



**Queensland Treasury**

Our Ref: 05846-2021

Cyclone Reinsurance Pool Taskforce  
Manager  
The Treasury  
Langton Crescent  
PARKES ACT 2600

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Dear Taskforce Manager

The Queensland Government welcomes the opportunity to respond to the exposure draft legislation for the establishment of a reinsurance pool for cyclones and related flood damage.

Natural disasters not only cause significant damage to public and private infrastructure, but their impact can also lead to insurance becoming unaffordable or unavailable. Under-insurance and non-insurance can jeopardise the resilience and strength of local communities and the broader economy.

Matters raised in the draft legislation will affect a significant number of Queenslanders in cyclone-impacted areas. The enclosed attachment provides detailed comments on several areas of concern in the draft legislation, informed by consultation with stakeholders and other Queensland Government agencies.

The draft legislation also notes that the Australian Reinsurance Pool Corporation could offer incentives to mitigate the risk of losses. I encourage the Corporation to consider synergies with the Queensland Government's Household Resilience Program. The Program has already helped to reduce premiums for Queenslanders who have replaced roofs, reinforced external structures or made other improvements to their buildings.

It is critical that the design of the reinsurance pool ensures that cost savings to insurers are delivered immediately and passed on in full to consumers. The Australian Government should provide a guarantee about insurance premiums for consumers in North Queensland, and subsidise premiums if this guarantee is not delivered. A clear statement of expected premium reductions will also assist in the monitoring of the pool by the Australian Competition and Consumer Commission.

I would also appreciate if the Commonwealth Treasurer could inform state and territory Treasurers of appointments of members to the Cyclone Reinsurance Corporation, or appointments of Observers from the Australian Prudential Regulation Authority and the Australian Government Actuary.

If you require any further information, please contact [REDACTED]

Yours sincerely

A handwritten signature in black ink, appearing to read 'Leon Allen', with a long horizontal flourish extending to the right.

Leon Allen

**Under Treasurer**

25 / 12 / 2021

Encl. (1)

## Attachment 1 – Comments on exposure draft legislation and regulations

Reference	Issue	Proposed resolution/amendment
<p><b>Ss 8B(3)(c)(i)-(iv) of the draft legislation - '80 per cent of floor space to be used for residential purposes eligibility threshold'</b></p>	<p>The proposal may have differing impacts for schemes under the <i>Body Corporate and Community Management Act 1997</i> (BCCM Act) and the <i>Building Units and Group Titles Act 1980</i> (BUGT ACT).</p> <p>Given the ACCC report indicates severe insurance availability concerns for schemes where the sum insured is over \$5 million, it is likely there are a significant number of mixed-use schemes in Queensland that contain residential and commercial/retail lots that will not be eligible for coverage under the reinsurance pool, as proposed.</p> <p>According to the Northern Australia Insurance Lobby (NAIL), holiday rental developments and other properties in Australia's north may be left uncovered by the cyclone reinsurance pool, with implications for holiday letting in popular north Queensland destinations. Nursing homes, aged care facilities, motels and body corporates with ground floor retailers could also be affected.</p> <p>It is unclear what impact this may have on the ongoing viability of schemes that do not fall within the eligibility requirements for coverage under the reinsurance pool, or other unintended consequences such as impacts on property values.</p>	<p>Commonwealth to consider the appropriateness of the current eligibility requirement that 80 per cent of floor space of a scheme is being used for residential purposes.</p> <p>It is not clear what the rationale is for excluding mixed-use schemes where the floor space for lots used for non-residential purposes might be more than 20 per cent of the scheme's floor space.</p>
<p><b>Item 8 of the draft Regulations prescribes \$5 million per policy as the maximum sum insured threshold for non-residential policies for the purposes of s 8B(3)(d) of the draft legislation.</b></p>	<p>It's expected there are many mixed-use schemes with more than 20 per cent of floor space used for commercial purposes which will hold relevant insurance policies where the total insured value exceeds the maximum threshold of \$5 million.</p> <p>The occurrence of schemes exceeding the proposed \$5 million threshold could also be relatively more likely in north Queensland, given the higher costs associated with meeting stringent building codes (related to resilience) in the region.</p> <p>These properties would have to remain in the commercial insurance market and insurers would have to continue to purchase cyclone reinsurance protection from the commercial market for these risks to meet Australian Prudential Regulation Authority regulations.</p>	<p>Commonwealth to consider increasing the \$5 million threshold, with a threshold of at least \$10 million likely to be necessary to ensure larger mixed-use schemes are more appropriately captured within the eligibility of the scheme.</p>
<p><b>S 8B(3)(c) of the draft legislation refers to "building that is part of a strata titles or</b></p>	<p>The term 'strata titles or community title development' is not defined in the Bill nor in the amended Act. It is relevant to note the BUGT Act does not specifically use the terminology strata title or community title.</p>	<p>Suggest the Bill include a definition of 'strata titles or community title development' to make it clear that community title schemes under the BCCM</p>

