
TREASURY LAWS AMENDMENT (MEASURES FOR A LATER SITTING) BILL
2021: CYCLONE REINSURANCE

EXPOSURE DRAFT EXPLANATORY MATERIALS

Table of contents

Glossary..... 1

Chapter 1 Establishment of a cyclone and related flood
 damage reinsurance pool 3

DRAFT

Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

<i>Abbreviation</i>	<i>Definition</i>
ACCC	Australian Competition and Consumer Commission
AGA	Australian Government Actuary
APRA	Australian Prudential Regulation Authority
ARPC	Australian Reinsurance Pool Corporation
Bill	Treasury Laws Amendment (Measures for a later sitting) Bill 2021: Cyclone reinsurance
BoM	Bureau of Meteorology
The Act	<i>Terrorism and Cyclone Insurance Act 2003</i>
The Regulations	<i>Terrorism and Cyclone Insurance Regulations 2003</i>

Chapter 1

Establishment of a cyclone and related flood damage reinsurance pool

Outline of chapter

1.1 Schedule C to the Bill amends the Act to establish a framework for the ARPC to implement a cyclone and related flood damage reinsurance pool for the purposes of improving insurance access and affordability for households and small businesses in cyclone-prone areas.

1.2 All legislative references in this chapter are to the Act unless otherwise indicated.

Context of amendments

1.3 The damage to residential and business property caused by extreme weather events, including cyclones, is often severe, and on a scale that leads to the displacement of people from their homes and disruption to business activity. Due to the greater risks of extreme weather events in cyclone-prone areas, insurance premiums are significantly more expensive.

1.4 This has led to cover becoming less accessible and affordable for households and small businesses in these regions. Households that are underinsured or have no insurance have reduced financial capacity to recover from a natural disaster or other event. Poor insurance coverage can exacerbate costs and pressures for communities and for governments, through increased pressure on health, emergency and welfare systems. It can slow the economic recovery of a region following a disaster.

1.5 In recent years, several reviews and inquiries have considered the availability and affordability of insurance cover for natural disasters, including the Natural Disaster Insurance Review, the Northern Australia Insurance Premiums Taskforce, the Royal Commission into Natural Disaster Arrangements and the ACCC Northern Australian Insurance Inquiry.

1.6 Against this background, on 4 May 2021, the Australian Government announced its intention to establish a reinsurance pool covering the risk of property damage caused by cyclones and cyclone-related flood damage.

1.7 The cyclone reinsurance scheme is designed to lower insurance premiums for households and small businesses by reducing the cost of reinsurance, which is a significant cost component of premiums for policies with high cyclone and related flood damage risk.

1.8 The scheme would allow insurers to reinsure cyclone risks at a lower cost than in the private reinsurance market, as it is not intended to earn a commercial return but rather is designed to be cost-neutral to the Government over time and be backed by a Commonwealth guarantee.

1.9 The scheme is expected to improve insurance access and affordability in cyclone-prone areas, build the financial capability of affected households and small businesses to recover from natural disasters, and support the economic resilience and development of cyclone-prone areas. The scheme is also expected to increase competition by encouraging greater insurer participation in cyclone-prone areas and support higher levels of insurance coverage by property owners.

1.10 The cyclone reinsurance scheme is administered by the ARPC.

1.11 The ARPC is a corporate Commonwealth entity established by the Act to administer the terrorism reinsurance scheme, which provides insurers with reinsurance for commercial property and associated business interruption losses arising from a declared terrorist incident. The framework of the terrorism reinsurance scheme is contained in the Act with further refinements in the Regulations.

