

EXPOSURE DRAFT

EXPOSURE DRAFT

1
2
3
4
5
6
7

Inserts for
**Treasury Laws Amendment (Measures
for a later sitting) Bill 2021: Cyclone
reinsurance**

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Schedule C	The day after this Act receives the Royal Assent.	

8
9
10
11
12
13
14
15
16
17

Contents

Schedule C—Establishing a cyclone and related damage reinsurance pool	2
Part 1—Amendments	2
<i>Insurance Act 1973</i>	2
<i>Terrorism Insurance Act 2003</i>	2
Part 2—Application of amendments	18

EXPOSURE DRAFT

Schedule C—Establishing a cyclone and related damage reinsurance pool

Part 1—Amendments

Insurance Act 1973

1 After section 127E

Insert:

127F Civil penalty for general insurer contravening section 8A of the *Terrorism and Cyclone Insurance Act 2003*

A general insurer contravenes this section if it contravenes subsection 8A(1) of the *Terrorism and Cyclone Insurance Act 2003*.

Note: Subsection 8A(1) of the *Terrorism and Cyclone Insurance Act 2003* requires a general insurer to reinsure cyclone risks with the Australian Reinsurance Pool Corporation.

Civil penalty: 1,000 penalty units.

Terrorism Insurance Act 2003

2 Section 1

Repeal the section, substitute:

1 Short title

This Act may be cited as the *Terrorism and Cyclone Insurance Act 2003*.

3 Section 3

Insert:

APRA means the Australian Prudential Regulation Authority.

4 Section 3 (definition of *Australia*)

Repeal the definition.

EXPOSURE DRAFT

5 Section 3

Insert:

Bureau means the Commonwealth Bureau of Meteorology.

claims period for a cyclone event means the period:

- (a) starting on the day, and at the time, specified under paragraph 8F(1)(a) for the cyclone event; and
- (b) ending on the day, and at the time, specified under paragraph 8F(2)(c) for the cyclone event.

cyclone has the meaning given by the regulations.

cyclone event means a cyclone event declared under subsection 8F(1) in relation to a cyclone.

cyclone reinsurance scheme means:

- (a) the scheme operated by the Corporation in performing its function under paragraph 10(b) (cyclone and related flood damage reinsurance); and
- (b) any other activities the Corporation undertakes for the purposes of performing that function.

eligible cyclone loss has the meaning given by section 8C.

end, in relation to a cyclone, has the meaning given by the regulations.

financial year of a general insurer means a financial year of the insurer determined under section 323D of the *Corporations Act 2001*.

Finance Minister means the Minister administering the *Public Governance, Performance and Accountability Act 2013*.

general insurer means:

- (a) a general insurer within the meaning of the *Insurance Act 1973*; or
- (b) the Commonwealth when undertaking insurance under Part VI (about the Defence Service Homes Insurance Scheme) of the *Defence Service Homes Act 1918*.

insurance business has the same meaning as in the *Insurance Act 1973*.

EXPOSURE DRAFT

1 *Lloyd's underwriter* has the same meaning as in the *Insurance Act*
2 *1973*.

3 *pool insurance contract* has the meaning given by section 8B.

4 *reintensify*, in relation to a cyclone, has the meaning given by the
5 regulations.

6 **6 At the end of section 4**

7 Add:

8 Note: This Act extends to Norfolk Island, the Territory of Christmas Island
9 and the Territory of Cocos (Keeling) Islands: see the Acts dealing
10 with those Territories. Section 2B of the *Acts Interpretation Act 1901*
11 includes those Territories in the definition of *Australia*, when used in
12 a geographical sense. See also section 15B of that Act (dealing with
13 the coastal sea).

14 **7 At the end of Part 1**

15 Add:

16 **5 Binding the Crown**

17 Part 2A binds the Crown in right of the Commonwealth, but
18 nothing in that Part makes the Crown liable to a pecuniary penalty.

