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SUBJECT: AUSTRALIAN PRIVACY ACT – LLOYD'S OBLIGATIONS (UPDATE)
SUBJECT AREA(S):
ATTACHMENTS: Appendix 1: Updated Guidelines for underwriters, brokers and coverholders for the Privacy Act
ACTION POINTS: To note the obligations for Lloyd's and to comply with them
DEADLINE: **Immediate**

Market Bulletin Y2662 dated 12 December 2001 informed underwriters and brokers of their obligations to ensure compliance with the requirements under the Privacy Amendment (Private Sector) Act 2000 (the new Act), with effect from 21 December 2001.

The requirements of the new Act apply to **all** Australian risks regardless of whether the policy is issued locally in Australia or directly from London. In brief, the new Act sets out an insurer's obligations in relation to the collection, use, disclosure and handling of "personal information". Coverholders in Australia have been notified of the requirements of the new Act.

Prior to the new Act, Lloyd's had been a voluntary signatory to the General Insurance Information Privacy Principles Code of Practice (the Code). Market Bulletin Y2306 dated 22nd May 2000 issued guidelines to inform Lloyd's underwriters and brokers of their obligations under the Code.

The Insurance Council of Australia has revised the Code to take account of the new Act. However, the revised Code does not provide a higher level of protection for an insured's privacy than that provided for under the new Act and can therefore be considered as superseded. Lloyd's privacy guidelines have, therefore, been amended to inform underwriters and brokers of their obligations to ensure compliance with the requirements of the new Act and no longer make reference to the Code.

If you have any queries with regard to this bulletin, or any general queries regarding Lloyd's conducting business in Australia, please contact:

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This bulletin has been sent to underwriters, Lloyd's brokers and managing agents.

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APPENDIX 1

GUIDELINES TO THE PRIVACY ACT 1988 AND THE PRIVACY AMENDMENT (PRIVATE SECTOR) ACT 2000

The information provided in this document is general advice only, and whilst we have sought legal guidance regarding the overall position of Lloyd's underwriters, you may also wish to obtain specific legal advice in respect of your own circumstances.

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Introduction

Lloyd's became a voluntary signatory to the General Insurance Information Privacy Principles in August 1999. At the time, the general insurance industry was one of the first to adopt a voluntary code to protect the privacy of individuals in the absence of legislation governing personal information held within the private sector.

The *Privacy Act 1988* has now been amended by the *Privacy Amendment (Private Sector) Act 2000* to include certain private sector organisations within its jurisdiction, which previously only extended to the federal and ACT Government departments and agencies. The Amendment Act incorporates ten National Privacy Principles (NPPs) which encompass the private sector's obligations under the Act in relation to the collection, use, disclosure and handling of "personal information".

"Personal information" is essentially information or an opinion about a living individual whose identity is apparent or can reasonably be ascertained from the information or opinion.

A name or address alone is not necessarily personal information unless the identity of the individual can reasonably be ascertained from the name. Usually it will require a combination of pieces of information to be able to identify the individual.

The Act commenced on Friday 21 December 2001, and full compliance is required from that day forward – there is no transition period.

The requirements of the Act apply to all types and classes of insurance (e.g. marine, general, reinsurance etc) and regardless of whether the policy is issued locally or issued direct from London.

The obligations under the Act apply to all personal information held about an individual, except employee records. **It does not matter what type or class of business is transacted, all personal information held about a person, whether as an insured (or part of an insured company), an interested person, a claimant or other third party, is protected by the provisions of the Act and any accompanying guidelines.**

It is also important that what the individual is told is being done to protect their privacy, is actually what is being done in practice. An inconsistency in this regard may constitute misleading or deceptive conduct under the Trade Practices Act 1974.

The 10 National Privacy Principles (NPPs)

In brief, the NPPs impose the following obligations on you and anyone acting on your behalf (please refer to the NPPs for complete details of the requirements):

NPP 1 – Collection

NPP 1 imposes certain requirements that must be met whenever you collect personal information, whether from an individual directly or from a third party about an individual.