Summary of new law

1.12 The Act is amended to extend its operation from the terrorism reinsurance scheme to also include the cyclone reinsurance scheme. The framework for the cyclone reinsurance scheme contains:

- The eligible cyclone related losses that are covered by the cyclone reinsurance scheme – damage caused by a cyclone that commences during a declared cyclone event, including any damage due to wind, rain, rainwater and rainwater run-off, storm surge and flooding where these hazards are covered under the policyholder's choice of insurance cover;
- The insurance contracts that are covered by the cyclone reinsurance scheme – contracts that cover household property policies, residential and mixed-use strata policies, small business property policies, property policies for charities and not-for-profit entities and farm residential policies are generally eligible under the scheme;
- Funding arrangements – the cyclone reinsurance scheme is funded by insurance premiums and supported by a

\$10 billion annually reinstated Commonwealth guarantee that can be increased by the Minister;

- Review of the scheme – a review will be conducted initially three years after commencement of this Schedule to the Bill and then, once aligned with the terrorism reinsurance scheme’s review, every five years thereafter.

1.13 From 1 July 2022, insurers are expected to start entering into reinsurance agreements with the ARPC. Large insurers have until 31 December 2023 to join the scheme, at which point they must have obtained reinsurance for all their eligible cyclone risks with the ARPC. Small insurers must have all their eligible cyclone risks must be reinsured with the ARPC by 31 December 2024.

Detailed explanation of new law

Participating insurers under the cyclone reinsurance scheme

1.14 In contrast to the voluntary nature of the terrorism reinsurance scheme, insurers providing insurance that covers eligible cyclone risk in Australia are required to obtain reinsurance for eligible cyclone risk with the ARPC. This is consistent with the intention to improve insurance accessibility and affordability for households and small businesses in cyclone-prone areas. For the cyclone reinsurance scheme to achieve the maximum reductions in insurance premiums in cyclone-prone areas, insurers holding eligible cyclone risks must participate. [*Schedule C, item 8, section 8A(1) of the Act*]

1.15 Insurers, however, can obtain additional reinsurance from the private market for any of their retained risks that are not covered under the cyclone reinsurance scheme. This ensures that all risks held by insurers can be subject to appropriate reinsurance arrangements. [*Schedule C, item 8, section 8A(2) of the Act*]

1.16 For the purposes of the cyclone reinsurance scheme, an *insurer* is a general insurer under the *Insurance Act 1973* including a foreign general insurer. [*Schedule C, item 3, section 3 of the Act*]

1.17 Some insurers are not required to participate in the cyclone reinsurance scheme. The following insurers have the option of not participating, however if they choose to participate then all eligible cyclone risks they hold must be reinsured with the ARPC:

- Insurers with minimum exposure to policies with eligible cyclone risks, if their total gross written premiums are below the threshold amount prescribed by the regulations;
- *Lloyd’s underwriters* under the *Insurance Act 1973*.

[Schedule C, item 8, sections 8A(5), 8A(6), 8A(7) and 8A(8) of the Act]

1.18 The regulation-making power to set the threshold amount is necessary and appropriate to allow for the amount to be initially set after further industry consultation and to provide for flexibility for it to be updated in the future to account for potential changes to premium income thresholds. Allowing the threshold amount to be prescribed by regulations gives the Government flexibility to make timely changes to ensure insurers with minimum exposure to policies continue to not be required to reinsure with the ARPC. The regulations are subject to disallowance and therefore subject to additional Parliamentary scrutiny.

1.19 Some insurers are excluded entirely from obtaining reinsurance under the cyclone reinsurance scheme to recognise that support is provided directly to insurers (other than State or Territory Government insurers and most Commonwealth Government insurers) offering policies to the individuals and businesses. The following insurers are unable to participate in the scheme:

- Reinsurers (except to the extent that they also provide direct insurance); *[Schedule C, item 8, section 8B(8)(a) of the Act]*
- State and territory insurers; *[Schedule C, item 8, section 8B(9) of the Act]*
- Commonwealth Government insurers (other than the Defence Service Homes Insurance Scheme). *[Schedule C, item 3, section 3 of the Act]*

Penalty for non-participation

1.20 For insurers whose participation in the scheme is mandatory, a pecuniary penalty of 1,000 penalty units for a body corporate applies if it does not reinsure eligible cyclone risks with the ARPC. *[Schedule C, item 1, section 127F of the Insurance Act 1973]*

1.21 The Commonwealth Government is bound by the cyclone reinsurance scheme as set out in the Act, however this does not make the Commonwealth Government liable to any pecuniary penalty. *[Schedule C, item 7, section 5 of the Act]*

1.22 Imposing a civil penalty is necessary to enable an effective disciplinary response to non-compliance. A failure to participate in the cyclone reinsurance scheme would significantly undermine the pool's ability to improve insurance accessibility and affordability in cyclone-prone areas.

