

# EXPOSURE DRAFT



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## **Terrorism Insurance Amendment (Cyclone and Related Flood Damage Reinsurance Pool) Regulations 2022**

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I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2022

David Hurley  
Governor-General

By His Excellency's Command

Michael Sukkar [**DRAFT ONLY—NOT FOR SIGNATURE**]  
Assistant Treasurer, Minister for Housing and Minister for Homelessness, Social and Community Housing

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## 1 Name

This instrument is the *Terrorism Insurance Amendment (Cyclone and Related Flood Damage Reinsurance Pool) Regulations 2022*.

## 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## 3 Authority

This instrument is made under the following:

- (a) the *Insurance Act 1973*;
- (b) the *Legislation Act 2003*;
- (c) the *Terrorism and Cyclone Insurance Act 2003*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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Schedule 1 Amendments

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## Schedule 1—Amendments

### *Insurance Regulations 2002*

#### **1 Paragraph 4C(2)(d)**

Omit “*Terrorism Insurance Act 2003*”, substitute “*Terrorism and Cyclone Insurance Act 2003*”.

### *Legislation (Exemptions and Other Matters) Regulation 2015*

#### **2 Section 10 (item 31 of the table)**

Repeal the item, substitute:

31 A declaration made under section 6 of the *Terrorism and Cyclone Insurance Act 2003*

#### **3 Section 12 (item 63 of the table)**

Repeal the item, substitute:

63 Each of the following:

- (a) a declaration made under section 6 of the *Terrorism and Cyclone Insurance Act 2003*;
- (b) a regulation made under that Act

### *Terrorism Insurance Regulations 2003*

#### **4 Regulation 1**

Repeal the regulation, substitute:

##### **1 Name**

This instrument is the *Terrorism and Cyclone Insurance Regulations 2003*.

#### **5 Regulation 3 (definition of Act)**

Repeal the definition, substitute:

*Act* means the *Terrorism and Cyclone Insurance Act 2003*.

#### **6 Regulation 3 (definition of business)**

Omit “*Trade Practices Act 1974*”, substitute “*Competition and Consumer Act 2010*”.

#### **7 Regulation 3**

Insert:

*body corporate* for a strata or community title development has the meaning given by subregulation 4A(4).

#### **8 Regulation 3 (definition of contents)**

Repeal the definition.

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## 9 Regulation 3

Insert:

*cyclone* has the meaning given by regulation 3A.

*end*, in relation to a cyclone, has the meaning given by subregulations 3A(3) and (5).

*reintensify*, in relation to a cyclone, has the meaning given by subregulation 3A(4).

*strata or community title development* has the meaning given by subregulations 4A(1) to (3).

*unit* in a strata or community title development has the meaning given by subregulation 4A(5).

## 10 After regulation 3

Insert:

### 3A Definition of a cyclone and when a cyclone ends or reintensifies

- (1) This regulation has effect for the purposes of the definitions of *cyclone*, *end* and *reintensify* in section 3 of the Act.
- (2) A *cyclone* is a non-frontal low pressure system, of synoptic scale, that:
  - (a) has developed over warm waters; and
  - (b) has organised convection; and
  - (c) has a maximum mean wind speed of 34 knots or greater that extends more than half-way around near the centre of the system and has persisted for at least 6 hours.

Note: This definition describes tropical cyclones, which are referred to in the Act and this instrument as cyclones.

- (3) A cyclone *ends* at the earliest time (the *downgrade time*) when the following conditions are satisfied:
  - (a) the low pressure system concerned:
    - (i) no longer satisfies the condition in paragraph (2)(b); or
    - (ii) no longer satisfies the condition in paragraph (2)(c);and has been designated by the Bureau as an ex-tropical cyclone or post-tropical cyclone;
  - (b) in the opinion of the Bureau, the likelihood that the system will intensify to such an extent as to again satisfy the conditions in paragraphs (2)(b) and (c) at some time within 48 hours after the downgrade time is less than the likelihood that it will not.
- (4) If a cyclone ends because of subregulation (3) or (5) but the low pressure system concerned later intensifies to such an extent as to again satisfy the conditions in paragraphs (2)(b) and (c), it again becomes a *cyclone*, and is taken to *reintensify* at the time when it again meets the conditions in paragraphs (2)(b) and (c).