19 **8 After Part 2**

20 Insert:

EXPOSURE DRAFT

Part 2A—Cyclone and related flood damage reinsurance pool

8A When cyclone risks must be reinsured with the Corporation

- (1) If a general insurer carries on insurance business that includes undertaking liability, under pool insurance contracts, in respect of eligible cyclone losses, the insurer must maintain contracts of reinsurance with the Corporation that:
 - (a) cover the insurer's liability, under all pool insurance contracts that it enters into, in respect of eligible cyclone losses; and
 - (b) insure against 100% of the insurer's liability, under each of those pool insurance contracts, in respect of eligible cyclone losses.
- (2) Subsection (1) has effect even if the general insurer has entered into a contract of reinsurance otherwise than with the Corporation.
- (3) If:
 - (a) a direction in force under section 38 provides for risk to be retained to the extent of a specified percentage; and
 - (b) the direction applies to a contract of reinsurance that a general insurer proposes to enter into in order to comply with subsection (1) of this section;then that subsection applies to that general insurer, in relation to that contract of reinsurance, as if the reference in paragraph (1)(b) of this section to 100% were a reference to the difference between 100% and the percentage specified in the direction.
- (4) On and after 1 July 2022, the Corporation may enter into contracts of re-insurance with general insurers under which the general insurers insure against their liability under pool insurance contracts in respect of eligible cyclone losses.

Exception where premium income is below prescribed threshold in previous financial year

- (5) Subsection (1) does not apply to a general insurer during a calendar year if the amount worked out under subsection (6) does not exceed the threshold amount prescribed by the regulations.

EXPOSURE DRAFT

-
- 1 (6) For the purposes of subsection (5), the amount is the total gross
2 written premiums that, if insurance contracts:
3 (a) that the general insurer enters into as insurer; and
4 (b) that are wholly or partly pool insurance contracts; and
5 (c) under which the insurer undertakes any liability in respect of
6 eligible cyclone losses (whether or not the contracts cover
7 other risks);
8 were a distinct class of direct insurance business, the reporting
9 standard prescribed by the regulations for the purposes of this
10 subsection would require the general insurer to report to APRA, for
11 that class of direct business, in respect of the last financial year of
12 the general insurer that ended before the start of that calendar year.

13 *Exception for Lloyd's underwriters*

- 14 (7) Subsection (1) does not apply to a Lloyd's underwriter.

15 *One in all in rule for exempt general insurer*

- 16 (8) However, if a general insurer enters into a contract of reinsurance
17 with the Corporation that insures against the insurer's liability
18 under a pool insurance contract in respect of eligible cyclone
19 losses, neither of subsections (5) and (7) applies to the general
20 insurer while that contract of reinsurance is in force.

21 **8B Definition of *pool insurance contract***

- 22 (1) A contract of insurance is a ***pool insurance contract*** to the extent
23 (and only to the extent) that:
24 (a) it provides insurance cover, as mentioned in subsection (2),
25 that satisfies one or more of the paragraphs of subsection (3)
26 (whether or not the cover is limited or restricted in any way,
27 and whether or not it also provides any other insurance
28 cover); or
29 (b) it is prescribed by the regulations for the purposes of this
30 paragraph.

31 Note: Subsections (8) and (9) contain exclusions.

32 *Type of risk covered*

- 33 (2) The contract must provide insurance cover for one or more of the
34 following:

EXPOSURE DRAFT

-
- 1 (a) loss of, or damage to, eligible property that is owned by the
2 insured;
- 3 (b) business interruption, or consequential loss, arising from:
4 (i) loss of, or damage to; or
5 (ii) inability to use all or part of;
6 eligible property that is owned or occupied by the insured.

7 *Type of cover*

- 8 (3) The contract must provide one or more of the following:
9 (a) insurance cover in respect of a building that is used
10 principally and primarily as a place of residence, whether by
11 the insured or another person;
- 12 (b) insurance cover in respect of contents of a building that is
13 used principally and primarily as a place of residence,
14 whether by the insured or another person;
- 15 (c) insurance cover in respect of either or both of:
16 (i) a building that is part of a strata title or community title
17 development; and
18 (ii) contents of a building that is part of a strata title or
19 community title development;
- 20 where:
21 (iii) at least 80% of the total floor space of the units in the
22 development is used wholly or mainly for residential
23 purposes; and
24 (iv) the insured is the body corporate that manages the
25 common property of the development;
- 26 (d) insurance cover:
27 (i) that satisfies none of paragraphs (a), (b) and (c); and
28 (ii) that is in respect of a building, contents of a building, or
29 both, whether the building is occupied by the insured or
30 another person; and
31 (iii) for which the total of the sums insured does not exceed
32 the amount prescribed by the regulations for the
33 purposes of this paragraph.