1.23 This civil penalty was set in accordance with the Attorney-General's Department's Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers. The penalty units imposed are comparable to offences of a similar nature.

Cyclone reinsurance scheme coverage

Coverage period

1.24 Insurance claims are eligible under the scheme where they arise during the claims period of a ***cyclone event***.

1.25 The ARPC is required to declare the start of a cyclone event following BoM's advice. The declaration must state when a cyclone begins based on the BoM's advice. This represents the point at which claims start being covered by the pool. *[Schedule C, item 8, sections 8E(1) and 8F(1) of the Act]*

1.26 The ARPC is also required to declare the end of the period of a cyclone event based on BoM's advice in a subsequent declaration. The declaration must state when a cyclone ends (in accordance with the BoM's advice) and when the claims period ceases. BoM is required to notify the ARPC within 24 hours and can notify by electronic means. *[Schedule C, item 8, sections 8E(2) and 8E(3) and 8F(2) of the Act]*

1.27 After a cyclone is downgraded, it is taken to reintensify if it meets the condition in the regulations. In this case, on the advice of BoM, the ARPC would declare a new cyclone event. *[Schedule C, item 8, Note at the end of section 8F(1) of the Act]*

1.28 The meanings of ***cyclone***, ***end*** (of a cyclone) and ***reintensify*** (in relation to a cyclone) are provided for in the regulations. *[Schedule C, item 3, section 3 of the Act]*

1.29 The regulation-making power is appropriate as the meanings are based on existing BoM definitions and allow for timely adjustment and adaptation to any changes in the BoM definitions. This is required as the Government requires flexibility to make timely changes to ensure the cyclone reinsurance scheme is based on the latest scientific definition of what constitutes a cyclone. The regulations will be disallowable and subject to Parliamentary scrutiny.

1.30 The instrument declaring the end of a cyclone event will provide that the claims period ceases at a fixed time after a cyclone formally ends (the related damage period). This recognises that significant property damage can still occur for a period after a cyclone has been downgraded to a rain bearing depression. The duration of the related damage period is also prescribed in the regulations. *[Schedule C, item 8, sections 8F(2) and 8F(3) of the Act]*

1.31 The regulation-making power to prescribe the length of the related damage period is necessary to ensure a degree of flexibility in the scheme to allow for the suitability of the duration of the related damage period to be reviewed and for future changes to the period to be made in a timely manner if necessary. The regulations will be disallowable and subject to Parliamentary scrutiny.

1.32 The Chief Executive or a senior executive of the ARPC will make the cyclone declaration as a notifiable instrument within 24 hours of receiving meteorological advice from the BoM. The declaration will have immediate effect. *[Schedule C, items 8 and 23, sections 8F(4) and 40(2) of the Act]*

1.33 These declarations are administrative in character but are made as notifiable instruments for the purposes of transparency. Notifiable instruments are not subject to disallowance or sunseting given their administrative character.

1.34 The declarations cannot be revoked or varied. This is to provide certainty for the insurance market of the claims period. *[Schedule C, item 8, section 8F(4)(c) of the Act]*

1.35 Any eligible cyclone related loss that occurs during the claims period is covered under the scheme.

1.36 A declaration made under this section will have immediate effect. As the declaration will refer to a time at which a cyclone has already occurred, it will always be registered on the Federal Register of Legislation after the event and will apply retrospectively. The retrospective application will not affect an insurer's rights or disadvantage the person as the retrospective application will ensure the declarations can apply as intended to provide appropriate support. No administrative review of the decision to make the declaration is provided for in the Act for affected insurers. This is because the declarations only specify the relevant period of a cyclone and the additional period of coverage following it. Accordingly, as this is based on transparent criteria and on BoM advice, no review is needed.

