Compliance Advocacy Solutions

UAC MAY NEWSLETTER - COMPLIANCE ADVOCACY SOLUTIONS

SECTION 1 – REGULATORY UPDATES

1. APRA and ASIC call for a step-change in AI-related risk management and governance

1. **Brief Summary:**

- APRA is warning that while financial institutions are rapidly adopting AI, their risk management and governance practices are not keeping up, creating potential exposure to issues like bias, poor oversight and data risks. APRA expects a significant uplift using existing regulatory frameworks, with stronger board-level accountability, clearer controls and more robust monitoring of how AI is used across organisations.
- ASIC is calling on all licensees and market participants to urgently strengthen their cyber resilience measures, as frontier artificial intelligence (AI) intensifies the global cyber risk environment. While cyber risk has always existed, misuse of frontier AI models such as Anthropic's Claude Mythos could expose cyber security vulnerabilities at an unprecedented speed, scale, and sophistication. In an open letter to Industry ASIC has urged entities to act now and not wait for advanced AI tools to uplift their cyber security fundamentals and ensure their systems can withstand AI-accelerated threats.

2. **Impact for UAC Members:**

- Members should ensure that:
  - Their BCP has been updated to meet CPS 230 requirements (where binder(s) are with APRA general insurers) and include technology risk and implement testing of the cybersecurity measures as part of a severe but plausible scenario.
  - Risk management artefacts, such as risk profiles and risk appetite statements, have been updated to reflect technology risk and strategies to manage the risk.
  - cyber resilience is included as a standing agenda item for board ad management risk and compliance meetings; and
  - review and implement the steps referenced in ASIC's letter to licensees and directors dated 8 May 2026.

2. AFCA publishes a video explaining what happens after a consumer receives a determination

1. **Brief Summary:** ASIC's refreshed Moneysmart guidance highlights the growing need for trusted, independent financial information, particularly as more Australians, especially younger audiences, turn to social media for advice, positioning Moneysmart as a clearer, more accessible and reliable resource to support better financial decisions and improve overall financial literacy across the community.

2. Impact for UAC Members:

- For information only

SECTION 2 – MONTHLY ARTICLE

Compliance Requirements for Underwriting Agencies:

Underwriting Agencies play a unique and critical role in the Australian insurance market. Agencies generally act on behalf of an insurer and hold their own AFS Licence, this creates compliance requirements that can be onerous and complex.

AFS Licence authorisations

Typically, an Agency will be authorised to provide financial product advice however, this may be restricted to providing general financial product advice only.

The nuance arises with the dealing authorisation. As discussed below, the agency will have delegated underwriting authority to bind risks on behalf of the insurer. This requires the dealing authorisation that applies to product issuers:

Issue, apply for, acquire, vary or dispose of a financial product

Where the agency arranges general insurance products through open market placements (see below), they may also requirement the authorisation to act on behalf of another person:

Apply for, acquire, vary or dispose of a financial product on behalf of another person

Where the agency has delegated claims authority from the insurer, they will also require the authorisation to provide *claims handling settling services (on behalf of an insurer).*

Depending on the types of clients that the agency targets, the AFSL authorisation will permit the financial services to be provided to retail clients or wholesale clients or both.

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Acting under a binder - what does this mean?

A financial service licensee cannot be the authorised representative of another financial services licensee (s916D Corporations Act), unless acting under a binder given by an insurer (s916E).

Insurer means an APRA-regulated insurer authorised under the Insurance Act and includes Lloyd's underwriters. General insurers are authorised under s12 of the Act, and Lloyds Underwriters are authorised under s93.

A 'binder' is defined in s761A Corporations Act, and means an authorisation given to a person by a financial services licensee who is an insurer to do either or both of the following:

(a) enter into contracts that are risk insurance products on behalf of the insurer as insurer;

(b) provide a claims handling and settling service, on behalf of the insurer as insurer, in relation to risk insurance products.

It follows from the above, that the authority must be to 'bind' the insurer. Arrangements to present risks, *that fall outside the binder*, to an insurer including an unauthorised foreign insurer for quoting or acceptance or arrangements such as line slips, may not have the required elements to 'bind', and in such instances would be an **open market placement**. Each arrangement requires careful analysis and consideration to understand whether it is a 'binder' under section 916E.

Where the arrangement is an open market placement, effectively this means that the agency is acting on behalf of the insured (typically through a broker, in this scenario the agency is known as the wholesale broker and the broker dealing directly with the insured is the retail broker).

Financial service laws - requirements

As a licensee, the agency must comply with financial service laws. These include, regulatory obligations arising under:

- Chapter 7 Corporations Act - Financial services and markets including the general obligations of a licensee (s912A(1));
- ASIC Act Part 2, Division 2 -Unconscionable conduct and consumer protection in relation to financial services;
- Insurance Contracts Act;
- Privacy Act; and
- Competition and Consumer Act

Additional regulatory obligations arise under:

- Financial crime laws - Autonomous Sanctions Act, United Nations Charter, Criminal Codes and insider trading provisions of the Corporations Act (s1043A)

Requirements arising as a representative of the Insurer

As the agency is acting on behalf of an insurer additional obligations arise. However, it is important to note that the obligations are imposed on the insurer. The obligations manifest for the agency through the Binder Agreement - hence they are contractual obligations.

Such obligations include:

- for the agency to be monitored, to be trained and to be competent as part of the insurer's general obligations as a Licensee;
- as a material service supplier to general insurers under CPS 230 - Operational Risk Management; and
- where the agency manages the insurer's information assets, obligations under CPS 234 Information Security.

Note: APRA Prudential Standards apply to general insurers authorised under Section 12 of the Insurance Act. They do not apply to Lloyd's underwriters. Lloyd's underwriters are subject to UK conduct and prudential regulations.

Lloyd's underwriters

Binding Authority Agreement LMA3113A applies to Australia and will include endorsement LMA5546.

In addition**, Lloyd's Market Bulletins** may be issued, these are the formal means of advising the Lloyd's market of business critical issues. A recent example is Y5438 'Delegated authority agreements – mandate of lead security'.

GI Code of Practice

Where the general insurer is a subscriber to the Code, the insurer will require the agency to comply with the Code as a Distributor (Part 4) and/or Service Supplier (Part 5). These terms are defined in Part 16.

In respect of Lloyds underwriters, Lloyds Australia has signed a Deed of Adoption subscribing to the Code. The Code therefore applies to all direct insurance policies issued under a binding authority by an Australian coverholder and claims managed by the Australian coverholder or Australian domiciled claims administrator.

Managing obligations

The above provides a brief overview of the common obligations applying to an Underwriting Agency. In order to identify all material obligations it is necessary to understand the agencies:

- AFS Licence authorisations and conditions;
- Binder Agreement(s);
- General insurance products and services provided; and
- Business operating model including distribution and referral channels.

Documenting compliance measures

In order to navigate the complexity of compliance and demonstrate compliance, an agency must document its compliance measures.

This includes detailing the obligations arising under their AFS Licence, Financial service laws, Binder agreement(s) and the GI Code of Practice.

This enables the obligations to be grouped and have key controls assigned.

In addition, documenting compliance measures:

- enables a systemmatic approach to managing compliance;
- manages operational risk;
- manages the risk of non-compliance and the resultant customer, financial and reputational impacts; and
- provides assurance to the insurer and other business partners and regulators.

Contact me if you need assistance with your compliance needs and requirements.