

# MARKET BULLETIN

REF: Y4176

<b>Title</b>	Australia: New Australian Wordings to reflect name changes
<b>Purpose</b>	To advise the market of changes to Australian wordings to incorporate the changes in name of the Lloyd's Complaints Department and Insurance Ombudsman Service.
<b>Type</b>	Event
<b>From</b>	Cameron Murray, Senior Manager, International Regulatory Affairs International Market Access 020 7327 6854 / cameron.murray@lloyds.com
<b>Date</b>	27 August 2008
<b>Deadline</b>	With effect from 1 September 2008
<b>Related links</b>	

## Background

Please note that following the change in name of the Lloyd's Complaints Department to the **Lloyd's Policyholder and Market Assistance Department**, and of the Insurance Ombudsman Service to the **Financial Ombudsman Service** in Australia, changes have been made to the appropriate Australian wordings to reflect the new names of these departments and organisations.

## Detail

Therefore, with effect from 1 September 2008, the following wordings have been retired and replaced:

1. Australian retail binder certificate, LMA3049, has now been retired and replaced with LMA3082 (Appendix 1)
2. Australian wholesale binder certificate, LMA 3050, has now been retired and replaced with LMA3083 (Appendix 2)
3. Australian dispute resolution endorsement, LMA 5067 has now been retired and replaced with LMA5106 (Appendix 3).

4. Mandatory wording for use with binding authorities authorised to accept Australian business, LSW649b, has now been retired and replaced with LSW649c (Appendix 4).

Appendix 5 provides an updated summary of when each certificate/policy jacket may be used.

#### **Further information**

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

Lloyd's International Trading Advice:

Tel: 020 7327 6677

Email: [lita@lloyds.com](mailto:lita@lloyds.com)

Lloyd's General Representative in Australia, Keith Stern:

Tel: 00 61 2 9223 1433

Email: [keith@lloydsaustralia.com.au](mailto:keith@lloydsaustralia.com.au)

**LLOYD'S  
CERTIFICATE OF INSURANCE**  
effected through

(hereinafter called the Coverholder)

**THIS CERTIFICATE OF INSURANCE** confirms that in return for payment of the Premium shown in the Schedule, certain Underwriters at Lloyd's have agreed to insure you, in accordance with the wording attached to this Certificate.

You or your representative can obtain further details of the syndicate numbers and the proportions of this Insurance for which each of the Underwriters at Lloyd's is liable by requesting them from the Coverholder shown above. In the event of loss, each Underwriter (and their Executors and Administrators) is only liable for their own share of the loss.

In accepting this Insurance, the Underwriters have relied on the information and statements that you have provided on the Proposal Form (or Declaration) the date of which is stated in the Schedule. You should read this Certificate carefully and if it is not correct contact the Coverholder. It is an important document and you should keep it in a safe place with all other papers relating to this Insurance.

**SCHEDULE**

<b>Agreement Number:</b>	<b>Date of Proposal Form or Declaration:</b>
<b>Certificate Number:</b>	
<b>The Insured (you):</b>	
<b>Address of the Insured:</b>	
<b>Premium payable by the Insured:</b>	Premium: (including all commissions and charges but excluding taxes and duties)  Stamp Duty (if any):  Other taxes and duties (if any):
	<b>Total Amount Payable:</b>
<b>Period of Insurance:</b>	From: To: (both days at 4 p.m. Local Time).

This Certificate is Insurance Council of Australia's General Insurance Code of Practice compliant, apart from any claims adjusted outside Australia. Underwriters at Lloyd's proudly support the General Insurance Code of Practice. The purpose of the Code is to raise standards of practice and service in the general insurance industry. Any enquiry or complaint relating to this Insurance should be referred to the Coverholder shown above in the first instance. If this does not resolve the matter or you are not satisfied with the way a complaint has been dealt with, you should write to:

Lloyd's Underwriters' General Representative in Australia  
Suite 2, Level 21  
Angel Place  
123 Pitt Street  
Sydney NSW 2000

Telephone Number: (02) 9223 1433  
Facsimile Number: (02) 9223 1466

If your dispute remains unresolved you may be referred to the **Financial Ombudsman Service Limited** under the terms of the General Insurance Code of Practice. For other disputes you will be referred to other proceedings for resolution. Details are available from Lloyd's Underwriters' General Representative in Australia at the address above.

