



Terrorism and Cyclone Insurance Act 2003

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About this compilation

This compilation

This is a compilation of the *Terrorism and Cyclone Insurance Act 2003* that shows the text of the law as amended and in force on 31 March 2022 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act relating to insurance cover for terrorist acts, and for cyclone and related flood damage, and to other matters

Part 1—Preliminary

1 Short title

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

2 Commencement

This Act commences on the day on which it receives the Royal Assent.

3 Definitions

In this Act, unless the contrary intention appears:

APRA means the Australian Prudential Regulation Authority.

Australia includes Norfolk Island.

Note: See also section 2B of the *Acts Interpretation Act 1901* (which provides that in any Act **Australia** includes the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands) and section 15B of the *Acts Interpretation Act 1901* (which includes the coastal sea).

body corporate for a strata or community title development has the meaning prescribed by the regulations.

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

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

Corporation means the Australian Reinsurance Pool Corporation established by section 9.

cyclone has the meaning prescribed by the regulations.

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

cyclone reinsurance contract means a contract of reinsurance that the Corporation enters into as reinsurer under Part 2A.

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.

declared terrorist incident means an act or acts declared under section 6 to be a declared terrorist incident.

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

eligible insurance contract has the meaning given by section 7.

eligible property means the following property that is located in Australia:

- (a) buildings (including fixtures) or other structures or works on, in or under land;
- (b) tangible property that is located in, or on, property to which paragraph (a) applies;
- (c) any other property prescribed by the regulations.

Note: Roads, tunnels, dams and pipelines are examples of eligible property.

eligible terrorism loss means a loss or liability arising from a declared terrorist incident, but does not include a loss or liability arising from the hazardous properties (including radioactive, toxic

or explosive properties) of nuclear fuel, nuclear material or nuclear waste.

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

excess means an amount of an insurance claim that is to be paid or borne by the insured.

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

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

general insurer has the same meaning as in the *Insurance Act 1973*.

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

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

member means a member of the Corporation, and includes the Chair.

own, in relation to property, includes:

- (a) owning the property together with another person or other persons; and
- (b) having an insurable interest in the property.

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

reduction percentage means a reduction percentage specified in a declaration under section 6, and includes such a percentage as varied under that section.

reintensify, in relation to a cyclone, has the meaning prescribed by the regulations.

startup time means the beginning of 1 July 2003.

strata or community title development has the meaning prescribed by the regulations.

terrorist act has the meaning given by section 100.1 of the *Criminal Code*.

unauthorised foreign insurer has the same meaning as in the *Insurance Regulations 2002*.

unit in a strata or community title development has the meaning prescribed by the regulations.

4 Act extends to things outside Australia

Unless the contrary intention appears, this Act extends to acts, omissions, matters and things outside Australia.

5 Application to the Commonwealth

- (1) Part 2A applies to the Commonwealth, when undertaking insurance under Part VI (about the Defence Service Homes Insurance Scheme) of the *Defence Service Homes Act 1918*, in the same way as Part 2A applies to a general insurer.
- (2) Part 2A binds the Crown in right of the Commonwealth to the extent provided in subsection (1), but nothing in that Part makes the Crown liable to a pecuniary penalty.

Part 2—Insurance for terrorism risks

6 Declared terrorist incidents

- (1) If the Minister is satisfied that, after the startup time:
 - (a) a terrorist act has happened in Australia; or
 - (b) 2 or more related terrorist acts have happened in Australia;then the Minister must, by legislative instrument, declare that the act constitutes, or the acts together constitute, a declared terrorist incident for the purposes of this Act.
- (2) A terrorist act cannot be taken into account for the purposes of subsection (1) if the Minister is satisfied that it is an act of war.
- (3) A terrorist act that consists merely of a threat of action cannot be taken into account for the purposes of subsection (1) unless the Minister is satisfied that the threat resulted in economic loss to a person.
- (4) A terrorist act that consists of threatened action is taken to have happened in Australia if, and only if, the threatened action would happen in Australia.
- (4A) Before making a declaration under this section, the Minister must consult the Minister administering the *Australian Security Intelligence Organisation Act 1979*.
- (5) A declaration under this section cannot be revoked.
- (6) A declaration under this section may specify a reduction percentage that applies to the declared terrorist incident for the purposes of section 8.
- (7) A reduction percentage must be specified if the Minister considers that, in the absence of a reduction percentage, the total amounts paid or payable by the Commonwealth under section 35 (including

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amounts not related to the act or acts specified in the declaration) would be more than \$10,000 million.

