

# MSM Loss Management

**Specialists in  
loss management  
and quantum**

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## **MSM Newsletter**

Keep up to date with the latest MSM news, industry views and profiles from your Inbox or via our website [msmlm.biz](http://msmlm.biz).

## MSM Newsletter

MSM email newsletter for clients and industry members covering:

### **MSM training:**

Details on MSM training programs and content

### **MSM News:**

Keeping you up to date with MSM's independent services and initiatives

### **Current Industry Issues:**

Across the insurance, risk management, legal and construction industries

### **MSM profile:**

A brief profile of MSM consultants

## Best wishes for the Festive Season to all our clients and friends

Everyone at MSM would like to take this opportunity to thank all our clients and friends for your support throughout 2006. Whether you have had contact with us through our Business Interruption and Material Damage claims preparation services or compliance services, we've enjoyed dealing with you. We've achieved a number of outstanding claims results in 2006 for clients who had incidents resulting in Business Interruption losses and Material Damage and appreciate the opportunities to act as clients' independent claim preparers. Our Compliance services business also continues to grow.

We wish you and your families an enjoyable festive season and look forward to the opportunity of working with you in 2007.

MSM are pleased to be able to provide updates in our newsletters of legislative developments. We have received the following article from Kennedy's Solicitors who recently opened a new office in Sydney. We wish them every success.

## Fit and Proper Standards for Insurance Company Managers

From 1 October 2006, insurers must have in place a fit and proper policy that meets the new Prudential Standard issued by the Australian Prudential Regulation Authority (APRA) (GPS 520 Fit and Proper).

The insurer must implement a written fit and proper policy;

The fitness and propriety of a 'responsible person' must generally be assessed before their appointment and reassessed as close to annually as practicable;

An insurer must take all prudent steps to ensure that a person is not appointed to, or does not continue to hold, a 'responsible person' position for which they are not fit and proper;

The standard is aimed at senior managers – anyone playing a significant role in the management or control of the regulated institution, or involved with services or support that is prudentially significant.

Each insurer must document the competencies required for each 'responsible person' position. That person's characteristics must include competence, diligence, honesty, integrity, judgement to perform properly the duties of the 'responsible person' and position free from conflict of interest.

One aim of the standard is to identify behaviour that constitutes grounds to disqualify that senior manager from continuing in that role under the statutory framework that applies to insurers in Australia.

Significantly, the fit and proper policy must include adequate provision to allow whistle blowing if anyone believes that a responsible person does not meet the insurer's fit and proper criteria. The insurer (and any of its subsidiaries) must ensure that it does not have an internal policy or contractual arrangement that explicitly or implicitly restricts or discourages communication by a notifying person to APRA.

Should you require any more information about this article please contact Sumiya Basha at Kennedys solicitors on [s.basha@kennedys-law.com.au](mailto:s.basha@kennedys-law.com.au). Please also refer to the Kennedys website at [www.kennedys-law.com.au](http://www.kennedys-law.com.au).

## Financial Crisis Management: Application to SMEs in Australia

One of our Melbourne MSM consultants, Mohammed Aba-Bulgu, recently completed his doctorate on Financial Crisis Management for SMEs. The following is a brief summary of that Doctoral thesis.

Abrupt financial crises which result from fire, flood, storm, or any other human or natural disasters involve a partial or full destruction of productive assets, and manifest themselves in the form of deterioration in cash flows, loss of market share, loss of key personnel and, in extreme cases, a collapse of business organisation built over several years on the back of hard work and a lifetime of savings.

In an attempt to develop both theoretical and practical financial crisis management models that could minimise the impact of these disastrous incidents on small and medium sized enterprises ("SMEs"), an extensive study was undertaken of existing literature with a focus on practical case studies of 12 SMEs that had suffered from financial crises due to unfortunate events. The research produced a new approach and theoretical framework for the study and application of financial crisis management models based on :

- (i) financial management theories and policies such as risk management, financial engineering, capital budgeting and optimal capital structure;
- (ii) accounting theories and practices including corporate financial distress and financial ratio analyses; and
- (iii) corporate management theories and principles with major emphasis on corporate governance, marketing management, business ethics and stakeholders analysis.

The analysis of these case studies based on the new approach shows that SMEs pass through different crisis phases and require the application of different financial and managerial instruments. These include a cash flow optimisation model, optimal post-loss investment model, EOQ, optimal capital structure, project management techniques, target-orientated advertising and promotion, and appropriate communication policies with internal and external stakeholders. The findings indicate that an integrated and focused approach is required to effectively manage crisis and return SMEs to their normal trading position at a minimum cost and within the shortest possible time.

