



Terrorism Insurance Act 2003

No. 43, 2003

An Act relating to insurance cover for terrorist acts, and to other matters

Note: An electronic version of this Act is available in SCALEplus
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)

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Terrorism Insurance Act 2003

No. 43, 2003

An Act relating to insurance cover for terrorist acts, and to other matters

[Assented to 24 June 2003]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

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

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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:

Australia includes Norfolk Island.

Note: See also paragraph 17(a) of the *Acts Interpretation Act 1901* (which 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).

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

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

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.

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

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

own, in relation to eligible property, includes:

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

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

startup time means the beginning of 1 July 2003.

terrorist act has the meaning given by section 5.

4 Act extends to things outside Australia

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

5 Meaning of *terrorist act*

- (1) In this Act, **terrorist act** means an action or threat of action where:
 - (a) the action falls within subsection (2) and does not fall within subsection (3); and
 - (b) the action is done or the threat is made with the intention of advancing a political, religious or ideological cause; and
 - (c) the action is done or the threat is made with the intention of:
 - (i) coercing, or influencing by intimidation, the government of the Commonwealth or a State, Territory or foreign country, or of part of a State, Territory or foreign country; or
 - (ii) intimidating the public or a section of the public.
- (2) Action falls within this subsection if it:
 - (a) causes serious harm that is physical harm to a person; or
 - (b) causes serious damage to property; or
 - (c) causes a person's death; or

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- (d) endangers a person's life, other than the life of the person taking the action; or
 - (e) creates a serious risk to the health or safety of the public or a section of the public; or
 - (f) seriously interferes with, seriously disrupts, or destroys, an electronic system including, but not limited to:
 - (i) an information system; or
 - (ii) a telecommunications system; or
 - (iii) a financial system; or
 - (iv) a system used for the delivery of essential government services; or
 - (v) a system used for, or by, an essential public utility; or
 - (vi) a system used for, or by, a transport system.
- (3) Action falls within this subsection if it:
- (a) is advocacy, protest, dissent or industrial action; and
 - (b) is not intended:
 - (i) to cause serious harm that is physical harm to a person; or
 - (ii) to cause a person's death; or
 - (iii) to endanger the life of a person, other than the person taking the action; or
 - (iv) to create a serious risk to the health or safety of the public or a section of the public.

Part 2—Insurance for terrorism risks

6 Declared terrorist incidents

- (1) If the Minister, after consulting the Attorney-General, 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 notice in the *Gazette*, 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.
- (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 amounts not related to the act or acts specified in the declaration) would be more than \$10,000 million.

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- (8) The Minister may, by notice in the *Gazette*, 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 5.
- (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, 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 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) any other functions that are 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.

12 Constitution of Corporation

- (1) The Corporation consists of the following members:
 - (a) a Chair;
 - (b) at least 4, but not more than 6, 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

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

- (1) 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.
- (2) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

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:

Part 3 Australian Reinsurance Pool Corporation

Division 2 Administrative provisions about members

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- (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
- (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
- (d) the member fails, without reasonable excuse, to comply with Subdivision B of Division 4 of Part 3 of the *Commonwealth Authorities and Companies Act 1997*; or
- (e) the Minister is of the opinion that the performance of the member has been unsatisfactory for a significant period of time.

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.

Note: Subdivision B of Division 4 of Part 3 of the *Commonwealth Authorities and Companies Act 1997* has rules for “directors” about disclosing, and voting on matters involving, material personal interests.

- (6) Subject to this section, the procedure is to be as determined by the Corporation.

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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

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- (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.
- (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.
- (3) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.
- (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 Minister 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 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 of surplus money of the Corporation under Division 3 of Part 3 of the *Commonwealth Authorities and Companies Act 1997*.

35 Commonwealth guarantee

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

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.

Division 7—Miscellaneous

38 Minister may give directions to Corporation

- (1) The Minister may give written directions to 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;
 - (e) directions relating to the extent to which risk is to be retained by the insured under a contract of reinsurance with the Corporation.
- (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.

- (6) As soon as practicable after the Minister gives a direction covered by paragraph (2)(d) or (e), the Minister must cause the direction to be published.

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

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.

Note: See also subsection 25(3).

Part 4—Miscellaneous

41 Review of Act

At least once every 3 years after the startup time, the Minister must 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 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:

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- (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.

*[Minister's second reading speech made in—
House of Representatives on 12 December 2002
Senate on 13 May 2003]*

(283/02)