Hazard Coverage

1.37 An ***eligible cyclone loss*** is a loss attributable to a hazard that is covered under the scheme. *[Schedule C, item 8, section 8C of the Act]*

1.38 Schedule C to the Bill provides a non-exhaustive list of hazards arising from a cyclone that are covered under the scheme, including:

- Wind, rain, rainwater or rainwater runoff;
- A storm surge as prescribed by the regulations;
- A flood as prescribed by the regulations.

[Schedule C, item 8, section 8C of the Act]

1.39 As with the regulation-making powers for ***cyclone, end*** (of a cyclone) and ***reintensify*** (in relation to a cyclone), these regulation powers are necessary and appropriate to allow for timely adjustment and adaptation for any changes in the definitions. This is necessary as the Government requires flexibility to make timely changes to ensure the

cyclone reinsurance scheme applies as intended and can be modified. The regulations will be disallowable and subject to Parliamentary scrutiny.

Policy Coverage

1.40 An insurance contract is eligible to be reinsured under the cyclone reinsurance scheme if the contract provides insurance cover for losses of, or damages to eligible property and associated business interruption or consequential loss, or is prescribed by the regulations. *[Schedule C, item 8, sections 8B(1) and 8B(2) of the Act]*

1.41 An eligible insurance contract must provide one or more of the following kinds of insurance cover:

Household property policies

- Home building cover – including stand-alone residential properties including detached houses, duplexes and townhouses (other than those held by strata title); *[Schedule C, item 8, section 8B(3)(a) of the Act]*
- Home contents cover – including contents of all types of residential properties; *[Schedule C, item 8, section 8B(3)(b) of the Act]*
- Cover for on-site caravans or moveable homes – including on-site caravans kept permanently at a home or at a caravan park and moveable homes (for example, transportable cabins and prefabricated homes) that are used for residential purposes; and *[Schedule C, item 8, section 8B(4) of the Act]*
- Cover for residential landlords – including residential investment properties and lost rent for residential landlords; *[Schedule C, item 8, section 8B(3)(d) of the Act]*

Strata policies

- Building cover for strata title and community title developments – including residential buildings with shared property (for example, apartments and townhouses) and mixed use strata title property where at least 80 per cent of floor space is used wholly or mainly for residential purposes and the insured is the body corporate; *[Schedule C, item 8, sections 8B(3)(c) and 8B(5) of the Act]*

Small business property policies

- Commercial building cover, commercial contents cover and commercial business interruption cover are eligible for coverage subject to a maximum sum insured test – including commercial business interruption cover to cover losses suffered by a business because of an inability to trade for a period of time due to cyclone or related flood damage;

- The maximum sum insured test applies so that a policy is only covered under the cyclone reinsurance scheme if the sum insured does not exceed the prescribed threshold. *[Schedule C, item 8, section 8B3(d) of the Act]*

Charities and not for profits

- Cover for charities and not for profits is also subject to the maximum sum insured test – including community housing providers, religious institutions, aged care providers and boarding schools. The maximum sum insured test does not apply to property used for residential purposes (for example, community housing). *[Schedule C, item 8, section 8B3(d) of the Act]*

1.42 Generally, insurance contracts that provide cover for building insurance for a hotel, motel, boarding house or aged care facility are eligible under the cyclone reinsurance scheme subject to the maximum sum insured test for small business, charities and not for profits. However, if hotels, motels, boarding houses and aged care facilities are owned under strata arrangements, they will be eligible for unlimited coverage under the cyclone reinsurance scheme if at least 80 per cent of the floor space is used wholly or mainly for residential purposes. *[Schedule C, item 8, sections 8B(6) and 8B(7) of the Act]*

1.43 Insurance contracts that provide cover for the contents of a hotel, motel, boarding house or aged care facility are generally eligible under the cyclone reinsurance scheme subject to the maximum sum insured test for small business, charities and not for profits. However, if the contents of the insured building are principally and primarily for a place of residence, they can be subject to unlimited coverage under the cyclone reinsurance scheme. *[Schedule C, item 8, sections 8B(6) and 8B(7) of the Act]*

1.44 The sum insured is the maximum amount a policyholder can claim under their policy if their property is damaged or destroyed due to an insured event.