- (8) The Minister may, by legislative instrument, vary the reduction percentage, but only by making it smaller. The percentage may be varied more than once.
- (9) The Minister may delegate his or her powers under this section to:
 - (a) the Secretary of the Department; or
 - (b) an SES employee, or acting SES employee, in the Department.

7 Eligible insurance contracts

- (1) A contract of insurance is an *eligible insurance contract* to the extent that it provides insurance cover for one or more of the following:
 - (a) loss of, or damage to, eligible property that is owned by the insured;
 - (b) business interruption and consequential loss arising from:
 - (i) loss of, or damage to, eligible property that is owned or occupied by the insured; or
 - (ii) inability to use eligible property, or part of eligible property, that is owned or occupied by the insured;
 - (c) liability of the insured that arises out of the insured being the owner or occupier of eligible property.
- (2) A contract covered by subsection (1) is not an eligible insurance contract to the extent to which it is:
 - (a) a contract of reinsurance; or
 - (b) prescribed by the regulations for the purposes of this subsection.
- (3) A contract of insurance is not an eligible insurance contract if it is made in the course of State insurance not extending beyond the limits of the State concerned.

- (4) This section extends to contracts made before the commencement of this section.

8 Effect of terrorism exclusions in eligible insurance contracts

- (1) A terrorism exclusion in an eligible insurance contract has no effect in relation to a loss or liability to the extent to which the loss or liability is an eligible terrorism loss.
- (2) For the purposes of subsection (1), **terrorism exclusion** means an exclusion or exception (however described) for:
- (a) acts that are described using the word “terrorism” or “terrorist” or words of similar effect; or
 - (b) other acts (however described) that are substantially similar to terrorist acts as defined in section 100.1 of the *Criminal Code*; or
 - (c) acts that are described using the word “chemical”, “biological”, “polluting”, “contaminating”, “pathogenic” or “poisoning” or words of similar effect.
- (3) If:
- (a) apart from this subsection, an amount (the **base amount**) would be payable under the contract, solely because of this section, in respect of a declared terrorist incident; and
 - (b) a reduction percentage applies to the declared terrorist incident; and
 - (c) if the contract was made on or after 1 October 2003—the insurer is reinsured with the Corporation in respect of the whole or a part of the insurer’s liabilities under the contract that arise solely because of this section;
- then the base amount is to be reduced by the reduction percentage.
- (4) The Corporation is liable to compensate an insurer for:
- (a) a liability incurred by the insurer under a protected contract, to the extent that the liability arises solely because of this section; and
 - (b) expenditure incurred by the insurer in connection with, or arising from, the assessment, management, conduct,
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rejection, defence or settlement of a claim by the insured, to the extent to which the claim is:

- (i) under a protected contract; and
- (ii) in respect of a liability that arises (or is alleged to arise) solely because of this section.

For the purposes of this subsection, *protected contract* means an eligible insurance contract that is in force at the startup time or is entered into after the startup time and before 1 October 2003.

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 all eligible cyclone losses; and
 - (b) insure against 100% of the insurer's liability, under each of those pool insurance contracts, in respect of all eligible cyclone losses.

Note: A pecuniary penalty may be imposed for a contravention of this subsection: see section 127F of the *Insurance Act 1973*.

- (2) Subsection (1) has effect subject to a direction that is in force under section 38 and provides for the extent to which risk is to be retained by reinsureds under the relevant contracts of reinsurance.
- (3) Subsection (1) has effect even if the general insurer has entered into a contract of reinsurance otherwise than with the Corporation.
- (4) The Corporation may enter into contracts of reinsurance that insure against the reinsureds' liability, under pool insurance contracts, in respect of eligible cyclone losses arising on and after 1 July 2022.

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.