Collection of personal information must be fair, lawful and not intrusive. A person must also be told certain prescribed information.

An organisation collecting personal information directly from an individual is required under NPP 1.3, at or before the time (or, if that is not practicable, as soon as practicable after) they collect personal information from the individual, to take reasonable steps to ensure that the individual is aware of:

- its identity and how to contact it; and
- the fact that the individual is able to gain access to the information; and
- the purposes for which the information is collected; and
- the organisations (or the types of organisations) to which it usually discloses information of that kind; and
- any law that requires the particular information to be collected; and
- the main consequences (if any) for the individual if all or part of the information is not provided.

If you collect personal information indirectly, you must:

- satisfy yourself that it is not reasonable and practicable to collect personal information about the individual directly (i.e. this complies with NPP 1.4); and then
- take reasonable steps to ensure that the individual is or has been made aware of the matters listed in NPP 1.3 above as they relate to you, except to the extent that making them aware of the matters would pose a serious threat to the life or health of any individual.

Note: Transfer between related bodies corporate does not constitute a new collection.

NPP2 – Use and Disclosure

Personal information should only be used for the primary purpose for which it was obtained. It may be used for a secondary purpose subject to strict criteria, which vary depending on whether the data is considered *sensitive information* (sensitive information may include health data, sexual preferences, membership of trade unions, etc).

May be disclosed as required by law, for law enforcement, public safety, etc as defined in NPP2

NPP3 – Data Quality

Take reasonable steps to ensure data held is accurate, complete and current

NPP4 – Data Security

Ensure systems and procedures are in place to reasonably protect information from misuse, loss or unauthorised access, modification or disclosure.

Destroy or de-identify data if no longer needed (i.e. no legal or commercial need).

NPP5 – Openness

Documented and accessible privacy policy and information handling practices should be made available to the public on request

NPP6 – Access and Correction

The individual has a right to find out what personal information is held about them (with some important exceptions such as where the disclosure could impact on the privacy or safety of others and where it would breach your duty of confidentiality to your underwriter)

A reasonable charge may be levied for access to this information

Reasonable steps must be taken to correct wrong information, or to make reference to an individual's belief that the information is wrong

NPP7 – Identifiers

Generally speaking, you must not adopt, use or disclose, an identifier that has been assigned by a Commonwealth government 'agency' other than for the purpose they were originally issued.

"Identifier" includes a number assigned by an organisation to an individual to identify uniquely the individual for the purposes of the organisation's operations (e.g. tax file number and Medicare number). However, an individual's name or ABN (as defined in the *A New Tax System (Australian Business Number) Act 1999*) or a State assigned identifier, is not an identifier for the purposes of this Act.

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NPP8 – Anonymity

The individual has the right to remain anonymous in any transaction, unless it is unlawful or impractical in the circumstance

NPP9 – Transborder data flows

You may only transfer personal information about an individual to someone (other than yourselves or the individual) who is in a foreign country in certain circumstances. As Lloyd's is bound by the NPPs you will not be prevented from passing personal information in the way you already do to Lloyd's. In any case, you will usually have the insured's consent to do so.

NPP10 – Sensitive Information

Sensitive information (e.g. racial or ethnic origin; or political opinions; or membership of a political association; or religious beliefs or affiliations; or philosophical beliefs; or membership of a professional or trade association; or membership of a trade union; or sexual preferences or practices; or criminal record and health information) must not be collected unless:

- the individual has consented;
- collection is required by law;
- it is required to establish or defend a legal or equitable claim; or
- necessary to prevent or lessen a threat to the life or health of any person where the information subject cannot physically or legally consent.

Some additional grounds also to collect sensitive information or health information in certain circumstances, may also exist.

Note: If collecting data relating to health, or to crimes more than 10 years old, close attention should be paid to ensuring that the collection satisfies all privacy obligations, not just under this Act.

What you need to do

Suggested wording intended to satisfy NPP1 and NPP 10 obligations

Pursuant to NPP1, *whenever information is collected, especially (but not limited to) when a policy is taken out, renewed or altered, and when a claim is lodged, the individual (or their company or representative) must be advised of certain facts* about the collector and what is to be done with the information collected.