1.45 The threshold amount for the maximum sum insured test is prescribed by regulations. The maximum sum insured amount applies per policy. If an insurer's policy is below or meets the amount prescribed, they will be eligible for the reinsurance pool for that policy. However, if an insurer's policy exceeds this amount, they will not be able to reinsure risks under that policy with the ARPC. *[Schedule C, item 8, section 8B3(d)(iii) of the Act]*

1.46 The regulation-making power would ensure flexibility in prescribing the threshold amount so that it can be updated as required to meet the needs of small businesses. The regulations will be disallowable and subject to Parliamentary scrutiny.

1.47 Given the above eligibility list, insurance contracts that provide insurance for government-owned and managed property are ineligible for the cyclone reinsurance scheme.

1.48 In addition, specialised commercial marine cover including charter boats, fishing vessels and marinas are ineligible. However, the Government has announced that it intends to extend cover to certain marine insurance contracts from 1 July 2023.

1.49 Insurance contracts that provide cover to farm businesses are ineligible to be reinsured under the cyclone reinsurance scheme. However, if a contract of insurance provides cover to both farming business assets and residential properties on farmland, the contract will be eligible for the cyclone reinsurance scheme and only the residential component of the contract will be covered by the reinsurance pool. *[Schedule C, item 8, section 8B(8)(b) of the Act]*

1.50 Further ineligible insurance contracts can be prescribed in regulations. *[Schedule C, item 8, section 8B(8)(c) of the Act]*

1.51 The regulation-making power is necessary and appropriate to ensure that the scope of the cyclone reinsurance scheme applies as intended to particular asset classes. This flexibility is required to ensure the Government can make timely changes. The regulations will be disallowable and subject to Parliamentary scrutiny.

Geographical Coverage

1.52 The cyclone reinsurance scheme covers cyclones in Australia including the offshore territories of Norfolk Island, the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands, as well as related coastal seas. *[Schedule C, item 6, Note at end of section 4 of the Act]*

Premium Settings

1.53 Schedule C to the Bill amends the Act to allow the ARPC to set premium amounts that insurers will be required to pay under the cyclone reinsurance scheme. The Minister will not make directions in relation to premium settings. *[Schedule C, items 8 and 19, sections 8D and 38(2)(d) of the Act]*

1.54 This approach differs from the terrorism reinsurance scheme in which premiums are set by the Minister. The cyclone reinsurance scheme will be cost-neutral to the Government over time. The ARPC will price cyclone and related flood damage risks to meet this cost-neutral objective. Accordingly, premium amounts for the cyclone reinsurance pool will be determined and set by the ARPC with assistance from the reviewing actuary.

1.55 Before setting these premiums, the ARPC must have regard to several factors to ensure that the reinsurance pool can achieve its objective

of lowering insurance premiums for households and small businesses in cyclone-prone areas. In addition, the premiums must be reviewed by the reviewing actuary before being set. *[Schedule C, items 8 and 13, sections 8D and 33B(1)(a) of the Act]*

1.56 Specifically, the ARPC and reviewing actuary should first consider the requirement that the reinsurance pool is intended to be cost-neutral over time. The pool will be funded by the premiums that insurers would pay to participate in the scheme. The premiums charged would be expected to cover the long-term costs of insured risk in addition to the pool's ongoing administration expenses. *[Schedule C, item 8, section 8D(a) of the Act]*

1.57 The ARPC and reviewing actuary must also have regard to the second requirement, which is that the reinsurance pool is designed to reduce reinsurance costs. The pool does not include a profit margin above cost as it does not seek to make a profit, thereby increasing savings available to policyholders and insurers. The pool would provide targeted reinsurance premium reductions based on each property's risk profile, where higher risk properties receive higher discounts. *[Schedule C, item 8, section 8D(b) of the Act]*

1.58 Finally, the ARPC and reviewing actuary must consider any discounts that the reinsurance pool could offer to maintain incentives for risk reduction and to encourage cyclone and flood-related mitigation over time. As the pool develops its risk rating for pricing properties that are covered, it will incorporate discounts for properties where the risk of cyclone and related flood has been mitigated. In addition to encouraging policyholders to engage in strategies to mitigate cyclone and related flooding risks, the discounts will assist in improving the affordability and sustainability of insurance over time. *[Schedule C, item 8, section 8D(c) of the Act]*

