

FROM: Director, Worldwide Markets
LOCATION: G12
EXTENSION: 5998
DATE: 22 August 2003
REFERENCE: Y3121
SUBJECT: AUSTRALIA: MANDATORY WORDING FOR USE
WITH BINDING AUTHORITIES HELD BY
AUSTRALIAN COVERHOLDERS

ATTACHMENTS: LSW649: Mandatory Wording for Use with Binding
Authorities held by Australian Coverholders

ACTION POINTS: **Underwriters and Brokers to note**
DEADLINE: **1st November 2003**

Purpose and Scope of Bulletin

The purpose of this Bulletin is to advise of the introduction of LSW649, which must be attached to all Australian binding authorities incepting on or after 1 November 2003.

Use of LSW649

LSW649 (see Appendix 1) encompasses all Australian requirements, including those currently set out in LSW641b, and as a result LSW641b will be withdrawn from 31 October 2003. LSW649 must be attached to all Australian binding authorities incepting on or after 1 November 2003, 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 2003, where LSW649 has not been included.

As a result of the introduction of LSW649 the following checks will cease to be carried out by Xchanging Ins-sure Services with effect from 1 November 2003:

- Attachment of Certificates – Xchanging Ins-sure Services will no longer insist on a copy of the certificate being attached where business is likely to include risks falling within the scope of the Australian Code of Practice. However, whilst Xchanging Ins-sure Services will no longer query its absence, they will continue to accept risks where a copy of the certificate has been attached.
- LSW641b – this clause is to be withdrawn and therefore Xchanging Ins-sure Services will no longer insist on the inclusion of this clause on personal lines binding authorities.
- Australian Insurance (Agents & Brokers) Act 1984 – Xchanging Ins-sure Services will no longer insist on the inclusion of a clause relating to the coverholders' duties where it is clear that they are an agent as opposed to being a broker.

General

If you have any queries about this please contact any of the following:

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We have sent this bulletin to advise underwriters, Lloyd's Brokers and Managing Agents,

Julian James
Director
Worldwide Markets

**MANDATORY WORDING FOR USE WITH BINDING AUTHORITIES HELD BY
AUSTRALIAN COVERHOLDERS**

Notwithstanding anything to the contrary contained within the Agreement to which this endorsement is attached, the Coverholder must comply with the following provisions:

1. **Licence Requirements:** 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 Lloyd's underwriters have been provided with written evidence of any appropriate exemptions.

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 Enquiries and Complaints Limited's Scheme (IEC Scheme) 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 IEC Scheme, even though the Coverholder may also be required to be a member of the IEC Scheme in its own right.

2. **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 Lloyd's 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, Assureds, intending Assureds 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 Lloyd's 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 within the Agreement, the Coverholder shall fully indemnify Lloyd's underwriters the entire sum which Lloyd's underwriters are ordered or held liable to pay and in addition, all legal costs on a solicitor and own client basis which Lloyd's underwriters may incur.

If Lloyd's 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 Lloyd's underwriters the entire sum which Lloyd's underwriters are ordered or held liable to pay and, in addition, all related legal costs on a solicitor and own client basis which Lloyd's underwriters may incur.

3. **Certificates:** It is a condition of the Agreement that the format of any certificate issued under the Agreement shall:
 - (a) in respect of insurances falling within the scope of the General Insurance Code of Practice be based on NMA 2837 Standard Outline Certificate (Australia – Personal Lines); or
 - (b) in respect of other insurances, be based on the NMA 1856(a) Standard Outline Certificate with the service of suit clause deleted and replaced by LSW 1145 Alternative Disputes Resolution Clause, where inclusion of the latter has been agreed by Lloyd's underwriters; and
 - (c) in respect of applicable classes of business under the Insurance Contracts Act 1984, include Expiry/Renewal Notice NMA 1996.

4. **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 Enquiries and Complaints 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 Lloyd's underwriter, in order to ensure that the Lloyd's underwriter complies with the Code and any direction of the Insurance Enquiries and Complaints 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 the General Representative, reporting compliance with the foregoing obligations (stated in a, b and c above) and providing adequate detail as to how such obligations have been satisfied.
5. **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 Assureds in accordance with the Privacy Act Principles and for the purposes only of providing insurance to Assureds and prospective Assureds and of handling claims to the extent allowed by the Agreement.
6. **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 Lloyd's in London in order that the central tax system can properly record this information for Insurance Protection Tax (NSW) purposes.
7. **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 IEC Scheme, respond to the Lloyd's Australia office within 10 working days of the lodgement of a disputed claim.
8. **Statutory renewals after termination of Agreement - section 58 Insurance Contracts Act:** It is the Coverholder's responsibility to ensure that Lloyd's underwriters are not committed to insurances which incept after the termination of the Agreement. In addition to the Coverholder's responsibilities under Clause 10 of this endorsement, the Coverholder shall take appropriate action to prevent the renewal after the effective date of termination of the Agreement of any certificate by reason of the operation of section 58 of the Insurance Contracts Act.
9. **Statutory renewals during term of Agreement – section 58 Insurance Contracts Act:** The Coverholder shall take appropriate action to prevent the renewal of any certificate during the term of the Agreement by reason of the operation of section 58 of the Insurance Contracts Act.

10. **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.
11. **Severability:** If any provision of the Agreement is prohibited, invalid or unenforceable in any jurisdiction, that provision will, as to that jurisdiction, be ineffective to the extent of the prohibition, invalidity or unenforceability without invalidating the remaining provisions of the Agreement or affecting the validity or enforceability of that provision in any other jurisdiction, unless it materially alters the nature of any material term of the Agreement.

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LSW649