These facts should be contained on any form which requests personal information, and if you take any personal information over the telephone (e.g. phone quotes) the individual will also need to be advised verbally before the information is collected.

There will be a small number of policies where personal information will not be held, but as this will be a minority it will be much easier if a statement regarding Privacy is made standard on all proposal forms, renewals, claim forms, etc. It initially may not appear as if many commercial policies would be caught, but upon further investigation it is apparent that information will be gathered relating to employees, directors and officers at the proposal, endorsement and renewal stages, and any number of witnesses and persons of interest in the event of a claim. **For consistency and ease of compliance it will be far easier to make this a blanket change in all documentation.**

Appendix A - Written form. A generic form which may be

1. Used on proposal, renewal, claim forms, etc
2. Adapted to suit the specifics of the business written
3. Adapted depending on who is the issuer of the policy

Appendix B – Verbal form. This may be altered, again to suit the circumstances, and should be used where personal information is to be obtained verbally.

The policy contract/wording itself does not usually collect information, therefore in most circumstances the policy document will not require the detail of Appendix A or Appendix B, as these are constructed specifically to comply with the Act at the time of actually collecting the information.

Dispute Resolution for Privacy Complaints

All privacy complaints will be handled by the Privacy Commissioner's office in accordance with the requirements of the Act.

Monitoring third parties and agents

Any party enlisted by a Coverholder or underwriter to assist with the administration of a policy or claim must also be bound by the obligations of the Act. This applies to lawyers, assessors, investigators, repairers and suppliers, claims administrators, premium funding organisations, the list is probably endless.

Each third party utilised in this regard should be sent a summary of how you expect them to act, whenever they are representing you. **Appendix C** may assist in this regard. This (or similar) should be sent with a covering letter to all third parties who may act on your behalf, advising them that as a representative of yourself and of Lloyd's they are obliged to carry out their spec keeping in mind the obligations imposed on them by the Act. Any organisation or person utilised by you for the first time should also be advised of this.

Privacy Policy

A copy of Lloyd's Australia's Privacy Policy is attached as **Appendix D**. It is important to note that this legislation does not just apply to the principal insurer. Most organisations and related bodies corporate will all qualify in their own right as a body regulated by the legislation, and as such each organisation will need their own Privacy Policy. You may want to use the Lloyd's Australia Privacy Policy as a basis for your own, however it should be changed to suit the nature of your business and the extent of your involvement with the information collected, stored, used, disclosed, disposed of, etc.

Summary

Obligations imposed by the Act and its amendments relate to:

- “Personal Information” – i.e. information or an opinion about a living individual whose identity is apparent or can reasonably be ascertained from the information or opinion. They may be an insured, interested third party, a claimant, a witness, etc. Your own employee records are not however caught.
- All classes and types of business sold and administered by Lloyd’s and its agents
- All policy issuers, whether coverholder, agent or underwriter
- All agents acting in any capacity on behalf of Lloyd’s or its agents

The Act and its amendments became effective 21 December 2001.

For ease of compliance, the obligations of the Act and its amendments should be applied when acting in relation to all policies, even the small number of those where it is unlikely you will collect personal information.

All forms used to gather information (proposals, claims, renewals, etc) should be updated with notification similar to that contained in Appendix A.

All phone scripts should be updated to include notification similar to that contained in Appendix B, if personal information is going to be collected during the telephone call.

All third parties with whom you share personal information should be advised of your obligations and how they can assist you in meeting them, with notification similar to that contained in Appendix C.

A privacy policy should be developed for your organisation.
Appendix D may be used as a basis for this.