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## Schedule 1 Amendments

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- (5) A cyclone that has reintensified *ends* at the earliest time (also the *downgrade time*) after it reintensified when the conditions in paragraphs (3)(a) and (b) are satisfied.

### 11 After regulation 4

Insert:

#### 4A Definitions of *strata or community title development* and related terms

- (1) For the purposes of the definition of *strata or community title development* in section 3 of the Act, a *strata or community title development* is an arrangement covered by subregulation (2) or (3).
- (2) This subregulation covers an arrangement:
- (a) under which:
- (i) the title (whether freehold or leasehold) to a portion of land is subdivided into separate freehold or leasehold titles relating to smaller portions of land within the first-mentioned portion; and
- (ii) property that is common between the owners or occupiers of the smaller portions is owned or managed by a single body corporate (however described); and
- Example: An “owners corporation”.
- (b) that exists under a law, of the State or Territory in which the land is located, relating to “strata titles”, “community titles”, “unit titles”, “cluster titles” or something referred to by another term reflecting the features referred to in paragraph (a).
- (3) This subregulation covers an arrangement under which:
- (a) a body corporate owns an interest (whether freehold or leasehold) in land; and
- (b) under the constitution of the body corporate, a holder of shares in the body has, or may be granted, a right to occupy or use some or all of the land, whether the right is by way of a lease or licence or otherwise.
- Note: This kind of arrangement is commonly referred to as “company title”, and the body corporate is typically a company registered under the *Corporations Act 2001*.
- (4) For the purposes of the definition of *body corporate* in section 3 of the Act, the *body corporate* for a strata or community title development is the body corporate referred to subregulation (2) or (3), as the case requires.
- (5) For the purposes of the definition of *unit* in section 3 of the Act, a *unit* in a strata or community title development consists of:
- (a) one of the smaller portions of land referred to in subparagraph (2)(a)(i) of this regulation; or
- (b) so much of the land referred to in paragraph (3)(a) of this regulation as may be occupied or used by the holder of particular shares in the body corporate;
- as the case requires.



## 12 Regulation 5

Omit “For”, substitute “(1) For”.

## 13 At the end of regulation 5

Add:

- (2) For the purposes of Schedule 1, *contents*, of a building or part of a building, means any of the following items in that building or that part of the building:
- (a) furniture, furnishings and carpets (whether fixed or unfixed);
  - (b) household goods;
  - (c) clothing and other personal effects;
  - (d) a picture;
  - (e) a work of art;
  - (f) a fur;
  - (g) a piece of jewellery;
  - (h) a gold or silver article;
  - (i) a document of any kind;
  - (j) a collection of any kind;
  - (k) swimming pools that are not fixtures;
- that are items owned by the insured or by a member of the insured’s family ordinarily residing with the insured.

## 14 After regulation 5

Insert:

### 5A Premium income threshold for eligible cyclone loss cover

- (1) For the purposes of subsection 8A(5) of the Act, the prescribed threshold amount is \$10 million.
- (2) For the purposes of subsection 8A(6) of the Act, the prescribed reporting standard is the one set out in Schedule 1 to the *Financial Sector (Collection of Data) (reporting standard) determination No. 18 of 2013*.

### 5B Definition of *pool insurance contract*

*Definition for the purposes of paragraph 8B(3)(a) of the Act*

- (1) For the purposes of paragraph 8B(3)(a) of the Act:

**home building**, in relation to a contract of insurance, means:

- (a) any of the following that is located on a site specified in the contract:
  - (i) a building used, or intended to be used, principally and primarily as a place of residence, whether by the insured or another person;
  - (ii) an out-building, fixture or structural improvement used for domestic purposes that are related to the use of a building covered by subparagraph (i);