The research also shows that the application of a systems approach to crisis management at organisational and financial crisis management levels is important. As well, the utilization of a corporate planning format involving targets, instruments and policies is also vital. Loss consultants and or SME owner/managers can achieve better results by identifying their objectives and targets during different crisis phases, applying the appropriate financial and

managerial instruments and understanding the business policies and surrounding environment.

The case studies further show that traditionally SMEs with pro-active and focused owner managers, **appropriate and adequate insurance covers** and sufficient cash reserve tend to recover fast and withstand disastrous incidents that can cripple larger organisations.

## Compliance – Ivan’s Ideas– Addressing Further AFS Changes

The changes just keep rolling on for AFS Licensees. Below is a summary of each change and more importantly what you need to do to address the changes.

### **Professional Indemnity -The Changes**

Until now, most AFS Licensees have been operating under the same Professional Indemnity requirements as applied prior to the commencement of the FSRA in March 2004, pending the government’s decision on what new compensation requirements would be put into place. A draft Regulation released by Treasury in November 2006 will require (with some minor exemptions) all AFS Licensees that deal with Retail Clients to have in place an acceptable professional Indemnity cover and to provide information on this in the AFS Licensees Financial Services Guide.

At this point in time it appears the Government is not going to specifically prescribe the sums insured, excess levels or required policy conditions as is currently the case with Insurance Brokers Professional Indemnity cover.

The draft Regulation requires a level of professional Indemnity cover based on the following:

1. The maximum payout applicable from the external dispute facility;
2. The likely number of claims arising from one event;
3. The specific characteristics of the licensee’s business such as the volume of business, number and type of clients, number of licenses held and number of authorised representatives.

The government has called for submissions from the industry on the proposal and has also flagged that there is likely to be a transition period to enable all AFS Licensees time to implement the new requirements or adjust existing covers where required.

### **Action Required**

Given the proposed requirement to include your Professional Indemnity details in your FSG we would recommend Licensees delay any reprints of their FSG pending the finalisation of the proposed Regulation.

For Licensees unable to delay a reprint of their FSG we would recommend the inclusion of a clause along the following lines:

“For your added protection we also hold a Professional Indemnity Policy. This policy is designed to pay claims by Third Parties (including our clients) arising out of our Professional Negligence. The policy has a minimum cover of \$1 M for any one claim with the additional protection of providing for a further two claims (again with a minimum cover of \$1M each) in the same policy year.”

Some licensees may be concerned (as might be their insurers) in disclosing the existence of a professional Indemnity cover. However, given that the minimum levels of cover required are already legislated, the wording above does no more than confirm what is already public knowledge.

### **Insurance Brokers Code of Practice -The Changes**

The new code, which will apply from 1<sup>st</sup> January 2007 to all AFS Licensees who subscribe to the IBD, involves the following key changes:

1. There is the change of name for the code from the “General Insurance Brokers Code of Practice” to the “Insurance Brokers Code of Practice”.
2. Fees must be disclosed to clients prior to providing a service. The old Code only required disclosure of fees on written documentation.
3. You must advise the client prior to arranging an insurance policy if you will be retaining fees and/or commission on policy cancellations. The old Code had no such requirement.
4. Where cover is to be placed with a Direct Offshore Foreign Insurer you must advise the client of the relevant risks associated with such insurers and seek to have the client’s written acknowledgement of receiving such advice.
5. Ensure your complaints process provides for the client to be advised in 20 days of receipt of a complaint, on the steps you plan to take to resolve the complaint.

### **Action Required**

We recommend all Licensees affected by this change implement the following steps:

1. Ensure all staff are provided with Training on the new Code.
2. Update references in your Financial Services Guide, Invoices and Standard Letters etc to refer to the new Code name.
3. Ensure that your Invoices and FSG's include a clause to the effect that you retain the right to retain fees and commissions on policy cancellations.

4. Update your Oral Disclosure Scripts and ensure all staff are advised of the requirement to separately disclose fees in all verbal quotes, email quotes, submissions etc.
5. Identify all DOFI placements and implement a system to ensure that all such new business and renewals include the requisite advice and client acknowledgment.
6. Update your complaints systems to specifically include the 20 day resolution timeframe.