Further Reading

The following links may be of use:

Privacy Act 1988

http://www.austlii.edu.au/au/legis/cth/consol_act/pa1988108/

Privacy Amendment (Private Sector) Act 2000

http://www.austlii.edu.au/au/legis/cth/num_act/pasa2000n1552000373/index.html

Federal Privacy Commissioner's website

<http://www.privacy.gov.au>

Appendix A

PRIVACY WORDING FOR PROPOSAL, RENEWAL, ENDORSEMENT AND CLAIM FORMS

*Lloyd's and its agents are bound by the obligations of the **Privacy Act 1988 as amended by the Privacy Amendment (Private Sector) Act 2000 (the Act)**. This sets out basic standards relating to the collection, use, disclosure and handling of personal information.*

*"Personal information" is essentially information or an opinion about a living **individual** whose identity is apparent or can reasonably be ascertained from the information or opinion.*

Information will be obtained from individuals directly where possible. Sometimes it may be collected indirectly (e.g. from your representatives)

Only information necessary for the arrangement and administration of Lloyd's business by Lloyd's, its agents and their representatives will be collected. This includes information necessary to accept the risk, to assess a claim, to determine competitive and appropriate premiums, etc.

Lloyd's and its agents disclose personal information to third parties who they believe are necessary to assist them in doing the above. These parties will only use the personal information for the purposes we provided it to them for (or if required by law).

When you give Lloyd's and its agents personal information about other individuals, we rely on you to have made or make them aware that you will or may provide their personal information to us, the types of third parties we may provide it to, the relevant purposes we and the third parties we disclose it to will use it for, and how they can access it. If it is sensitive information we rely on you to have obtained their consent on these matters. If you have not done or will not do either of these things, you must tell us before you provide the relevant information.

You are entitled to access your information if you wish and request correction if required. You may also opt out of receiving materials sent by Lloyd's by contacting (issuer of policy) on (phone)...

APPENDIX B

VERBAL PRIVACY DISCLOSURE TO BE USED WHENEVER
INFORMATION IS COLLECTED VERBALLY

*I am required by law to advise you of certain requirements imposed on Lloyd's and its agents by the **Privacy Act 1988 as amended by Privacy Amendment (Private Sector) Act 2000 (the Act)**.*

Only information necessary for the arrangement and administration of Lloyd's business by Lloyd's, its agents and their representatives will be collected. This includes information necessary to accept the risk, to assess a claim, to determine competitive and appropriate premiums, etc. When you give Lloyd's and its agents personal information about other individuals, we rely on you to have made or make them aware that you will or may provide their personal information to us, the types of third parties we may provide it to, the relevant purposes we and the third parties we disclose it to will use it for, and how they can access it. If it is sensitive information we rely on you to have obtained their consent on these matters. If you have not done or will not do either of these things, you must tell us before you provide the relevant information.

Lloyd's and its agents disclose personal information to third parties who they believe are necessary to assist them in doing the above. These parties will only use the personal information for the purposes we provided it to them for (or if required by law).

You are entitled to access your information if you wish and request correction if required.

Are you happy to proceed on this basis?

If not, the transaction should not be continued.

APPENDIX C

THIRD PARTY OBLIGATIONS

(To be used to advise any third parties who act on your behalf of their obligations)

*Lloyd's and its representatives are bound by the obligations of the **Privacy Act 1988 as amended by the Privacy Amendment (Private Sector) Act 2000 (the Act)**. As a representative of Lloyd's Underwriters we expect that from 21 December 2001 you will meet the following standards.*

Only information necessary for the arrangement and administration of Lloyd's business by Lloyd's, its agents and their representatives will be collected. This includes information necessary to accept the risk, to assess a claim, to determine competitive and appropriate premiums, etc.

When you give Lloyd's and its agents personal information about other individuals, we rely on you to have made or make them aware that you will or may provide their personal information to us, the types of third parties we may provide it to, the relevant purposes we and the third parties we disclose it to will use it for, and how they can access it. If it is sensitive information we rely on you to have obtained their consent on these matters. If you have not done or will not do either of these things you must tell us before you provide the relevant information.

You should advise them that they can access their information and request any corrections if required.

Where relevant, you, your agents, employees and contractors must meet the requirements of the Privacy Act 1988 when collecting, using, disclosing and handling personal information on our behalf.

If you do not notify us otherwise before your next business dealing with us, by default you have confirmed your agreement to the above on behalf of yourself and those whom you represent.