Funding claims made under the cyclone reinsurance scheme

1.59 All eligible claims are funded by the reinsurance pool above the policyholder's excess for cyclone events for the first three years. Thereafter, the pool will operate on a risk-sharing arrangement with insurers, with the level of risk retention being set by Ministerial directions to allow a staged transition to a limited level of risk retention by insurers and will be informed by consultation with insurers. For example, the ARPC might pay up to a certain percentage of the eligible claim with a further cap to an insurer's annual liability thereafter. However, the pool would be expected to continue to cover a significant proportion of eligible risks. *[Schedule C, items 8 and 20, sections 8A(3) and 38(2)(e) of the Act]*

1.60 In turn, the reinsurance pool is funded by the premiums that insurers pay. The collected premiums may be used by the ARPC to fund the pool's ongoing operational costs. The Minister may also direct the

ARPC to make payments to the Commonwealth's Consolidated Revenue Fund (with specific amounts to be set in Ministerial determinations). This may occur in years where there are few or no claims on the pool.

Commonwealth guarantee

1.61 Schedule C to the Bill provides for the cyclone reinsurance scheme to be backed by an annually reinstated \$10 billion Commonwealth guarantee. The guarantee is supported by a special appropriation. *[Schedule C, items 17 and 18, sections 35A and 37(b) of the Act]*

1.62 The Commonwealth guarantee will be drawn from if funds from the reinsurance pool and the ARPC's own resources are insufficient to meet claim costs.

1.63 Schedule C to the Bill also provides a mechanism for the Minister to increase the cap on the guarantee amount. To do so, the ARPC must first notify the Minister of the need for additional funds to pay claims under the cyclone reinsurance scheme. The Minister is then required to consult with the Finance Minister, the Treasurer and the Prime Minister before increasing the guarantee amount. *[Schedule C, item 17, section 35A of the Act]*

1.64 The increased guarantee amount is made as notifiable instruments for the purposes of transparency and cannot be revoked. This is to provide certainty for the insurance market of any increased guarantee amount. *[Schedule C, item 17, section 35A(5) of the Act]*

1.65 This mechanism addresses the risk that the \$10 billion Commonwealth guarantee cannot meet all claim costs in the event of one or series of large but rare cyclones in any annual period and accounts for growth of the scheme and inflationary factors over time. Increasing the cap on the guarantee will ensure that all cyclone liabilities offered under reinsurance contracts with the ARPC are met.

1.66 As a new cyclone reinsurance Commonwealth guarantee is introduced, amendments are made to the Commonwealth Terrorism guarantee to ensure separation between the two guarantees. *[Schedule C, items 15 and 16, sections 35(1) and 35(3) of the Act]*

Information sharing arrangements

1.67 Information sharing arrangements with Commonwealth agencies are yet to be included in the consultation exposure draft.

ARPC's obligations under the cyclone reinsurance scheme, review and reporting

New function

1.68 Schedule C to the Bill amends the Act to give the ARPC a new function of operating the cyclone and related flood damage reinsurance pool to give effect to the new scheme. The regulation-making power that provides that the ARPC may perform any other functions is retained. *[Schedule C, item 9, section 10(b) of the Act]*

Review by the Minister

1.69 The Minister must prepare a report that reviews both the cyclone reinsurance scheme and terrorism reinsurance scheme three years after commencement of this Schedule to the Bill and then at least once every five years thereafter. *[Schedule C, item 24, section 41 of the Act]*

1.70 Regular reviews will evaluate the performance of the scheme and ensure that it is fit for purpose in addressing insurance accessibility and affordability for households and small businesses in cyclone-prone areas.

1.71 The subsequent review every five years after the review of the two schemes are aligned ensures that there is periodic ongoing review of the scheme and sufficient time to identify and implement significant changes and issues relating to the cyclone reinsurance scheme between reviews.

