

FROM: Frank Speight
LOCATION: 86/G12
EXTENSION: 6520
DATE: 10 October 2000
REFERENCE: Y2389
SUBJECT: AUSTRALIAN INSURANCE ARRANGEMENTS
INSURANCE CONTRACTS ACT 1984: SECTION 58
SUBJECT AREA(S):
ATTACHMENTS:
ACTION POINTS: **Underwriters and Brokers to note**
DEADLINE: **Immediate**

This bulletin is being issued as a reminder to underwriters, who are currently writing, or may write in the future, Australian business, of their responsibilities under Section 58 of the Insurance Contracts Act 1984.

The provisions of the Act apply to **ALL** insurance policies with the following exceptions:

- Contracts of reinsurance
- Health insurance policies¹
- A policy which has a Friendly Society as a party to it¹
- Workers Compensation policies¹
- A policy which has the Export Finance and Insurance Corporation as a party to it
- A policy which is governed by the Marine Insurance Act 1909
- A policy which is jointly underwritten by an insurer and a state/territory
- A policy concerned with aircraft engaged in commercial operations with insurance covering war risk.

¹ Not normally involving the Lloyd's market

Section 58 refers to ‘renewable insurance cover’ which is defined as insurance cover that:

- (a) is provided for a particular period of time; and
- (b) is of a kind that it is usual to renew or for the renewal of which it is usual to negotiate.

Under this section an insurance carrier, including Lloyd’s, is required to send out a written renewal notice to the insured, which must be received by the insured, or his broker, no later than 14 days prior to the expiry of the policy. This renewal notice must inform the insured, or his broker of the day on which and the time at which the cover will expire and whether the insurer is prepared to negotiate to renew or extend the cover.

If the insurer fails to meet his obligations under Section 58 he remains on cover until either the insured obtains cover elsewhere i.e. from another insurer, or the insurer eventually gives the required 14 days notice of cancellation.

If the insurer does not notify the insured within 14 days of the expiry date and the insured, upon subsequently receiving notice from the insurer, cannot secure another policy, a statutory policy² commences immediately upon the expiry of the earlier policy on the same terms as the original policy. The statutory policy expires when:

- a replacement policy is secured;
- or a term equivalent to the term of the earlier policy expires;
- or the policy is cancelled by giving the insured 14 business days prospective notice, pursuant to Sections 59 and 60 of the Act.

whichever is earlier.

For business that is underwritten by coverholders, it is the coverholder’s responsibility, acting as agent of the Lloyd’s syndicate, to issue the renewal notice to the client or the broker.

However, underwriters should note that, subject to each individual binding authority contract, they may ultimately retain the financial responsibility for any failure, by the coverholder, to give notice to the insured.

For open market or lineslip business it is the responsibility of the **insurer** to issue the renewal notice to the client or broker. There is no requirement on any broker, whether Lloyd’s broker or otherwise, to remind the syndicate of forthcoming renewals.

The Claims Review Panel of Insurance Enquiries & Complaints Ltd, has no hesitation in finding in favour of the insured where there is evidence of non-compliance with any section of the Insurance Contracts Act. There have been many recent cases where insurers have failed to comply with Section 58 and consequently the dispute has been determined in favour of the insured.

To assist underwriters and brokers with the adherence of this section of the Act, the N.M.A. have produced an Expiry/Renewal Notice, NMA 1996. If you would like a copy of this Notice, please contact Rob Gillies on robert.gillies@lloyds.com.

² The insured does not have to pay any premium for this statutory policy unless a claim is made. In this circumstance, a specially calculated premium is payable.

LPSO offer an Expiry Reminder System for advising syndicates with a list of risks 4 weeks before expire/renewal date, this is issued on a monthly basis. However, due to the lack of use of this system, it is the intention of LPSO to cease this reporting system at the end of the year. If syndicates wish for this reporting system to remain in place, please contact Nick Parker, LPSO Business Services on Lloyd's Extension 2534 before Wednesday, 15th November 2000.

If you have any questions relating to this market bulletin, please contact Maxine Hooper, International Department on Lloyd's extension 6291 or Keith Stern, Lloyd's Australia Limited on 00 612 9223 1433.

If you have any general queries, please contact the overseas helpdesk on Lloyd's extension 6677.

This bulletin is being sent to all compliance officers, underwriting agents, active underwriters and Lloyd's brokers and for information to market associations.

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