The Underwriters accepting this Insurance agree that:

- (i) if a dispute arises under this Insurance, this Insurance will be subject to Australian law and practice and the Underwriters will submit to the jurisdiction of any competent Court in the Commonwealth of Australia;
- (ii) any summons notice or process to be served upon the Underwriters may be served upon:

*Lloyd's Underwriters' General Representative in Australia  
Suite 2, Level 21  
Angel Place  
123 Pitt Street  
Sydney NSW 2000*

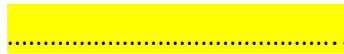
- who has authority to accept service and to appear on the Underwriters' behalf;
- (iii) if a suit is instituted against any of the Underwriters, all Underwriters participating in this Insurance will abide by the final decision of such Court or any competent Appellate Court.

In the event of a claim arising under this Insurance IMMEDIATE NOTICE should be given to:



# LLOYD'S CERTIFICATE OF INSURANCE

effected through



(hereinafter called the Coverholder)

**THIS IS TO CERTIFY** that in accordance with the authorisation granted under Contract No. [REDACTED] to the undersigned by certain Underwriters at Lloyd's, whose definitive numbers and the proportions underwritten by them, which will be supplied on application, can be ascertained by reference to the said Contract, and in consideration of the premium specified herein, the said Underwriters are hereby bound, severally and not jointly, each for his own part and not one for another, their Executors and Administrators, to insure in accordance with the terms and conditions contained herein or endorsed hereon.

### SCHEDULE

Certificate No:

The Assured:

Rate:

Premium:

Stamp Duty:

Charges:

Address of the Assured:

Period of Insurance:

from

to

(both days at 4 p.m. Local

Time).

This Certificate is Insurance Council of Australia's General Insurance Code of Practice compliant, apart from any claims adjusted outside Australia. Underwriters at Lloyd's proudly support the General Insurance Code of Practice. The purpose of the Code is to raise standards of practice and service in the general insurance industry. Any enquiry or complaint relating to this Insurance should be referred to the Coverholder shown above in the first instance. If this does not resolve the matter or you are not satisfied with the way a complaint has been dealt with, you should write to:

Lloyd's Underwriters' General Representative in Australia

Suite 2, Level 21

Angel Place

123 Pitt Street

Sydney NSW 2000

Telephone Number: (02) 9223 1433

Facsimile Number: (02) 9223 1466

who will refer your dispute to Policyholder & Market Assistance at Lloyd's.

Complaints that cannot be resolved by Policyholder & Market Assistance may be referred to the Financial Ombudsman Service (UK). Further details will be provided at the appropriate stage of the complaints process.

The Underwriters hereon agree that:

- (i) In the event of a dispute arising under this Insurance, the Underwriters at the request of the Assured will submit to the jurisdiction of any competent Court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such Court.
- (ii) Any summons notice or process to be served upon the Underwriters may be served upon:

.....

who has authority to accept service and to enter an appearance on the Underwriters' behalf, and who is directed at the request of the Assured to give a written undertaking to the Assured that he will enter an appearance on the Underwriters' behalf.

- (iii) If a suit is instituted against any one of the Underwriters, all Underwriters hereon will abide by the final decision of such Court or any competent Appellate Court.

The amount of Premium specified herein is the amount due to the Underwriters and any commission allowed by them is to be regarded as remuneration of the Coverholder placing this Insurance.

In the event of a claim arising under this Insurance IMMEDIATE NOTICE should be given to:

IN WITNESS WHEREOF this Certificate has been signed at

.....

this ..... day of ..... by

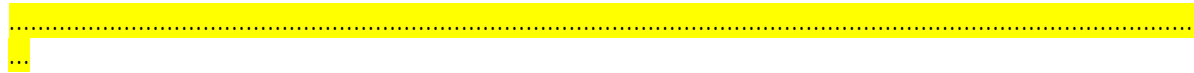
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Coverholder

LMA3083 (Australia)  
1 September 2008

AUSTRALIAN DISPUTE RESOLUTION ENDORSEMENT

This Insurance does not comply with the Insurance Council of Australia's General Insurance Code of Practice. Any enquiry or complaint relating to this insurance should be referred to



in the first instance. If this does not resolve the matter or you are not satisfied with the way a complaint has been dealt with, you should write to:

Lloyd's Underwriters' General Representative in Australia  
Suite 2, Level 21  
Angel Place  
123 Pitt Street  
Sydney NSW 2000

Telephone Number: (02) 9223 1433  
Facsimile Number: (02) 9223 1466

If your dispute remains unresolved you may be referred to the Financial Ombudsman Service Limited under the terms of the General Insurance Code of Practice. For other disputes you will be referred to other proceedings for resolution. Details are available from Lloyd's Underwriters' General Representative in Australia at the address above.