<p><b>community title development’.</b></p>		<p>Act and plans under the BUGT Act with applicable insurance contracts, qualify for coverage under the reinsurance pool.</p>
<p><b>S 8B of the draft legislation – definition of ‘residence’ and ‘residential’</b></p>	<p>Definitions of ‘residential’ and ‘residence’ have not been included in the exposure draft. There are no definitions included in the existing <i>Terrorism Insurance Act 2003</i>.</p> <p>As lots in many schemes under the BCCM Act and plans under the BUGT Act may be used for short-term accommodation purposes, confusion may arise as to whether schemes and plans where lots are used for short-term accommodation qualify as schemes where lots are used as a ‘residence’ or for ‘residential’ purposes, and thus eligible for coverage under the reinsurance pool.</p> <p>If lots in schemes/plans being used for short-term accommodation are not included in the definition of residential and/or not eligible for coverage by the reinsurance pool, then there may be a range of impacts including disharmony and disputes in schemes about the use of lots for short-term accommodation, or impacts on the availability of short-term accommodation in these regions (which may be significant tourism regions).</p>	<p>Request that consideration be given to including a definition of ‘residential’ in the amendment Bill to clarify whether it is intended that schemes and plans with insurance policies where lots are used for short-term accommodation purposes qualify for coverage under the reinsurance pool.</p> <p>Including lots being used for short-term accommodation purposes in the definition of residential will make it easier to determine eligibility of a strata title or community titles development for coverage, as well as minimise any potential adverse impacts on the accommodation sector.</p>
<p><b>S 8B(6) of the draft legislation – exclusion of certain buildings</b></p>	<p>The provision makes it clear that paragraph (3)(a) does not apply to insurance cover in respect of a hotel, motel, boarding house or aged care facility. Hotels, motels, boarding houses and aged care facilities may be community titles schemes under the BCCM Act or plans under the BUGT Act. It may not be clear whether particular community titles schemes fall under the terms of hotel, motel or aged care facility.</p> <p>For example, in a community titles scheme, lots may be individually owned but a letting agent for the scheme may let the lots out for particular owners who wish to let their lot out for short-term accommodation. However, the number of owners that join the letting pool may vary from scheme to scheme, and many owners in the scheme may use their lots for residential purposes other than short-term accommodation. The body corporate remains responsible for insurance of buildings in these schemes under the BCCM Act and not the letting agent. It is unclear whether schemes where lots may be offered for short or long-term accommodation through an onsite letting agent will be deemed to be hotels or motels under the provision, as currently drafted.</p> <p>In addition, some retirement villages in Queensland may be schemes under the BCCM Act or plans under the BUGT Act. It is unclear whether retirement villages registered as schemes under the BCCM Act or plans under the BUGT Act that hold relevant insurance policies are intended to be included in the definition of aged care facility and excluded from the reinsurance pool coverage.</p>	<p>Propose that consideration be given to further defining the types of buildings/facilities that will be classified as being used as hotels, motels or aged care facilities to clarify this matter in terms of eligibility for insurance coverage.</p> <p>There may be justification for including aged care facilities, hotels and motels in the legislation.</p> <p>In particular, regarding aged care facilities, the residents live at the facility, including many long-term residents, and any risks of under-insurance would potentially be significantly detrimental to this sector.</p>



<p><b>Item 8 (5D) of the draft Regulations prescribes for s 8F(3) of the draft legislation that the claim period will cease 48 hours after the notification from the Bureau of Meteorology (BoM) of the downgrading of a cyclone to a low.</b></p>	<p>The definition of an event under the proposed legislation is very specific, and there are large aspects of loss that are deemed to take place outside of a cyclone, as defined by the legislation. The consultation documents, including the draft legislation, do not appear to recognise that after being downgraded, a cyclone can form as a slow-moving low that continues beyond the 48-hour period, or that associated flood impacts can continue beyond the 48-hour period. As seen with Cyclone Oswald in 2013, significant flooding continued for seven days after downgrading to a tropical low.</p> <p>Additional damage also may not be realised until well after the eligible period, such as mould, water damage that isn't identified earlier, and house stabilisation.</p> <p>Homes or businesses subject to cyclone-associated-impacts beyond the 48-hour period would not be eligible to claim, resulting in increased household or business financial hardship and potential loss of rebuilding opportunities.</p> <p>Associated losses of insurance coverage could increase reliance on emergency relief including emergency hardship assistance, donated items, financial counselling and housing services.</p> <p>Significant risk and uncertainty can be expected to remain with the private market, with potential difficulties in applying catastrophe models to cyclones as they are defined in the legislation. This could lead to double counting of risk by insurers to ensure they do not fall short of premium.</p>	<p>Recommend consideration of an exception clause that could be added to the Regulations to accommodate slow moving tropical lows that are confirmed by BoM and that result in significant rainfall and flooding that continue beyond the 48-hour period.</p> <p>Alternatively, the definition of a cyclone event could align with the:</p> <ul style="list-style-type: none"> <li>- Time period defined by the relevant state/territory disaster declarations; or</li> <li>- the Disaster Recovery Funding Arrangements (DRFA) activation period.</li> </ul> <p>Whichever method is adopted, the Commonwealth should consider trialling it for a defined period and then reassessing its effectiveness.</p>
<p><b>Item 6 (3A) of the draft Regulations – definition of ‘Cyclone declaration area’</b></p>	<p>This section does not outline how the Australian Reinsurance Pool Corporation will determine what geographic areas will be covered by the insurance pool in the event of a cyclone, particularly where eligible damage included up to 48 hours after the cyclone ends could also include related flood damage beyond the BoM cyclone track.</p> <p>If eligible damage is included up to 48 hours after the cyclone ends, it is not clear if this is only where the cyclone track ends, or whether it includes related flood damage beyond the cyclone track.</p>	<p>The definition for the geographic areas should align with:</p> <ul style="list-style-type: none"> <li>- the areas in which a disaster has been declared under state/territory disaster management legislation; or</li> <li>- the areas covered by an activation of the Disaster Recovery Funding Arrangements (DRFA).</li> </ul>
<p><b>S 8C(b) of the draft legislation - “caused by that weather system”</b></p>	<p>It is important that the legislation referring to “caused by that weather system” provides sufficient clarity on what this means. For example, it is unclear how this would be interpreted if, as a result of a cyclone event, water needs to be released from a dam, causing subsequent flooding.</p>	<p>Commonwealth to provide further clarification on this matter and adequately address this in the legislation.</p>