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- (6) For the purposes of subsection (5), the amount is the total gross written premiums that the reporting standard prescribed by the regulations for the purposes of this subsection would require the general insurer to report to APRA:
- (a) in respect of the last financial year of the general insurer that ended before the start of the calendar year referred to in subsection (5); and
 - (b) for a class of direct business consisting of contracts of insurance:
 - (i) that the general insurer enters into as insurer; and
 - (ii) that are wholly or partly pool insurance contracts; and
 - (iii) under which the insurer undertakes any liability in respect of eligible cyclone losses (whether or not the contracts cover other risks) other than eligible cyclone losses arising at a place covered by a determination in force under subsection (7);
- if such contracts were a distinct class of direct insurance business.
- (7) The Corporation may, by notifiable instrument, determine areas where, in its opinion, the risk of eligible cyclone losses arising is so small as to be negligible.

One in, all in rule for exempt general insurer

- (8) However, if a general insurer enters into a contract of reinsurance with the Corporation that insures against the insurer's liability under a pool insurance contract in respect of eligible cyclone losses, subsection (5) does not apply to the general insurer while that contract of reinsurance is in force.

How this section applies to a Lloyd's syndicate

- (9) If a syndicate of Lloyd's underwriters enter into a contract of reinsurance with the Corporation that insures against their liability under a pool insurance contract in respect of eligible cyclone losses, then, while that contract of reinsurance is in force, subsections (1), (2) and (3) apply to:
- (a) the syndicate; and

(b) each Lloyd's underwriter who is a member of the syndicate, when acting in that capacity;
in the same way as those subsections apply to a general insurer.

How this section applies to an unauthorised foreign insurer

- (10) If an unauthorised foreign insurer enters into a contract of reinsurance with the Corporation that insures against the liability of the foreign insurer under a pool insurance contract in respect of eligible cyclone losses, then, while that contract of reinsurance is in force, subsections (1), (2) and (3) apply to that foreign insurer in the same way as those subsections apply to a general insurer.

8B Definition of *pool insurance contract*

- (1) A contract of insurance is a ***pool insurance contract*** to the extent (but only to the extent) that:
- (a) it provides insurance cover that is of a kind referred to in subsection (2) and also of a kind referred to in subsection (3), whether or not the cover is limited or restricted in any way, and whether or not the contract also provides any other insurance cover; or
 - (b) it is prescribed by the regulations for the purposes of this paragraph.

Note: Subsections (5) to (8) contain exclusions.

Type of risk covered

- (2) The kinds of insurance cover referred to in this subsection are the following:
- (a) insurance cover for loss of, or damage to, eligible property that is owned by the insured;
 - (b) insurance cover for business interruption and consequential loss arising from:
 - (i) loss of, or damage to; or
 - (ii) inability to use all or part of;eligible property that is owned or occupied by the insured.

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Note: An example of insurance cover referred to in paragraph (b) is a contract of insurance that is entered into by the owner of leased premises and insures against loss of rental income if the premises are damaged.

Type of cover

- (3) The kinds of insurance cover referred to in this subsection are the following:
- (a) insurance cover in respect of a home building;
 - (b) insurance cover in respect of contents of a home building;
 - (c) if:
 - (i) the insured is the body corporate for a strata or community title development; and
 - (ii) at least 50% of the total floor space of the units in the development is used wholly or mainly for residential purposes;insurance cover in respect of either or both of:
 - (iii) a building located on land that is included in the development; and
 - (iv) contents of such a building;
 - (d) insurance cover (other than insurance cover of a kind referred to in paragraph (a), (b) or (c)):
 - (i) that is in respect of a building, contents of a building, or both; and
 - (ii) for which the total of the sums insured does not exceed the amount prescribed by the regulations for the purposes of this paragraph.

Terms used in subsection (3) that are defined by the regulations

- (4) For the purposes of a paragraph of subsection (3):

building means a building as defined by the regulations for the purposes of that paragraph.

contents means contents as defined by the regulations for the purposes of that paragraph.

home building means a home building as defined by the regulations for the purposes of that paragraph.

Exclusion from subsection (3) of buildings owned and managed by government entities

- (5) Paragraph (3)(a) or (d) does not apply if:
- (a) the insured is a government entity as defined by the regulations for the purposes of this subsection; and
 - (b) the home building or building, as the case may be, is managed by such a government entity (whether or not the same as the one referred to in paragraph (a) of this subsection).

