

# MARKET BULLETIN

<b>From</b>	Director, Worldwide Markets
<b>Date</b>	13 September 2005
<b>Reference</b>	Y3628
<b>Subject</b>	<b>AUSTRALIA: MANDATORY WORDING FOR USE WITH BINDING AUTHORITIES HELD BY AUSTRALIAN COVERHOLDERS</b>
<b>Subject areas</b>	
<b>Attachments</b>	LSW649a: Mandatory Wording for use with Binding Authorities held by Australian Coverholders
<b>Action points</b>	<b>Underwriters and Brokers to note</b>
<b>Deadlines</b>	<b>1<sup>st</sup> November 2005</b>

## **Purpose and Scope of Bulletin**

The purpose of this Bulletin is to advise of the revision of LSW649, and subsequent introduction of LSW649a, which must be attached to all Australian binding authorities incepting on or after 1 November 2005.

## **Purpose of LSW649a**

There are two reasons for the introduction of LSW649a

- The introduction of LMA3004
- Insurance Enquiries and Complaints Limited changing its name to Insurance Ombudsman Service Limited

## **Use of LSW649a**

LSW649a (see Appendix 1) encompasses all Australian requirements, including those currently set out in LSW649, and as a result LSW649 will be withdrawn from 31 October 2005. LSW649a must be attached to all Australian binding authorities incepting on or after 1

November 2005 but can be attached to Australian binding authorities before this date if the underwriter so requests. This endorsement sets out certain duties that the Coverholder must undertake in order to demonstrate compliance with Australian laws, regulations and fiscal requirements on behalf of Lloyd's underwriters.

Xchanging Ins-sure Services has been instructed to refer back to underwriters, via the Lloyd's broker, any Australian binding authorities incepting on or after 1 November 2005, where LSW649a has not been included.

## General

If you have any queries, please contact either of the following:

Lloyd's Worldwide Markets

Market Services                      Tel: 020 7327 6677  
Email: [market.services@lloyds.com](mailto:market.services@lloyds.com)

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This bulletin has been sent to active underwriters and the Compliance Officers of Lloyd's brokers and managing agents and for information, to the LMBC and LMA.

The information contained in this market bulletin is provided in order to support managing agents in meeting their commitment ***'to protect Lloyd's licences and authorisations to conduct insurance business in the UK and overseas'***. The information will also help underwriters decide, prior to binding, how a risk can be underwritten in compliance with Lloyd's trading rights in the country concerned.

More detailed information on Lloyd's trading rights may be found on [www.lloyds.com/worldwide](http://www.lloyds.com/worldwide). Select the appropriate country from the Lloyd's trading status box (located on the right hand side of the web page) and this will take you to the Quick Reference Guide for the country selected. More detailed information may then be obtained for certain countries by selecting 'Manual' from the menu on the left hand side of the screen. You will be asked to input a user name and password. Please contact the Worldwide Market Services (contact details as above) in order to obtain this information.

Julian James  
Director  
Worldwide Markets

APPENDIX 1

**AUSTRALIAN BINDING AUTHORITY ENDORSEMENT  
(for use in conjunction with Binding Authority Wordings)**

The Coverholder agrees to comply with the following provisions of this endorsement:

**1. Licence Requirements:**

- (a) It is a condition of the Agreement that the Coverholder holds the proper licence, licences, approval or approvals as the case may be, according to Australian regulatory requirements unless the Underwriters have been provided with written evidence (acceptable to the Underwriters) of any appropriate exemptions.
- (b) Without limiting the previous paragraph, if under the Agreement the Coverholder makes any offer to a retail client to arrange for the issue, variation or disposal of a financial product by the Underwriters:
  - (i) the Coverholder must hold an Australian Financial Services Licence that covers the relevant offer; and
  - (ii) it is acknowledged by the Coverholder that the Agreement is an *intermediary authorisation* under section 911A(2)(b) of the Corporations Act 2001 (Cth).
- (c) The Coverholder acknowledges that the Underwriters do not (or might not) hold an Australian Financial Services Licence. The Coverholder undertakes not to do anything, or omit to do anything, which results in the Underwriters providing any financial service for which the Underwriters are required to hold an Australian Financial Services Licence.
- (d) The Coverholder and the Underwriters agree that Sections 17.3 and 17.4 of the Agreement are varied to provide as follows:

“17.3 The Underwriters and Coverholder specifically agree that the Underwriters reserve the right to cancel the Agreement at any time with immediate effect upon the occurrence of any of the events set out in 17.3.1 to 17.3.4 inclusive;

The Underwriters shall give written notice of such cancellation and the Agreement shall terminate at the date specified in the notice;

- 17.3.1 The Coverholder fails to comply with any of the provisions of the Agreement;
- 17.3.2 Any past or present director, officer, partner or employee of the Coverholder or any individual named in the Agreement is convicted of or charged with any criminal offence involving fraud or dishonesty or any other criminal offence that may materially affect the operation of the Agreement;
- 17.3.3 The Lloyd's Broker is suspended as a Lloyd's Broker or ceases to have permission to transact insurance business at Lloyd's as a Lloyd's Broker unless an alternative Lloyd's Broker is mutually agreed in writing by the Underwriters and the Coverholder;
- 17.3.4 The Coverholder breaches the Corporations Act or any condition of its Australian Financial Services Licence.

17.4 The Coverholder shall inform the Underwriters immediately upon becoming aware of the occurrence of any of the events set out in 17.2, 17.3.1, 17.3.2 and 17.3.4 above. Any failure by the Coverholder so to advise shall not affect the automatic termination of the Agreement under 17.2 or the Underwriters' rights under 17.3;

The Underwriters shall advise the Coverholder immediately upon becoming aware of the occurrence of any of the events in 17.3.3;"

- (e) Where, as a condition of any application made for an Australian Financial Services Licence (or any application for exemption), the Coverholder is required to have established an Internal Disputes Resolution (IDR) process and also required to be a member of an External Disputes Resolution (EDR) scheme, then in respect of those classes of business which are covered by The Insurance Ombudsman Service and which are underwritten at Lloyd's, the Coverholder must agree to comply with the IDR Process administered by Lloyd's Australia Ltd. As a result, in respect of those classes of business the Coverholder shall participate in the EDR Process only via Lloyd's Australia Ltd's Membership of The Insurance Ombudsman Service, even though the Coverholder may also be required to be a member of The Insurance Ombudsman Service in its own right.
2. **Clients' money account:** The Coverholder and the Underwriters agree that despite the provisions of Section 33 of the Agreement ("Section 33"):
- (a) if the Corporations Act and the Corporations Regulations ("Corporations Act and Regulations") require the Coverholder, in particular circumstances, to deal with or hold monies referred to in Section 33 in a manner that conflicts with Section 33, Section 33 is taken to be varied, in respect of those circumstances, to the extent necessary to enable the Coverholder to comply with the Corporations Act and Regulations; and
  - (b) for the purposes of Corporations Regulation 7.8.05, the Underwriters consent to the Coverholder holding money referred to in that regulation on trust for the Underwriters.
3. **The Coverholder's General Responsibilities:** The Coverholder shall not perform any duties as a Coverholder if not approved to do so by Lloyd's and/or the Underwriters and for which the Coverholder does not have an appropriate level of expertise and knowledge.

In all communications arising out of or relating to the Agreement, the Coverholder shall ensure that it is clearly stated that the Coverholder acts as agent of Lloyd's underwriters. In particular, and without limiting the operation of the obligations set out in the previous sentence, the Coverholder shall: (a) advise third parties, including but not limited to brokers, Insureds, intending Insureds and government authorities, of its status as agent of the Lloyd's underwriters for whom it is acting; and (b) not purport to act, or represent to any third party that it is acting, in the capacity of a Principal in respect of any matter arising out of or relating to the Agreement.

If the Underwriters are held responsible for the conduct of the Coverholder, its agents or employees by virtue of the operation of Australian law or otherwise, where such conduct was not within the scope of the Coverholder's authority, as set out in the Agreement, the Coverholder shall fully indemnify the Underwriters for the entire sum which the Underwriters are ordered or held liable to pay and in addition, all legal costs on a solicitor and own client basis which the Underwriters may incur.

If the Underwriters are held to have committed offences against Australian law or any other law by reason of acts or omissions of the Coverholder, its agents or employees, the Coverholder shall fully indemnify the Underwriters the entire sum which the Underwriters are ordered or held liable to pay and, in addition, all related legal costs on a solicitor and own client basis which the Underwriters may incur.