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## Schedule 1 Amendments

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- (iii) a caravan or moveable home that is fixed to the site and is used, or intended to be used, principally and primarily as a place of residence, whether by the insured or another person; or
  - (b) fixed wall coverings, fixed ceiling coverings and fixed floor coverings (other than carpets) in anything covered by subparagraph (a)(i), (ii) or (iii); or
  - (c) a service (whether underground or not):
    - (i) that is in, or connected to, anything covered by subparagraph (a)(i), (ii) or (iii); and
    - (ii) that is the property of the insured, or that the insured is liable to repair or replace or to pay the cost of repairing and replacing; or
  - (d) a fence that:
    - (i) is wholly or partly on the site; and
    - (ii) surrounds anything covered by subparagraph (a)(i), (ii) or (iii); and
    - (iii) is not used principally and primarily for the purposes of a farm business within the meaning of paragraph 8B(7)(b) of the Act (including anything covered by a subparagraph of that paragraph); or
  - (e) a gate in a fence covered by paragraph (d) of this definition;
- but does not include:
- (f) a hotel; or
  - (g) a motel; or
  - (h) a boarding house; or
  - (i) an aged care facility; or
  - (j) a building that is in the course of construction; or
  - (k) a temporary building or structure; or
  - (l) a demountable or moveable structure (except one covered by subparagraph (a)(iii) of this definition).
- (2) A definition in subregulation (1) applies to a part of a building in the same way as it applies to a building.
  - (3) Nothing in paragraphs (b), (c) and (d) of the definition of **home building** in subregulation (1) is intended to limit the generality of anything in paragraph (a) of that definition.

### *Definitions for the purposes of paragraph 8B(3)(b) of the Act*

- (4) For the purposes of paragraph 8B(3)(b) of the Act:

**contents** of a home building, in relation to a contract of insurance, means items of property that:

- (a) are located in the home building, or elsewhere on a site that is specified in the contract and on which the home building is located; and
- (b) are owned by the insured or by a member of the insured's family who ordinarily resides with the insured.

**home building**, in relation to a contract of insurance, means any of the following that is located on a site specified in the contract:

- (a) a building used principally and primarily as a place of residence, whether by the insured or another person;

- (b) an out-building used for domestic purposes that are related to the use of a building covered by paragraph (a);
- (c) a caravan or moveable home that is fixed to the site and is used, or intended to be used, principally and primarily as a place of residence, whether by the insured or another person;

but does not include:

- (d) any of the following:
  - (i) a hotel;
  - (ii) a motel;
  - (iii) a boarding house;
  - (iv) an aged care facility;except so much of the hotel, motel, boarding house or aged care facility as the insured uses principally and primarily as a place of residence; or
- (e) a building that is in the course of construction; or
- (f) a temporary building or structure; or
- (g) a demountable or moveable structure (except one covered by paragraph (c)).

- (5) A definition in subregulation (4) applies to a part of a building in the same way as it applies to a building.

*Definitions for the purposes of paragraph 8B(3)(c) of the Act*

- (6) For the purposes of paragraph 8B(3)(c) of the Act:

**building**, in relation to a contract of insurance, means:

- (a) any of the following that is located on a site specified in the contract:
  - (i) a building or part of a building;
  - (ii) an out-building, fixture or structural improvement used for purposes that are related to the use of a building located on the site; or
- (b) fixed wall coverings, fixed ceiling coverings and fixed floor coverings (other than carpets) in anything covered by subparagraph (a)(i) or (ii); or
- (c) a service (whether underground or not):
  - (i) that is in, or connected to, anything covered by subparagraph (a)(i) or (ii); and
  - (ii) that is the property of the insured, or that the insured is liable to repair or replace or to pay the cost of repairing and replacing; or
- (d) a fence or gate wholly or partly on the site;

but does not include:

- (e) a building that is in the course of construction; or
- (f) a temporary building or structure; or
- (g) a demountable or moveable structure.

**contents** of a building, in relation to a contract of insurance, means items of property that:

- (a) are located in the building, or elsewhere on a site that is specified in the contract and on which the building is located; and
- (b) are owned by the insured.

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- (7) Nothing in paragraphs (b), (c) and (d) of the definition of **building** in subregulation (6) is intended to limit the generality of anything in paragraph (a) of that definition.