Other exclusions

- (6) A contract is not a pool insurance contract to the extent that it provides cover of a kind referred to in paragraph (3)(a) or (b) if the contract also provides cover that would be of a kind referred to in paragraph (3)(d) but for the fact that the last-mentioned cover does not satisfy subparagraph (3)(d)(ii).
- (7) A contract is not a pool insurance contract to the extent that:
- (a) it is a contract of reinsurance; or
 - (b) it provides insurance cover (other than insurance cover of a kind referred to in paragraph (3)(a) or (b)) to a farm business, including:
 - (i) producing crops or livestock, or produce derived from the crops or livestock; and
 - (ii) secondary processing of, or manufacturing goods from, the crops, livestock or produce, at the place where the crops or livestock are produced; and
 - (iii) the interests of the insured in property used in doing something covered by subparagraph (i) or (ii) of this paragraph; or
 - (c) it is prescribed by the regulations for the purposes of this subsection.

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- (8) A contract of insurance is not a pool insurance contract if it is made in the course of State insurance not extending beyond the limits of the State concerned.
- (9) Subsections (6) to (8) have effect despite subsection (1).

8C Definition of *eligible cyclone loss*

- (1) For the purposes of this Act, an *eligible cyclone loss* is a loss that satisfies the conditions in subsections (2) and (3).
- (2) The loss must arise:
 - (a) from the weather system in relation to which a cyclone event was declared under subsection 8F(1); or
 - (b) without limiting the generality of paragraph (a) of this subsection, from any of the following that is caused by that weather system:
 - (i) wind, rain, rainwater or rainwater runoff;
 - (ii) a storm surge, as defined by the regulations for the purposes of this subparagraph;
 - (iii) a flood, as defined by the regulations for the purposes of this subparagraph.
- (3) The loss must commence during the claims period for the cyclone event referred to in paragraph (2)(a).

8D Setting reinsurance premiums

When setting premiums that reinsureds are to pay under cyclone reinsurance contracts, the Corporation is to seek:

- (a) to ensure that, over the longer term, premiums paid under such contracts are sufficient to cover or offset:
 - (i) the amounts paid in meeting the Corporation's liabilities under such contracts (including payments by the Commonwealth under section 35A in respect of such liabilities); and
 - (ii) all other amounts applied by the Corporation as mentioned in subsection 34(1), in so far as those

amounts may reasonably be regarded as connected with the cyclone reinsurance scheme; and

- (b) in so far as those premiums are for reinsuring liability under pool insurance contracts that involve medium to high levels of exposure to eligible cyclone losses—to keep the premiums as low as possible while maintaining incentives to reduce and mitigate the risk of eligible cyclone losses; and
- (c) in so far as those premiums are for reinsuring liability under pool insurance contracts that involve lower levels of exposure to eligible cyclone losses—to keep those premiums at levels comparable to what would be charged by other reinsurers.

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

- (1) If the Bureau determines that:
 - (a) a cyclone exists or has reintensified; and
 - (b) the cyclone is likely to affect any part of Australia;the Bureau must notify the Corporation that the cyclone exists or has reintensified, specifying the day and time when, in the Bureau's opinion, the cyclone began or reintensified, as the case may be.
- (2) If:
 - (a) the Bureau determines that a cyclone has ended; and
 - (b) the cyclone is one about which the Bureau has notified the Corporation under subsection (1);the Bureau must notify the Corporation that the cyclone has ended, specifying the day and time when, in the Bureau's opinion, the cyclone ended.
- (3) A notification under this section must be given:
 - (a) as soon as practicable, and in any event within 24 hours, after the Bureau determines as mentioned in subsection (1) or (2), as the case may be; and
 - (b) in writing sent by electronic communication within the meaning of the *Electronic Transactions Act 1999*.

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Note: This section confers functions on the Bureau in addition to its functions under the *Meteorology Act 1955*.

8F Declarations about cyclone events

- (1) If the Bureau notifies the Corporation that a cyclone exists or has reintensified, the Corporation must declare that a cyclone event has begun. The declaration must:
- (a) specify the day and time when the cyclone began or reintensified, as notified by the Bureau; and
 - (b) state that the claims period for the cyclone event began on that day at that time.

Note: If a cyclone ends but then reintensifies, a new cyclone event is declared under this section in relation to the cyclone.