LMA5106

1 September 2008



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.
  - (i) where the Coverholder is located in a territory outside of Australia, it is a condition of the Agreement that the Coverholder holds the proper licence, licences, approval or approvals as the case may be that are appropriate to that territory.
- (b) Without limiting the previous paragraphs, 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 16.3 and 16.4 of the Agreement are varied to provide as follows:

“16.3 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 16.3.1 to 16.3.4 inclusive;

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

16.3.1 The Coverholder fails to comply with any of the provisions of the Agreement;

16.3.2 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;

16.3.3 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;

16.3.4 The Coverholder breaches the Corporations Act or any condition of its Australian Financial Services Licence;

16.4 The Coverholder shall inform the Underwriters immediately upon becoming aware of the occurrence of any of the events set out in 16.2, 16.3.1, 16.3.2 and 16.3.4 above. Any failure by the Coverholder so to advise shall not affect the automatic termination of the Agreement under 16.2 or the Underwriters' rights under 16.3;

The Underwriters shall advise the Coverholder immediately upon becoming aware of the occurrence of any of the events in 16.3.3;"

- (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 Financial 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 Financial Ombudsman Service, even though the Coverholder may also be required to be a member of The Financial 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 an Australian based Coverholder shall:
  - (a) in respect of insurances within the scope of the Financial Ombudsman Service, be based on LMA3082 Standard Outline Certificate (Australia — Retail Lines);
  - (b) in respect of wholesale insurances, be based on the LMA3083 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 an Australian based Coverholder undertakes:
  - (a) to comply with the General Insurance Code of Practice ("the Code").
  - (b) to comply with the provisions 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 "Checklist for Review of Compliance with the General Insurance Code of Practice " [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 Financial Ombudsman Service and/or 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 in order to ensure compliance with the Code and any direction of the Lloyd's General Representative in Australia and/or the Financial Ombudsman Service, including participating in any review of compliance with the Code requested by the Financial Ombudsman Service; and
    - (iii) to complete the Financial Ombudsman Service's Code Self-Assessment document for the Code [as set out in the Lloyd's Australian procedures manual] within 15 working days of entering the Binding Authority Agreement, and return to the Lloyd's General Representative; and
    - (iv) to complete the Financial Ombudsman Service's Code Review document for the Code [as set out in the Lloyd's Australian procedures manual] within 15 working days of renewal of the Binding Authority Agreement, and return to the Lloyd's General Representative.
  - (d) to furnish a statement to the Lloyd's General Representative, in the form prescribed by the 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, by the date specified by the Lloyd's General Representative each year.
  
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, where appropriate. 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.
    - (i) where the Coverholder is located in a territory outside of Australia the requirement to register for GST as described in the previous paragraph will not apply unless the last act necessary to make the contract of insurance binding takes place in Australia.
  - (b) be responsible for administering stamp duty, withholding (non-resident) tax and fire services levies (where they apply).
    - (i) where the Coverholder is located in a territory outside of Australia it shall ensure that appropriate alternative arrangements are made to administer the taxes and charges referred to in the above paragraph if it is not practical to do so itself.
  - (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) comply with the complaints procedures under the General Insurance Code of Practice.
  - (b) in respect of disputes falling under the Financial 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 15 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 15 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.

09/08  
LSW649C

**SUMMARY**

	Direct Insurance Wholesale		Direct Insurance Retail		Reinsurance
	Open Market	Binder	Open Market	Binder	
Is a dispute resolution or service of suit clause required? †	YES	YES	YES	YES	RECOMMENDED
Can NMA1854 be used? **	YES	NO	NO	NO	YES
Can LMA3082 be used? *	NO	NO	NO	YES	NO
Can LMA3083 be used? *	NO	YES	NO	NO	NO ‡
Can LSW1145 be used? †	YES	YES	NO	NO	YES
Can an alternative dispute resolution or service of suit wording be used? †	YES	YES	YES †	YES †	YES
Can NMA2752 with endorsement LMA5066 be used? **	YES	NO	NO	NO	YES
Can NMA2741 with endorsement LMA5066 be used? **	YES	NO	NO	NO	YES
Can NMA2752 with endorsement LMA5106 be used? **	NO	NO	YES	NO	NO
Can NMA2741 with endorsement LMA5106 be used? **	NO	NO	YES	NO	NO

- ‡ Retail contracts are provided for within the Financial Ombudsman Service Scheme, an existing alternative method of dispute resolution and therefore reference to this Scheme should be used in conjunction with, or be included in, any service of suit wording. NMA 3082 includes a suitable form of words that can be adopted in conjunction with NMA 1854 or incorporated within any other service of suit wording used.
- † XIS will query where there are conflicting provisions within the same policy or wording.
- ‡ Other than where it forms the basis of reinsurance certificates issued under a binding authority.
- \* Only to be used by an Australian coverholder.
- \*\* Only to be used by a syndicate.