*Definitions for the purposes of paragraph 8B(3)(d) of the Act*

- (8) For the purposes of paragraph 8B(3)(d) of the Act:

**building**, in relation to a contract of insurance, means:

- (a) any of the following that is located on a site specified in the contract:
  - (i) a building or part of a building, whether occupied by the insured or another person;
  - (ii) an out-building, fixture or structural improvement used for purposes that are related to the use of a building located on the site; or
  - (iii) a caravan or moveable home that is fixed to the site; or
- (b) fixed wall coverings, fixed ceiling coverings and fixed floor coverings (other than carpets) in anything covered by subparagraph (a)(i), (ii) or (iii); or
- (c) a service (whether underground or not):
  - (i) that is in, or connected to, anything covered by subparagraph (a)(i), (ii) or (iii); and
  - (ii) that is the property of the insured, or that the insured is liable to repair or replace or to pay the cost of repairing and replacing; or
- (d) a fence or gate wholly or partly on the site;

but does not include:

- (e) a building that is in the course of construction; or
- (f) a temporary building or structure; or
- (g) a demountable or moveable structure (except one covered by subparagraph (a)(iii) of this definition).

**contents** of a building, in relation to a contract of insurance, means items of property that:

- (a) are located in the building, or elsewhere on a site that is specified in the contract and on which the building is located; and
- (b) are owned by the insured.

- (9) Nothing in paragraphs (b), (c) and (d) of the definition of **building** in subregulation (8) is intended to limit the generality of anything in paragraph (a) of that definition.

*Non-residential policies: maximum sum insured*

- (10) For the purposes of paragraph 8B(3)(d) of the Act, the prescribed amount is \$5 million.

*Definition for the purposes of subsection 8B(5) of the Act*

- (11) For the purposes of subsection 8B(5) of the Act:

**government entity** means any of the following:

- (a) the Commonwealth;

- (b) a Commonwealth entity as defined by subsection 10(1) of the *Public Governance, Performance and Accountability Act 2013*, disregarding subsection 10(2) of that Act;
- (c) a Corporations Act company, within the meaning of the *Public Governance, Performance and Accountability Act 2013*, that the Commonwealth controls, within the meaning of that Act;
- (d) the Crown in right of a State, the Australian Capital Territory, the Northern Territory or an external Territory to which the Act extends;
- (e) a person in the person's capacity as a Minister of the government of a State, the Australian Capital Territory or the Northern Territory;
- (f) a Department of the government of a State, the Australian Capital Territory or the Northern Territory;
- (g) a local governing body established by or under a law of a State or Territory.

## **5C Definitions of *storm surge* and *flood***

- (1) For the purposes of subparagraph 8C(2)(b)(ii) of the Act, ***storm surge*** means an abnormal rise in sea level, over and above the normal astronomical tide levels.
- (2) For the purposes of subparagraph 8C(2)(b)(iii) of the Act, ***flood*** means a flood as defined by subsection 34(1) of the *Insurance Contracts Regulations 2017* (for the purposes of paragraph 37B(2)(a) of the *Insurance Contracts Act 1984*).

## **5D End of claims period for a cyclone event**

For the purposes of subsection 8F(3) of the Act, the prescribed duration is 48 hours.

## **5E Content of Financial Outlook Report**

For the purposes of subsection 40A(1) of the Act, a Financial Outlook Report must set out the following:

- (a) an overview of the performance of the cyclone reinsurance scheme during the financial year;
- (b) observations on broader financial risks affecting the scheme's financial outlook;
- (c) an assessment of the adequacy of:
  - (i) the premiums the Corporation is receiving under cyclone reinsurance contracts; and
  - (ii) the Corporation's reserves that are available to meet claims under those contracts;
- (d) observations on capital management for the purposes of the scheme;
- (e) projections for financial outcomes for the scheme, based on estimates of future claims under cyclone reinsurance contracts;
- (f) any other matters that the Corporation considers material to the current and future financial situation of the scheme.

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Schedule 1 Amendments

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## 15 Regulation 6

Repeal the regulation.

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