- (2) If the Bureau notifies the Corporation that a cyclone has ended, the Corporation must declare that the cyclone event has ended that was previously declared under subsection (1) in relation to that cyclone. The declaration under this subsection must specify:
- (a) the previous declaration; and
 - (b) the day and time when the cyclone ended, as notified by the Bureau; and
 - (c) the day and time when the claims period for the cyclone event ended, or will end, as the case requires.
- (3) The day and time specified under paragraph (2)(c) must be the day and time when the period ends:
- (a) that began on the day, and at the time, specified under paragraph (2)(b); and
 - (b) whose duration is prescribed by the regulations for the purposes of this subsection.
- (4) A declaration under this section:
- (a) must be made as soon as practicable, and in any event within 24 hours, after the Bureau notifies the Corporation that a cyclone exists, has reintensified or has ended, as the case may be; and
 - (b) must be made by notifiable instrument; and

- (c) cannot be varied or revoked; and
 - (d) must be published on the Corporation's website as soon as practicable, and in any event within those 24 hours.
- (5) The validity of a declaration under this section is not affected by:
- (a) an error in matter specified in the declaration; or
 - (b) a contravention of subsection (4).

Part 3—Australian Reinsurance Pool Corporation

Division 1—Establishment, functions and powers of the Corporation

9 Establishment of Corporation

The Australian Reinsurance Pool Corporation is established by this section.

10 Functions of Corporation

The Corporation has the following functions:

- (a) to provide insurance cover for eligible terrorism losses (whether by entering into contracts or by other means);
- (b) to operate a cyclone and related flood damage reinsurance pool by entering into contracts of reinsurance as reinsurer in accordance with Part 2A;
- (c) any other functions prescribed by the regulations.

11 Powers of Corporation

- (1) The Corporation has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (2) For the avoidance of doubt, the powers of the Corporation include:
 - (a) the power to charge premiums in respect of contracts of insurance for which it is the insurer; and
 - (b) the power to charge fees for services that it provides in connection with the performance of its functions.
- (3) Division 1 of Part III (Authorisation to carry on insurance business) of the *Insurance Act 1973* does not apply, and is taken never to have applied, to the Corporation.

12 Constitution of Corporation

- (1) The Corporation consists of the following members:
 - (a) a Chair;
 - (b) at least 6, but not more than 8, other members.

- (2) The Corporation:
 - (a) is a body corporate with perpetual succession; and
 - (b) must have a seal; and
 - (c) may acquire, hold and dispose of real and personal property;
and
 - (d) may sue and be sued in its corporate name.

Division 2—Administrative provisions about members and observers

13 Appointment of members

- (1) The members of the Corporation are to be appointed in writing by the Minister, on a part-time basis.
- (2) A member holds office for the period specified in the instrument of appointment. The period must not exceed 4 years.
- (3) The Minister must not appoint a person as a member unless the Minister is satisfied that the person:
 - (a) has suitable qualifications or experience; and
 - (b) is of good character.
- (4) The appointment of a member is not invalid merely because of a defect or irregularity in connection with the member's appointment.

14 Acting Chair

The Minister may appoint a member to act as the Chair:

- (a) during a vacancy in the office of Chair (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Chair is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

15 Additional terms and conditions of appointment of members

A member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

16 Outside employment of members

A member must not engage in any paid employment that, in the Minister's opinion, conflicts or may conflict with the proper performance of the member's duties.

17 Remuneration and allowances of members

- (1) A member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed.
- (2) A member is to be paid the allowances that are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

18 Leave of absence

The Chair may grant leave of absence to any other member on the terms and conditions that the Chair determines.

19 Resignation

A member may resign his or her appointment by giving the Minister a written resignation.

20 Termination of appointment of members

- (1) The Minister may terminate a member's appointment for misbehaviour or physical or mental incapacity.
- (2) The Minister may terminate a member's appointment if:
 - (a) the member:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or

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- (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
- (b) the member is absent, except on leave of absence, from 3 consecutive meetings of the Corporation; or
- (c) the member engages in paid employment that, in the Minister's opinion, conflicts or could conflict with the proper performance of the duties of his or her office; or
- (e) the Minister is of the opinion that the performance of the member has been unsatisfactory for a significant period of time.

Note: The appointment of a member may also be terminated under section 30 of the *Public Governance, Performance and Accountability Act 2013* (which deals with terminating the appointment of an accountable authority, or a member of an accountable authority, for contravening general duties of officials).