34 *Extended application of paragraphs applying to buildings*

- 35 (4) Paragraphs (3)(a), (b) and (d) apply to the following in the same
36 way as they apply to a building:
37 (a) a part of a building;
-

EXPOSURE DRAFT

-
- 1 (b) an on-site caravan kept permanently at one place;
2 (c) a movable home kept permanently at one place.

3 (5) Paragraph (3)(c) applies to a part of a building in the same way as
4 it applies to a building.

5 *Exclusion of certain buildings*

6 (6) Paragraph (3)(a) does not apply to insurance cover in respect of a
7 hotel, motel, boarding house or aged care facility.

8 Note: Such insurance cover may satisfy paragraph (3)(d).

9 (7) Paragraph (3)(b) does not apply to insurance cover in respect of
10 contents of a building that is a hotel, motel, boarding house or aged
11 care facility, except contents of so much of the building as the
12 insured uses principally and primarily as a place of residence.

13 Note: Insurance cover excluded by this subsection may satisfy
14 paragraph (3)(d).

15 *Other exclusions*

16 (8) A contract is not a pool insurance contract to the extent that:

17 (a) it is a contract of reinsurance; or

18 (b) it provides insurance cover to a farm business, including:

19 (i) producing crops or livestock, or produce derived from
20 the crops or livestock; or

21 (ii) the interests of the insured in property used to produce
22 crops or livestock;

23 (other than insurance cover that satisfies paragraph (3)(a) or

24 (b) of this section); or

25 (c) it is prescribed by the regulations for the purposes of this
26 subsection.

27 (9) A contract of insurance is not a pool insurance contract if it is
28 made in the course of State insurance not extending beyond the
29 limits of the State concerned.

30 (10) Subsections (8) and (9) have effect despite subsection (1).

31 **8C Definition of *eligible cyclone loss***

32 For the purposes of this Act, an *eligible cyclone loss* is a loss that
33 arises, during the claims period for a cyclone event:

EXPOSURE DRAFT

-
- 1 (a) from the weather system in relation to which the cyclone
2 event was declared under subsection 8F(1); or
3 (b) without limiting the generality of paragraph (a) of this
4 subsection, from any of the following that is caused by that
5 weather system:
6 (i) wind, rain, rainwater or rainwater runoff; or
7 (ii) a storm surge, as defined by regulations made for the
8 purposes of this subparagraph; or
9 (iii) a flood, as defined by regulations made for the purposes
10 of this subparagraph.

11 **8D Setting reinsurance premiums**

12 When setting the premiums it charges in respect of contracts of
13 reinsurance it enters into as insurer under the cyclone reinsurance
14 scheme, the Corporation is to seek, so far as practicable:

- 15 (a) to ensure that, over the longer term, the premiums under such
16 contracts are sufficient to cover or offset:
17 (i) the amounts paid in meeting the Corporation's liabilities
18 under such contracts (including payments by the
19 Commonwealth under section 35A in respect of such
20 liabilities); and
21 (ii) all other expenses, charges, obligations and liabilities
22 incurred or undertaken by the Corporation in the course
23 of the scheme; and
24 (b) to keep those premiums:
25 (i) to the extent they are for reinsuring liability under pool
26 insurance contracts that involve medium to high levels
27 of exposure to eligible cyclone losses—as low as
28 possible; and
29 (ii) to the extent they are for reinsuring liability under pool
30 insurance contracts that involve lower levels of
31 exposure—comparable to what would be charged by
32 other reinsurers; and
33 (c) to maintain incentives to reduce and mitigate the risk of
34 eligible cyclone losses.