4. **Certificates:** It is a condition of the Agreement that the format of any Certificate issued by the Coverholder shall:
  - (a) in respect of insurances within the scope of the General Insurance Code of Practice, be based on NMA2837 Standard Outline Certificate (Australia — Personal Lines);
  - (b) in respect of other insurances, be based on the NMA1856(a) Standard Outline Certificate with the service of suit clause deleted and replaced by LSW1145 Alternative Disputes Resolution Clause, where inclusion of the latter has been agreed by the Underwriters;
  - (c) in respect of applicable classes of business under the Insurance Contracts Act 1984, include Expiry/Renewal Notice NMA1996.
  
5. **Code of Practice:** It is a condition of the Agreement that the Coverholder undertakes:
  - (a) to comply with the General Insurance Code of Practice ("the Code") in respect of obligations imposed by the Code on agents.
  - (b) to comply with the provisions of section 3 (agents and employees), section 4 (policy documentation) and section 5 (claims handling) of the Code as if each reference in those sections to the "insurer" were a reference to the Coverholder, unless the context otherwise requires.
  - (c) in connection with performing its obligations in paragraphs (a) and (b) above:
    - (i) to use the document titled "Code Compliance Systems" [as set out in the Lloyd's Australian procedures manual] (as may be amended from time to time by Lloyd's under guidance from the Insurance Ombudsman Service Limited and the Insurance Council of Australia) as a guide to formulating the Coverholder's internal procedures for compliance with those aspects of the Code relevant to the Coverholders' business; and
    - (ii) to do all things reasonably necessary, or reasonably required by the Underwriters, in order to ensure that the Underwriters comply with the Code and any direction of the Insurance Ombudsman Service Limited.
  - (d) on or before 15 July in each year, to furnish a statement to Lloyd's General Representative in Australia, in the form prescribed by Lloyd's General Representative, reporting compliance with the obligations stated in (a), (b) and (c) above and providing adequate detail as to how such obligations have been satisfied.
  
6. **Privacy Act:** It is a condition of the Agreement that the Coverholder ensures that it is aware of its obligations under the Privacy Act 1988 as amended by the Privacy Amendment (Private Sector) Act 2000. The Coverholder shall process data regarding Insureds in accordance with the Privacy Act Principles and for the purposes only of providing insurance to Insureds and prospective Insureds and of handling claims to the extent allowed by the Agreement.
  
7. **Taxes:** It is a condition of the Agreement that the Coverholder shall:
  - (a) if above the registration threshold, be registered for Goods and Services Tax (GST) and shall be responsible for accounting for GST on business bound under the Agreement to the Australian Taxation Office in accordance with the relevant provisions of the Australian tax law.
  - (b) be responsible for administering stamp duty, withholding (non-resident) tax and fire services levies (where they apply).

- (c) report New South Wales premiums separately in their monthly reporting to the Underwriters in order that the central tax system can properly record this information for Insurance Protection Tax (NSW) purposes.
8. **Complaints:** It is a condition of the Agreement that the Coverholder shall:
- (a) in respect of personal lines business, comply with the complaints procedures under the General Insurance Code of Practice.
  - (b) in respect of disputes falling under The Insurance Ombudsman Service, respond to the Lloyd's Australia office within 10 working days of the lodgement of a disputed claim.
9. **Statutory renewals during the period of Agreement – section 58 Insurance Contracts Act:** In addition to Section 16 of the Agreement the Coverholder shall take appropriate action to prevent the renewal of any certificate during the period of the Agreement by reason of the operation of section 58 of the Insurance Contracts Act.
10. **Statutory renewals after expiry, cancellation or termination of Agreement - section 58 Insurance Contracts Act:** In addition to Section 16 of the Agreement the Coverholder shall take appropriate action to prevent the renewal, after the effective date of expiry, cancellation or termination of the Agreement, of any certificate by reason of the operation of section 58 of the Insurance Contracts Act.
11. **Indemnities continue:** It is a condition of the Agreement that:
- (a) each indemnity contained in the Agreement is a continuing obligation despite:
    - (i) any settlement of account; or
    - (ii) the occurrence of any other thing,and remains in full force and effect until all money owing, contingently or otherwise, under the indemnity has been paid in full; and
  - (b) each indemnity contained in the Agreement:
    - (i) is an additional, separate and independent obligation and no one indemnity limits the generality of any other indemnity; and
    - (ii) survives the termination of the Agreement.

LSW649A