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

Division 3—Meetings of the Corporation

21 Times and places of meetings

- (1) The Corporation must hold such meetings as are necessary for the efficient performance of its functions.
- (2) The Chair:
 - (a) may convene a meeting at any time; and
 - (b) must convene a meeting on receipt of a written request signed by at least 2 other members.
- (3) Meetings are to be held at such places as the Chair determines.

22 Procedure at meetings

- (1) The Chair presides at all meetings at which he or she is present.
- (2) If the Chair is not present at a meeting, the members present are to appoint one of their number to preside.
- (3) A quorum is constituted by a majority of the members for the time being holding office.
- (4) A question is decided by a majority of the votes of the members present and voting.
- (5) The person presiding at a meeting has a deliberative vote and, if necessary, also a casting vote.
- (6) Subject to this section, the procedure is to be as determined by the Corporation.

23 Resolutions without meetings

If the Corporation so determines, a resolution is taken to have been passed at a meeting of the Corporation if:

- (a) without meeting, a majority of the members indicate agreement with the resolution in accordance with the method determined by the Corporation; and
- (b) that majority would have constituted a quorum at a meeting of the Corporation.

Division 4—Chief Executive

24 Chief Executive

- (1) There is to be a Chief Executive of the Corporation.
- (2) The Chief Executive is to be appointed in writing by the Corporation on a full-time basis.
- (3) A member of the Corporation cannot be appointed as Chief Executive.
- (4) The appointment of a person as Chief Executive is not invalid merely because of a defect or irregularity in connection with the person's appointment.

25 Duties of the Chief Executive

- (1) The Chief Executive is to manage the affairs of the Corporation subject to the directions of, and in accordance with policies determined by, the Corporation.
- (2) A thing is taken to have been done by the Corporation if it is done in the name of the Corporation, or on behalf of the Corporation:
 - (a) by the Chief Executive; or
 - (b) with the authority of the Chief Executive.

26 Termination of appointment

The Corporation may at any time terminate the appointment of the Chief Executive.

27 Acting appointments

- (1) The Corporation may appoint a person to act as the Chief Executive for a period not exceeding 3 months:

- (a) during a vacancy in the office of Chief Executive (whether or not an appointment has previously been made to the office);
or
- (b) during any period when the Chief Executive is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

- (2) If, at the end of the 3 month period:
 - (a) there continues to be a vacancy in the office of Chief Executive; or
 - (b) the Chief Executive continues to be absent or unable to perform the duties of the office;then the Minister, on the recommendation of the Corporation, may appoint a person to act as the Chief Executive.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

- (4) An appointment under this section must be in writing.

28 Additional terms and conditions of appointment of Chief Executive

The Chief Executive holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined in writing by the Corporation.

29 Outside employment of Chief Executive

The Chief Executive must not engage in paid employment outside the duties of his or her office except with the approval of the Corporation.

30 Leave of absence

The Chair may grant leave of absence to the Chief Executive on the terms and conditions that the Chair determines.

31 Resignation

The Chief Executive may resign his or her appointment by giving the Corporation a written resignation.

Division 5—Employees and consultants

32 Employees

- (1) The Corporation may employ such persons as it considers necessary for the performance of its functions and the exercise of its powers.
- (2) An employee is to be employed on the terms and conditions that the Corporation determines in writing.

33 Consultants

- (1) The Corporation may engage persons having suitable qualifications and experience as consultants to the Corporation.
- (2) The consultants are to be engaged on the terms and conditions that the Corporation determines in writing.

Division 5A—Reviewing actuary

33A Nomination of reviewing actuary

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

Reviewing actuary for first 3 years of cyclone reinsurance scheme

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

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 cyclone reinsurance contracts, 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.

Division 6—Finances

34 Application of money

- (1) The Corporation's money is to be applied only:
 - (a) in payment or discharge of the expenses, charges, obligations and liabilities incurred or undertaken by the Corporation in the performance of its functions and the exercise of its powers; and
 - (b) in payment of remuneration and allowances payable under this Act.
- (2) Subsection (1) does not prevent investment, under section 59 of the *Public Governance, Performance and Accountability Act 2013*, of money that is not immediately required for the purposes of the Corporation.