ARPC annual reporting

1.72 In addition to any reports that the ARPC must prepare under the *Public Governance, Performance and Accountability Act 2013*, the ARPC must prepare an annual Financial Outlook Report. The ARPC will be required to give the Minister this report within four months after the end of each financial year, starting on the financial year commencing on 1 July 2023. The ARPC is also required to publish this report on its website 10 days after providing the report to the Minister. The first report will cover the operation of the pool from 1 July 2022. *[Schedule C, item 24, section 40A(1), (2) and (3) of the Act]*

1.73 The annual Financial Outlook Report ensures that the Government is provided with current information about risks that affect its liabilities, as well as additional scrutiny of premium adequacy and risk preparedness activities.

1.74 The requirement to appoint a reviewing actuary will provide greater assurance of the recommendations and outcomes of the report.

1.75 The report must contain the information prescribed by regulations. *[Schedule C, item 24, section 40A(1) of the Act]*

1.76 It is necessary and appropriate for the regulations to prescribe particular information to be included in the Financial Outlook Report as this will ensure that the report contains relevant information and allows the reporting requirements of the scheme to adjust to the operating environment. The regulations will be disallowable and subject to Parliamentary scrutiny.

Reviewing actuary

1.77 The ARPC must nominate a reviewing actuary, whose responsibilities include:

- Reviewing the premiums the ARPC proposes setting and ensuring it complies with the principles in the law;
- Reviewing the content of the financial outlook report to ensure the report complies with the law and reporting to the ARPC on the financial outlook report;
- Reporting to the Board on any significant concerns about the financial outlook or risk management of the ARPC;
- Providing the Board with any additional advice or actuarial reports.

[Schedule C, item 13, sections 33B(1) and 33B(3) of the Act]

1.78 The ARPC must nominate the AGA as the reviewing actuary as soon as possible after the scheme comes into operation. The appointment applies for three years and accordingly will cover the first three financial outlook reports and premium settings and reporting to the Board during this period on any concerns. *[Schedule C, item 13, section 33A(5) of the Act]*

1.79 For later years, the ARPC must nominate, in writing, a Fellow of the Institute of Actuaries of Australia who the ARPC considers to have the appropriate skills, experience and knowledge as the reviewing actuary. A nomination has effect for three years. *[Schedule C, item 13, sections 33A(1) and 33A(2) of the Act]*

1.80 If the Board requires additional advice or actuarial reports, then the Board must request the reviewing actuary to provide the advice or report. The Board must ensure that the reviewing actuary is allowed access to all the necessary information and data available from the ARPC in order to meet the requirements. *[Schedule C, item 13, section 33B(2) and 33C of the Act]*

1.81 ARPC must revoke the nomination if the reviewing actuary is no longer a Fellow of the Institute of Actuaries of Australia or becomes employed under the Act. *[Schedule C, item 13, section 33A(3) of the Act]*

1.82 A nomination or revocation is not a legislative instrument. The nomination and revocation are not limited by section 33(3) of the *Acts Interpretation Act 1901*. [Schedule C, item 13, sections 33A(4) and (6) of the Act]

Expanded Board Structure

Board Structure

1.83 The ARPC is comprised of a Chair and other part-time members. The limit on the number of other part-time members is expanded by two so that the ARPC has a minimum of six and a maximum of eight other part-time members. This ensures that the ARPC has the capability to administer the cyclone reinsurance scheme. [Schedule C, item 10, section 12(1)(b) of the Act]

1.84 The Minister may appoint a representative of the APRA or the AGA to be a part-time observer by written instrument. There is a limit of two part-time observers that can hold office as observers at the same time. [Schedule C, item 12, section 20A(2) of the Act]

1.85 The intention for appointed observers to be a representative of the APRA or the AGA recognises that observers with experience with the cyclone reinsurance scheme's design will help maintain continuity through to its implementation.