### **Further Financial Services Refinements - The Changes**

The Federal Government has released a further discussion paper on a number of refinements to the Corporations Act that are designed to address various practical issues raised by the Financial Services Sector. A few of the proposed changes that may have an impact on general insurance intermediaries include:

1. Create a new type of advice – Sales Recommendation. Only representatives who work solely for an insurer or an intermediary acting under a binder would be able to take advantage of this new concept. Disclosure requirements would include a “Sales Recommendation” warning and disclosure of Sales Recommendation concept in FSG’s etc. This change may also involve changes to PS146 – Training Requirements, with the expectation of reduced training required for representatives involved in “Sales Recommendations”.
2. Amend the cross-endorsement arrangements so that licensees are only jointly and severally liable for the conduct of their authorised representatives where those representatives provide financial services in relation to the same sub-class of financial product.

### **Action Required**

We would recommend that Licensees, who have Authorised Representatives cross endorsed with other Licensees, review the product authorisations provided under the authorisation. Where relevant the Licensee should reduce the product authorisations provided to the specific classes that the authorised representative is expected to operate with for your Licence.

For Clients who use our MSM Mission Control system, all of these changes have been incorporated into our system and appropriate changes made to various documentation etc. This includes a PowerPoint Presentation on the new Code.

Please do not hesitate to contact Mr. Ivan Handasyde from MSM Compliance Services P/L 03 9209 9410 on any questions that you have on these changes. MSM are also able to provide

you with cost effective in-house training on the new Code of Practice, reducing staff time away from office, whilst providing a face to face interaction that delivers a better learning outcome with a practical outcome focus.

### **Financial Audits**

By now all Licensees should have had their Financial Accounts audited and lodged with ASIC. If you are one of the few who haven't, we suggest you make it the next thing that you do!

**MSM are proud to advise that we are now able to offer our clients this Financial Audit service for the 2007 financial year.** With our expertise in compliance and the general insurance intermediary market it appeared to us that the extension of our services into this key business area was a logical progression.

We were also prompted by the feedback we receive from many Licensees that the level of industry expertise being provided by their current audit provider was less than satisfactory. Should you wish to discuss your audit requirements with MSM please do not hesitate to contact Mr. Ivan Handasyde on 03 9209 9410

## MSM Training Update

MSM recently have been running Business Interruption Insurance training for groups of local brokerages on request that missed out on our NIBA sessions. For the fifth year our NIBA Intermediate and Advanced Business Interruption training were successfully run in Sydney, Brisbane, Adelaide & Melbourne throughout 2006 by MSM directors Greg Sutton, Colin Chinner and Peter Rink. We will be running these courses again in 2007. Look out for the dates to be announced by NIBA in the New Year.



**SYDNEY**  
Greg Sutton



**MELBOURNE**  
Colin Chinner



**BRISBANE**  
Peter Rink

## MSM CORPORATE PROFILE

MSM Loss Management (MSM) is Australia's premier provider of business interruption, litigation support, claims management and related support services.

Services include preparation of economic and consequential loss claims, **material damage claims (property, fidelity)**, business valuations, policy reviews business continuity planning. The practice has focused on **material damage and business interruption**, economic loss consulting, forensic accounting and litigation support as well as providing training and compliance services. The MSM team has gained technical and practical experience through years of involvement in thousands of claims and litigated matters, across a broad range of industries, including mining, construction, metals and energy, manufacturing, hospitality and logistics. MSM has a multi-disciplined, professional team which includes chartered accountants and CPAs with experience across a diverse range of industries and organisations.

### Claim Services – including Claim Preparation

- Management, preparation, review and settlement of **material damage**, business interruption, advanced loss of profits, fidelity, product recall/liability and related claims requiring the establishment of quantum.
- Advice on business interruption and **material damage** cover including rights and obligations, policy response and a review of the adequacy of the sums insured.
- Timely advice, allowing informed decisions on critical issues such as recovery actions and options affecting the treatment of payroll.
- Claims management and **commercial disputes**
- Identification and quantification of economic losses.

### Pre-Loss Consulting Services

The pre-loss consulting services include:

- Reviewing the adequacy of declared values, limits, sub-limits and indemnity periods.
- Establishing pre-loss procedures.
- Business continuity planning.

### Litigation Support

MSM undertakes assignments on behalf of major law firms, acts as expert witnesses, and provides expert opinion and advice in a broad range of matters across a variety of industries.

For more on MSM's services, visit our website at [www.msmlm.biz](http://www.msmlm.biz)



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**Correspondents in New Zealand, Asia, USA, UK and Europe**

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Training and related areas to Insurance Brokers ▪ Risk Managers ▪ Solicitors ▪ Accountants and our  
respective clients.

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