35 Commonwealth guarantee: payments otherwise than under cyclone reinsurance contracts

- (1) The Commonwealth guarantees the due payment of money that may become payable by the Corporation to any person (other than the Commonwealth) otherwise than in respect of a liability of the Corporation under a cyclone reinsurance contract.
- (3) If at any time the Corporation considers it likely that it will be unable to discharge all its liabilities (other than its liabilities under cyclone reinsurance contracts), after taking into account the guarantee under this section, then the Corporation must give the Minister a written notice to that effect.

35A Commonwealth guarantee: payments under cyclone reinsurance contracts

- (1) The Commonwealth guarantees the due payment of money that may become payable by the Corporation to any person (other than

the Commonwealth) in respect of a liability (a *cyclone loss liability*) of the Corporation under a cyclone reinsurance contract.

- (2) However, the total of the amounts paid by the Commonwealth under subsection (1) in a financial year must not exceed:
 - (a) unless paragraph (b) of this subsection applies—\$10 billion; or
 - (b) if an amount is determined for that financial year under subsection (4)—the greatest amount so determined.
- (3) If at any time the Corporation considers it likely that, after taking into account the guarantee under this section, the Corporation will be unable to discharge all its cyclone loss liabilities, the Corporation must give the Minister a written notice to that effect.
- (4) If the Minister receives a notice under subsection (3), the Minister must:
 - (a) if the Minister is not the Treasurer—consult with the Treasurer; and
 - (b) consult with the Prime Minister and the Finance Minister; and
 - (c) determine an amount for a financial year, for the purposes of paragraph (2)(b), that in the Minister's opinion is sufficient to ensure that, after taking into account the guarantee under this section, the Corporation will be able to discharge all its cyclone loss liabilities.

Note: If the Corporation gives the Minister a further notice under subsection (3), this subsection may have a further application.
- (5) A determination under subsection (4) must be made by notifiable instrument, and cannot be revoked.
- (6) The validity of a determination under subsection (4) is not affected by a failure to comply with paragraph (4)(a) or (b).

36 Liability to taxation

The Corporation is not subject to income tax under a law of the Commonwealth.

37 Appropriation of Consolidated Revenue Fund

The Consolidated Revenue Fund is appropriated for:

- (a) payment to the Corporation of amounts borrowed by the Corporation from the Commonwealth; and
- (b) payments by the Commonwealth under section 35 or 35A.

Division 7—Miscellaneous

38 Minister may give directions to Corporation

- (1) The Minister may, by notifiable instrument, direct the Corporation in relation to the performance of its functions and the exercise of its powers.
- (2) The directions that may be given under subsection (1) include the following:
 - (a) directions requiring the Corporation to pay money to the Commonwealth;
 - (b) directions requiring the Corporation to enter into contracts to borrow money from the Commonwealth;
 - (c) directions requiring the Corporation to enter into contracts to borrow money from persons other than the Commonwealth;
 - (d) directions setting premiums that are to be charged by the Corporation in respect of contracts of insurance (except cyclone reinsurance contracts);
 - (e) directions relating to the extent to which risk is to be retained by reinsureds under contracts of reinsurance that the Corporation enters into as reinsurer.
- (3) Without limiting paragraph (2)(a), a direction under that paragraph may require the Corporation to make the following payments to the Commonwealth:
 - (a) payments designed to ensure that sections 35 and 36 do not result in a competitive advantage for the Corporation;
 - (b) payments in the nature of dividends.
- (4) A direction under paragraph (2)(c) cannot require the Corporation to enter into a contract with a particular person.
- (5) The Corporation must perform its functions and exercise its powers in a manner consistent with any directions given by the Minister under this section.

39 Evidence—Corporation’s seal

All courts, judges and persons acting judicially must:

- (a) take judicial notice of the imprint of the seal of the Corporation appearing on a document; and
- (b) presume that the document was duly sealed.

40 Delegation by Corporation

- (1) The Corporation may, by writing, delegate all or any of its powers or functions under this Act to:
 - (a) the Chief Executive; or
 - (b) a person employed under section 32.
- (2) However, a power or function under section 8F (declarations about cyclone events) may only be delegated to:
 - (a) the Chief Executive; or
 - (b) a person employed under section 32 in a senior executive position.