APPENDIX D

THE PRIVACY POLICY OF LLOYD'S AUSTRALIA LTD

Lloyd's Australia Ltd is a proud supporter of the intent of the Privacy Act 1988 as amended by the Privacy Amendment (Private Sector) Act 2000.

Our aim is to provide the highest service to our Australian Policyholders, and to that end, we have developed the following procedures for the fair handling of personal information.

Our Privacy Policy became effective on 21 December 2001, and applies to all information collected about individuals, regardless of how or from where the information is collected. It may be collected in relation to a personal or a business policy, but does not protect information obtained regarding the business or its related entities. It also does not protect information regarding our own employees.

Why we collect personal Information

We collect personal information in order to appropriately address your insurance needs. Only information necessary for the completion of Lloyd's business or related activities will be collected. This includes information necessary to accept the risk, to assess a claim, to determine competitive and appropriate premiums, etc.

We may also sometimes collect personal information for the development of better products and services, and for conducting marketing and customer service research. We may sometimes share this information with our related companies in order to serve you better.

Firstly, we usually collect identifying information such as name, address, contact telephone numbers and email addresses. If you are applying for a product we may offer, we may also need to collect specific information that will enable us to supply that product to you. We will collect and store this information in a manner that allows us to assist you in the future.

Some products or services may require us to collect 'sensitive information', which may include (but is not limited to) your membership of associations, health data, criminal records. We will only collect this type of information in accordance with the Privacy Act.

If you do not agree to provide us with the information we request, we may not be able to offer you the product or service you seek.

The information provided in this document is general advice only, and whilst we have sought legal guidance regarding the overall position of Lloyd's underwriters, you may also wish to obtain specific legal advice in respect of your own circumstances.

How we collect personal information

Where possible we will collect information about you, from you. If we obtain this information from other sources, we will take reasonable steps to advise you of this disclosure.

When you give Lloyd's personal information about other individuals, we rely on you to have made or make them aware that you will or may provide their personal information to us, the types of third parties we may provide it to, the relevant purposes we and the third parties we disclose it to will use it for, and how they can access it. If it is sensitive information we rely on you to have obtained their consent on these matters. If you have not done or will not do either of these things you must tell us before you provide the relevant information.

Disclosing this Personal Information

This information will only be disclosed to third parties where the disclosure is reasonably required to carry out Lloyd's business or activities unless you have authorised otherwise (or if required by law).

Except where you have consented to it, we will limit the use and disclosure of any personal information provided to us by third parties about you, to the specific purpose for which the information was supplied.

Some examples of entities we may disclose personal information about you to include (but are not limited to) Lloyd's brokers, reinsurers, Lloyd's underwriters, underwriting agents, Lloyd's Regulatory Division, loss adjusters, assessors, investigators, lawyers, insurance reference bureaus, etc.

Security of your Personal Information

We will endeavour to protect your personal information from misuse, loss, unauthorised access, modification or disclosure.

We will need to transfer your personal information overseas in order to properly carry out our business.

Accuracy of and Access to your Personal Information

We will take reasonable steps to ensure that the personal information you provide is accurate, complete and up to date, whenever it is used, collected or disclosed.

You are entitled to access your information if you wish and request correction if required. We may request reasonable costs from you to cover retrieving and providing this information.

You may also opt out of receiving any marketing materials that may be sent by us by contacting us by telephone on 02 9223 1433.

The information provided in this document is general advice only, and whilst we have sought legal guidance regarding the overall position of Lloyd's underwriters, you may also wish to obtain specific legal advice in respect of your own circumstances.

Complaints regarding the handling of your Personal Information

If you believe your privacy may have been prejudiced, you have the right to make a complaint about the matter.

In the first instance, it is suggested that your complaint should be addressed either in writing to us at Lloyd's Australia Ltd, Suite Q, Level 12, 55 Hunter Street, Sydney NSW 2000 (fax 02 9223 1466) or by telephone via 02 9223 1433. We will investigate the matters raised by you and respond directly to you.

If you are dissatisfied with our response, you should refer the matter to the Privacy Commissioner's Office in accordance with the Act.