

EXPOSURE DRAFT

EXPLANATORY STATEMENT

Issued by authority of the Minister for Revenue and Financial Services

Terrorism Insurance Act 2003

Terrorism Insurance Amendment Regulations 2017

Section 43 of the *Terrorism Insurance Act 2003* (the ‘Act’) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the *Terrorism Insurance Amendment Regulations 2017* (the ‘Amending Regulations’) is to amend the *Terrorism Insurance Regulations 2003* (the ‘Regulations’) to give effect to recommendation nine of the *Terrorism Insurance Act Review: 2015* to extend the terrorism insurance scheme (the ‘scheme’) to provide cover for mixed-use and high value residential buildings.

The Act established the scheme in 2003 which operates by overriding terrorism exclusion clauses in eligible insurances contracts to the extent that losses excluded are eligible terrorism losses arising from a declared terrorist incident. The scheme is operated by the Australian Reinsurance Pool Corporation (the ‘ARPC’) and generally provides for insurance cover for commercial property and associated business interruption losses and public liability claims.

The scheme was originally established as there was insufficient terrorism insurance cover available in the market for commercial buildings following the 2001 terrorist attacks in the United States. Under section 41 of the Act, the operation of the scheme is reviewed every three years. The most recent review, conducted in 2015, recommended that the scheme should be extended to apply to mixed-use buildings where at least 20 per cent of floor space is used for commercial purposes and high value residential buildings that are insured for \$50 million or more.

Schedule 1 to the Regulations excludes a number of insurance contracts from the scheme. At present, paragraphs 2(a) and 2(b) of Schedule 1 to the Regulations exclude home buildings and the contents of home buildings (as defined in the *Corporations Regulations 2001*) from the scheme. As such, the scheme presently does not cover any buildings or the contents of buildings that are primarily used as a place of residence.

To give effect to recommendation nine in the 2015 review, the Regulations replace paragraphs 2(a) and 2(b) of Schedule 1 to the Regulations with a new provision that only excludes from the scheme a contract of insurance that provides cover for a building and its contents if more than 80% of the building’s floor space is used for residential purposes, and it is insured for less than \$50 million.

To implement this change, the definition of ‘contents’ under regulation 7.1.13 of the *Corporations Regulations 2001* has been replicated in the Amending Regulations instead, with amendments to reflect the extension of the scheme to certain mixed-use and residential buildings. This is necessary as the definition within the *Corporations*

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Regulations 2001 applies in relation to buildings where more than 50% of the floor space is used for residential purposes and would not be appropriate given the change to the scheme to provide cover for contents of buildings where up to 80% of a building may be used for residential purposes.

The scheme also presently does not apply in relation to any personal property under paragraph 2(d) of Schedule 1 of the Regulations. This broad exclusion for personal property is no longer appropriate given the scheme is being extended to mixed use buildings where up to 80% of the floor space is used for residential purposes and high value buildings which may be used completely for residential purposes.

The exclusion for personal property under paragraph 2(d) of Schedule 1 of the Regulations is therefore being narrowed so that it only applies to personal property that is not the contents of the residential part of a mixed use or high value residential building.

The Act does not specify any conditions that need to be met before the power to make the Regulations may be exercised. However, under the ARPC Reinsurance Agreement for Terrorism Risks with insurers, all insurers must receive 3 months' notice prior to application of these changes. To allow for this, the amendments in the Amending Regulations to extend the scheme will only apply in relation to insurance contracts executed or renewed on or after 1 July 2017.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence on the day after they are registered on the Federal Register of Legislation.