35 **8E Bureau to notify the Corporation when cyclone begins and ends**

- 36 (1) If:
37 (a) the Bureau determines that a cyclone exists or has
38 reintensified; and
-

EXPOSURE DRAFT

-
- 1 (b) the cyclone is one about which, because of its proximity to
2 Australia, the Bureau has published, or proposes to publish, a
3 warning;
4 the Bureau must notify the Corporation that the cyclone exists or
5 has reintensified, specifying the day and time when, in the
6 Bureau's opinion, the cyclone began or reintensified, as the case
7 may be.
- 8 (2) If:
9 (a) the Bureau determines that a cyclone has ended; and
10 (b) the cyclone is one about which the Bureau has notified the
11 Corporation under subsection (1);
12 the Bureau must notify the Corporation that the cyclone has ended,
13 specifying the day and time when, in the Bureau's opinion, the
14 cyclone ended.
- 15 (3) A notification under this section must be given:
16 (a) as soon as practicable, and in any event within 24 hours, after
17 the Bureau determines as mentioned in paragraph (1)(a) or
18 (2)(a), as the case may be; and
19 (b) in writing sent by electronic communication within the
20 meaning of the *Electronic Transactions Act 1999*.

8F Declarations about cyclone events

- 21
- 22 (1) If the Bureau notifies the Corporation that a cyclone exists or has
23 reintensified, the Corporation must declare that a cyclone event has
24 begun. The declaration must:
25 (a) specify the day and time when the cyclone began or
26 reintensified, as notified by the Bureau; and
27 (b) state that the claims period for the cyclone event began on
28 that day at that time.
- 29 Note: If a cyclone ends but then reintensifies, a new cyclone event is
30 declared under this section in relation to the cyclone.
- 31 (2) If the Bureau notifies the Corporation that a cyclone has ended, the
32 Corporation must declare that the cyclone event has ended that was
33 previously declared under subsection (1) in relation to that cyclone.
34 The declaration under this subsection must specify:
35 (a) the previous declaration; and
36 (b) the day and time when the cyclone ended, as notified by the
37 Bureau; and

EXPOSURE DRAFT

-
- 1 (c) the day and time when the claims period for the cyclone
2 event ended, or will end, as the case requires.
- 3 (3) The day and time specified under paragraph (2)(c) must be the day
4 and time when the period ends:
- 5 (a) that began on the day, and at the time, specified under
6 paragraph (2)(b); and
- 7 (b) whose duration is prescribed by the regulations for the
8 purposes of this subsection.
- 9 (4) A declaration under this section:
- 10 (a) must be made as soon as practicable, and in any event within
11 24 hours, after the Bureau notifies the Corporation that a
12 cyclone exists, has reintensified or has ended, as the case
13 may be; and
- 14 (b) must be made by notifiable instrument; and
- 15 (c) cannot be varied or revoked.

9 Paragraph 10(b)

- 16 Repeal the paragraph, substitute:
- 17 (b) to operate a cyclone and related flood damage reinsurance
18 pool by entering into contracts of reinsurance that enable
19 general insurers to comply with Part 2A;
- 20 (c) any other functions prescribed by the regulations.

10 Paragraph 12(1)(b)

- 21 Repeal the paragraph, substitute:
- 22 (b) at least 6, but not more than 8, other members.

11 Heading to Division 2 of Part 3

- 23 Repeal the heading, substitute:

24 Division 2—Administrative provisions about members and 25 observers

26 12 At the end of Division 2 of Part 3

- 27 Add:

EXPOSURE DRAFT

20A Observers

Role of observers

- (1) A person appointed under this section (an **observer**):
- (a) is entitled to receive notice of meetings of the Corporation;
 - and
 - (b) may attend any meeting of the Corporation and take such part in the proceedings, not including voting, as the observer thinks fit; and
 - (c) may report to the Minister on any matter relating to the cyclone reinsurance scheme; and
 - (d) if the Minister requests a report on such a matter, must report to the Minister on that matter.

Appointment of observers

- (2) The Minister may, by written instrument, appoint a representative of APRA or of the Australian Government Actuary to be an observer, on a part-time basis. At most 2 persons may hold office as observers at the same time, of whom:
- (a) at most one may be a representative of APRA; and
 - (b) at most one may be a representative of the Australian Government Actuary.
- (3) A person is not eligible to be appointed as an observer unless the Minister is satisfied that the person has qualifications or experience that the Minister considers relevant to the performance of the Corporation's functions.
- (4) An observer holds office for the period specified in the instrument of appointment. The period must not exceed 2 years.

Note: An observer may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

- (5) The Minister may at any time terminate the appointment of an observer.