Part 4—Miscellaneous

40A Annual Financial Outlook Report

- (1) After the end of a financial year beginning on or after 1 July 2023, the Corporation must prepare and give to the Minister a Financial Outlook Report that sets out the matters prescribed by the regulations.
- (2) The Report must be given to the Minister on or before the next 15 October after the end of the financial year.
- (3) The Report must be published on the Corporation’s website within 10 business days after it is given to the Minister.

41 Review of Act

The Minister must:

- (a) as soon as practicable after 1 July 2025; and
 - (b) at least once every 5 years after that day;
- prepare a report that reviews the need for this Act to continue in operation.

42 Compensation—constitutional safety net

- (1) If:
 - (a) the operation of this Act would result in the acquisition of property otherwise than on just terms; and
 - (b) the acquisition would not be valid, apart from this section, because a particular person has not been compensated;the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia for the recovery from the

Section 43

Commonwealth of such reasonable amount of compensation as the Court determines.

- (3) The Consolidated Revenue Fund is appropriated for the purposes of this section.
- (4) In this section:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

43 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

Endnotes

Endnote 1—About the endnotes

be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnotes

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Terrorism Insurance Act 2003	43, 2003	24 June 2003	24 June 2003 (s 2)	
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Sch 2 (items 1143–1148) and Sch 3 (items 10, 11): 27 Dec 2011 (s 2(1) items 11, 12)	Sch 3 (items 10, 11)
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 12 (items 209–212) and Sch 14: 1 July 2014 (s 2(1) items 6, 14)	Sch 14
as amended by Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2)	Sch 7
as amended by Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2)	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014	116, 2014	3 Nov 2014	Sch 1 (items 140–143): 1 Dec 2014 (s 2(1) item 2)	Sch 1 (item 143)
Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 6 (item 30) and Sch 7: 14 Apr 2015 (s 2)	Sch 7
as amended by				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—
Treasury Laws Amendment (2016 Measures No. 1) Act 2017	25, 2017	4 Apr 2017	Sch 1: 1 July 2017 (s 2(1) item 2)	Sch 1 (item 2)
Home Affairs and Integrity Agencies Legislation Amendment Act 2018	31, 2018	9 May 2018	Sch 2 (items 240, 241, 284): 11 May 2018 (s 2(1) items 3, 7)	Sch 2 (item 284)
Treasury Laws Amendment (2019 Measures No. 3) Act 2020	64, 2020	22 June 2020	Sch 3 (items 322–326): 1 Oct 2020 (s 2(1) item 6)	Sch 3 (items 325, 326)
Treasury Laws Amendment (Cyclone and Flood Damage Reinsurance Pool) Act 2022	13, 2022	31 Mar 2022	Sch 1 (items 2–30): 31 Mar 2022 (s 2(1) item 1)	Sch 1 (items 27–30)

Endnotes

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
Title	am No 13, 2022
s 1	rs No 13, 2022
s 3	am No 46, 2011; No 116, 2014; No 13, 2022
s 5	rep No 116, 2014 ad No 13, 2022
Part 2	
s 6	am No 31, 2018; No 64, 2020
s 8	am No 116, 2014; No 25, 2017
Part 2A	
Part 2A.....	ad No 13, 2022
s 8A	ad No 13, 2022
s 8B.....	ad No 13, 2022
s 8C.....	ad No 13, 2022
s 8D.....	ad No 13, 2022
s 8E.....	ad No 13, 2022
s 8F.....	ad No 13, 2022
Part 3	
Division 1	
s 10	am No 13, 2022
s 11	am No 13, 2022
s 12	am No 13, 2022
Division 2	
Division 2 heading.....	rs No 13, 2022
s 14	am. No. 46, 2011
s 20	am No 62, 2014
s 20A	ad No 13, 2022

Endnote 4—Amendment history

Provision affected	How affected
Division 3	
s 22	am No 62, 2014
Division 4	
s 27	am No 46, 2011
s 31	am No 36, 2015
Division 5A	
Division 5A	ad No 13, 2022
s 33A	ad No 13, 2022
s 33B	ad No 13, 2022
s 33C	ad No 13, 2022
Division 6	
s 34	am No 62, 2014
s 35	am No 13, 2022
s 35A	ad No 13, 2022
s 37	am No 13, 2022
Division 7	
s 38	am No 64, 2020; No 13, 2022
s 40	am No 13, 2022
Part 4	
s 40A	ad No 13, 2022
s 41	rs No 13, 2022