1.86 In deciding whether to appoint a person as a part-time observer, the Minister is expected to consider a person's skills, qualifications and experience. [Schedule C, item 12, section 20A(3) of the Act]

1.87 The role of a part-time observer involves the following:

- Entitlement to receive notice of Board meetings;
- The option to attend and take part in Board meetings, but without voting rights;
- The option to report to the Minister on any matters relating to the cyclone reinsurance scheme;
- The obligation to report to the Minister on any matters relating to the cyclone reinsurance scheme requested by the Minister.

[Schedule C, item 12, section 20A(1) of the Act]

1.88 An observer holds office for the period the written instrument of appointment specifies, up to a maximum period of two years. [Schedule C, item 12, section 20A(4) of the Act]

1.89 At any time, the Minister may terminate the observer's appointment. [Schedule C, item 12, section 20A(5) of the Act]

1.90 The Minister may grant a leave of absence to an observer on the terms and conditions that the Minister determines. [*Schedule C, item 12, section 20A(6) of the Act*]

1.91 An observer may also resign from office by giving a written resignation to the Minister. [*Schedule C, item 12, section 20A(7) of the Act*]

Consequential amendments

1.92 Schedule C to the Bill makes consequential amendments to Part 2 of the Act to ensure that the current terrorism reinsurance scheme operates concurrently with the new cyclone reinsurance scheme.

1.93 Schedule C to the Bill inserts several new definitions in section 3 of the Act in relation to the cyclone reinsurance scheme. [*Schedule C, items 3 and 5, section 3 of the Act*]

1.94 Consequential amendments have also been made to update numbering, cross-references, to insert new headings to take into account the new cyclone reinsurance scheme and to remove a redundant note. [*Schedule C, items 11, 13, 14, 21 and 22, Heading to Division 2 of Part 3, Division 5A – reviewing actuary, Section 35 (heading), and section 40 of the Act*]

Definition of Australia

1.95 The definition of Australia is repealed as it is redundant. Section 2B of the *Acts Interpretation Act 1901* applies to provide that the term Australia includes Norfolk Island, Christmas Island and Cocos (Keeling) and Christmas Islands. [*Schedule C, item 4, section 3 of the Act*]

Title of the Act

1.96 The Act is renamed as the *Terrorism and Cyclone Insurance Act 2003* to account for the establishment of a new cyclone reinsurance scheme that is also administered by the ARPC. [*Schedule C, item 2, section 1 of the Act*]

Application provisions

1.97 Schedule C to the Bill commences the day after Royal Assent. [*Schedule C, commencement table*]

1.98 The cyclone reinsurance scheme comes into operation on 1 July 2022. [*Schedule C, item 8, section 8A(4) of the Act*]

1.99 A contract of insurance qualifies as a pool insurance contract under section 8B regardless of whether it commenced before, at or after the commencement of Schedule C to the Bill. [*Schedule C, item 26, Application of section 8B Of the Terrorism and Cyclone Insurance Act 2003*]

1.100 Existing Board members who have been appointed under the Act will not have their appointment term affected as a result of the amendments made by this Schedule. *[Schedule C, item 27, appointment of members of the Corporation]*

1.101 The scheme comes into operation on 1 July 2022 at which time insurers are expected to commence joining the scheme. To mitigate costs and risks associated with transitioning from existing reinsurance contracts, insurers generally have until 31 December 2023 to reinsure all eligible cyclone insurance risks with the ARPC. From 1 January 2024, insurers with eligible cyclone losses will be subject to the participation mandate. *[Schedule C, item 25, Application of section 8A of the Terrorism and Cyclone Insurance Act 2003]*

1.102 Small insurers that enter into insurance contracts totalling less than \$300 million of gross written premiums for household insurance in the last financial year before 31 December 2022 in the Australian insurance market, may reinsure eligible cyclone losses with the ARPC between when the scheme comes into operation and 31 December 2024. This additional time for small insurers to reinsure with the ARPC provides them with additional flexibility to transition to the new arrangements. *[Schedule C, item 25, Application of section 8A of the Terrorism and Cyclone Insurance Act 2003]*

1.103 Once an insurer enters into a reinsurance agreement with ARPC, new and renewed policies from that date are backed by the reinsurance pool. Existing policies that have not yet been renewed could be covered by agreement between the ARPC and the insurer.