Terms and conditions

- (6) The Minister may grant leave of absence to an observer on the terms and conditions that the Minister determines.
- (7) An observer may resign by giving the Minister a written resignation. The resignation takes effect on the day it is received by

EXPOSURE DRAFT

1 the Minister or, if a later day is specified in the resignation, on that
2 later day.

3 **13 After Division 5 of Part 3**

4 Insert:

5 **Division 5A—Reviewing actuary**

6 **33A Nomination of reviewing actuary**

- 7 (1) The Corporation must, in writing, nominate a person as reviewing
8 actuary. The person must be an actuary who:
- 9 (a) is a Fellow of The Institute of Actuaries of Australia; and
 - 10 (b) in the opinion of the Corporation, is a fit and proper person,
11 and has appropriate skills, experience or knowledge, to be the
12 reviewing actuary; and
 - 13 (c) is neither a person employed under section 32 nor a
14 consultant engaged under section 33.
- 15 (2) The nomination has effect for 3 years or a shorter period specified
16 in the nomination.
- 17 (3) The Corporation must, in writing, revoke the nomination if the
18 nominee:
- 19 (a) ceases to be a Fellow of The Institute of Actuaries of
20 Australia; or
 - 21 (b) becomes a person employed under section 32 or a consultant
22 engaged under section 33.
- 23 (4) Subsections (2) and (3) do not limit subsection 33(3) of the *Acts*
24 *Interpretation Act 1901* (which deals with revocation and variation
25 of instruments).

26 *Reviewing actuary for first 3 years of cyclone reinsurance scheme*

- 27 (5) The Corporation must nominate the Australian Government
28 Actuary under subsection (1) as the first reviewing actuary, as soon
29 as reasonably practicable after the commencement of this section.
30 The nomination has effect for 3 years, despite subsection (2) of this
31 section and subsection 33(3) of the *Acts Interpretation Act 1901*,
32 but subject to subsection (3) of this section.

EXPOSURE DRAFT

Nominations and revocations are not legislative instruments

- (6) Neither a nomination under subsection (1) nor a revocation under subsection (3) is a legislative instrument.

33B Duties of reviewing actuary

- (1) The duties of the reviewing actuary are:
- (a) to review the premiums that the Corporation proposes to charge in respect of contracts of reinsurance it enters into as insurer under the cyclone reinsurance scheme, and the Corporation's compliance with section 8D in setting those premiums; and
 - (b) to review, and report to the Corporation on, each Financial Outlook Report prepared under section 40A, before the Report is given to the Minister; and
 - (c) to provide advice and reports on actuarial matters, as requested by the Corporation.
- (2) A report to the Corporation under paragraph (1)(b) must state whether, in the reviewing actuary's opinion, the Corporation has made all arrangements necessary for the reviewing actuary to conduct the review to which the report relates.
- (3) If the reviewing actuary has significant concerns about the financial sustainability of the cyclone reinsurance scheme, or the risk management processes of the Corporation, the reviewing actuary must report those concerns to the Corporation as soon as reasonably practicable.

33C Corporation to assist reviewing actuary

The Corporation must make arrangements to enable the reviewing actuary to perform the duties for which section 33B provides.

14 Section 35 (heading)

Repeal the heading, substitute:

EXPOSURE DRAFT

1 35 Commonwealth guarantee: payments otherwise than under 2 cyclone reinsurance contracts

3 15 Subsection 35(1)

4 Omit “other than the Commonwealth”, substitute “(other than the
5 Commonwealth) otherwise than in respect of a liability of the
6 Corporation as insurer under a contract of reinsurance it entered into
7 under the cyclone reinsurance scheme”.

8 16 Subsection 35(3)

9 After “liabilities”, insert “(other than its liabilities as insurer under
10 contracts of reinsurance it entered into under the cyclone reinsurance
11 scheme)”.

