoria rightly believes that practices should promote the important principle that **IF IT IS NOT IN WRITING IT IS NOT DONE!**

26.1 Many claims cannot be successfully defended because of the absence of relevant file notes. Does your practice have a uniform policy on the making of file notes? YES/NO

*If no, see Risk Management Tips on Website*

26.2 Does your staff record all telephone discussions in writing? YES/NO/n/a

*If no, see Risk Management Tips on Website*

27. Does your practice have a system in place for checking all relevant incoming correspondence by a partner/director, principal or departmental head? YES/NO/n/a

*If no, see Risk Management Tips on Website*

28. Do you have a formal file closing procedure? YES/NO

If yes:

- does it include a formal policy for closing/ending the mandate? YES/NO
- does it include a termination of mandate letter? YES/NO

*If no, see Risk Management Tips on Website*

29. Do you have effective and uniform billing policies and procedures in place? YES/NO

30. Are all your policies reduced to writing and available to staff in either electronic or hard copy? YES/NO /n/a

# RISKALERT

- 31. Do you have effective checks and balances in place to ensure that your policies and procedures are being complied with? YES/NO/n/a
- 32. Do you have a client complaints procedure in place? YES/NO
- 33. Do you have a fraud prevention program and policy in place? YES/NO
- 34. Do you have a policy that monitors and ensures control over your professionals' workloads? YES/NO/n/a

SECTION 3

Claims Information

Please insert the required claims information into the table below:

Insurance Year	No of claims/circs notified	No of claims settled	No of claims withdrawn	No of claims still not resolved

Have any actions been taken to prevent the recurrence of the claims situations that arose as set out above? YES/NO

If yes, please elaborate

.....

.....

.....

.....

SECTION 4

Insurance Information

- 1. How did you find out about the AIIF and its functions?  
.....
- 2. Do you believe that the existence of the AIIF and its functions is adequately communicated to the profession? YES/NO  
If no, please suggest ways in which these could become better known to the profession.  
.....  
.....  
.....
- 3. Do you make use of any of the AIIF's risk management interventions? YES/NO  
If yes, which ones? Risk Alert Bulletin/Prescription Alert/Website/Other
- 4. Are there any other interventions that you would find helpful in your practice? YES/NO  
If yes, please discuss  
.....  
.....  
.....

NAME : .....

CAPACITY: .....

SIGNATURE: .....

DATE OF COMPLETION: .....