12 17 After section 35

13 Insert:

14 35A Commonwealth guarantee: payments under cyclone 15 reinsurance contracts

- 16 (1) The Commonwealth guarantees the due payment of money that
17 may become payable by the Corporation to any person (other than
18 the Commonwealth) in respect of a liability (a *cyclone loss*
19 *liability*) of the Corporation as insurer under a contract of
20 reinsurance it enters into under the cyclone reinsurance scheme.
- 21 (2) However, the total of the amounts paid by the Commonwealth
22 under subsection (1) in a financial year must not exceed:
- 23 (a) unless paragraph (b) of this subsection applies—\$10 billion;
24 or
25 (b) if an amount is determined for that financial year under
26 subsection (4)—the greatest amount so determined.
- 27 (3) If at any time the Corporation considers it likely that, after taking
28 into account the guarantee under this section, the Corporation will
29 be unable to discharge all its cyclone loss liabilities, the
30 Corporation must give the Minister a written notice to that effect.
- 31 (4) If the Minister receives a notice under subsection (3), the Minister
32 must:
- 33 (a) if the Minister is not the Treasurer—consult with the
34 Treasurer; and

EXPOSURE DRAFT

-
- 1 (b) consult with the Prime Minister and the Finance Minister;
2 and
3 (c) determine an amount for a financial year, for the purposes of
4 paragraph (2)(b), that in the Minister's opinion is sufficient to
5 ensure that, after taking into account the guarantee under this
6 section, the Corporation will be able to discharge all its
7 cyclone loss liabilities.

8 Note: If the Corporation gives the Minister a further notice under
9 subsection (3), this subsection may have a further application.

10 (5) A determination under subsection (4) must be made by notifiable
11 instrument, and cannot be revoked.

12 (6) The validity of a determination under subsection (4) is not affected
13 by a failure to comply with paragraph (4)(a) or (b).

14 **18 Paragraph 37(b)**

15 After "35", insert "or 35A".

16 **19 Paragraph 38(2)(d)**

17 After "insurance", insert "(except contracts of reinsurance entered into
18 under the cyclone reinsurance scheme)".

19 **20 Paragraph 38(2)(e)**

20 Repeal the paragraph, substitute:

21 (e) directions relating to the extent to which risk is to be retained
22 by insureds under contracts of reinsurance with the
23 Corporation.

24 **21 Section 40**

25 Omit "The", substitute "(1) The".

26 **22 Section 40 (note)**

27 Repeal the note.

28 **23 At the end of section 40**

29 Add:

30 (2) However, a power or function under section 8F (declarations about
31 cyclone events) may only be delegated to:

32 (a) the Chief Executive; or

EXPOSURE DRAFT

1 (b) a person employed under section 32 in a senior executive
2 position.

3 **24 Section 41**

4 Repeal the section, substitute:

5 **40A Annual Financial Outlook Report**

6 (1) After the end of a financial year beginning on or after 1 July 2023,
7 the Corporation must prepare and give to the Minister a Financial
8 Outlook Report that sets out the matters prescribed by the
9 regulations.

10 (2) The Report must be given to the Minister on or before the next
11 15 October after the end of the financial year.

12 (3) The Report must be published on the Corporation's website within
13 10 business days after it is given to the Minister.

14 **41 Review of Act**

15 The Minister must:

16 (a) as soon as practicable after 1 July 2025; and

17 (b) at least once every 5 years after that day;

18 prepare a report that reviews the need for this Act to continue in
19 operation.

EXPOSURE DRAFT

1 **Part 2—Application of amendments**

2 **25 Application of section 8A of the *Terrorism and Cyclone*** 3 ***Insurance Act 2003***

4 Subsection 8A(1) of the *Terrorism and Cyclone Insurance Act 2003*, as
5 inserted by Part 1 of this Schedule, applies to a general insurer from the
6 start of:

- 7 (a) unless paragraph (b) applies—the 2024 calendar year; or
8 (b) if the total gross written premiums for the householders class
9 of direct business, as reported to APRA:
10 (i) under the reporting standard prescribed for the purposes
11 of subsection 8A(6) of that Act; and
12 (ii) in respect of the last financial year of the insurer to end
13 before 31 December 2022;
14 is less than \$300 million—the 2025 calendar year.

15 **26 Application of section 8B of the *Terrorism and Cyclone*** 16 ***Insurance Act 2003***

17 Section 8B of the *Terrorism and Cyclone Insurance Act 2003*, as
18 inserted by item 8 of this Schedule, applies to a contract whether made
19 before, at or after the commencement of that item.

20 **27 Appointment of members of the Corporation**

21 The amendment made by item 10 of this Schedule does not affect the
22 appointment of a member holding office at the commencement of that
23 item.