



Statutory Rules

1974 No. 117

REGULATIONS UNDER THE DEFENCE SERVICE HOMES ACT 1918-1973.*

I, THE GOVERNOR-GENERAL of Australia, acting with the advice of the Executive Council, hereby make the following Regulations under the *Defence Service Homes Act* 1918-1973.

Dated this twenty-eighth day of June, 1974.

PAUL HASLUCK
Governor-General.

By His Excellency's Command,

JOHN M. WHEELDON
Minister of State for Repatriation and Compensation.

AMENDMENTS OF THE DEFENCE SERVICE HOMES REGULATIONS†

1. Regulation 19 of the Defence Service Homes Regulations is repealed and the following regulation substituted:—

“ 19. (1) For the purposes of section 38 of the Act, the risks other than fire to be insured against are—

Prescribed
insurance
risks.

- (a) lightning, thunderbolt, flood, tempest, earthquake, explosion;
- (b) riot, civil commotion, strikes, and labour disturbances including acts of a lawfully constituted authority in suppressing a riot, civil commotion, strike or labour disturbance;
- (c) malicious damage, burglary and housebreaking (including an attempt at burglary or housebreaking);
- (d) theft of the property insured or any part thereof (including an attempt at theft);
- (e) bursting, leaking, and overflowing of boilers, tanks, pipes and associated apparatus;
- (f) depredation by borers and white ants in the first two years after the date of completion of, or the date on which the Director acquired an interest in, the dwelling-house;
- (g) impact of road vehicles;
- (h) impact of animals not belonging to, or under the control of, the assured or the occupier of the dwelling-house or a member of the family of the assured or the occupier of the dwelling-house;

* Notified in the *Australian Government Gazette* on 29 June 1974.

† Statutory Rules 1936, No. 74, as amended by Statutory Rules 1945, No. 202; 1946, No. 66; 1947, No. 93; 1949, Nos. 13 and 29; 1951, No. 16; 1956, No. 17; 1957, Nos. 18 and 54; 1962, No. 42; 1964, No. 55; 1969, No. 164; 1972, No. 172; and 1973, Nos. 50 and 173.

- (j) impact of aircraft or missiles (including parts of and objects falling from aircraft or missiles);
- (k) sonic boom, that is to say, shock waves created when an aircraft or missile travels at a supersonic speed;
- (l) impact of a tree or a part of a tree;
- (m) leakage of oil from an oil heater, being a heater that is only capable of being operated from the place where it is installed;
- (n) breakage resulting in a fracture through the entire thickness of glass in the windows or doors of the dwelling-house, glass in fixed partitions built into the dwelling-house or glass (including mirrors) built into the walls or doors of the dwelling-house but not a breakage of—
 - (i) any glass of the types mentioned which is in a portion of the dwelling-house which is used, whether constantly or from time to time, for trade purposes; and
 - (ii) glass which contained a fracture through its entire thickness prior to the time of the occurrence giving rise to the claim; and
- (o) breakage resulting in a fracture through the entire thickness of any wash basin, lavatory pan, lavatory cistern or sink other than a breakage of—
 - (i) a wash basin, lavatory pan, lavatory cistern or sink in a damaged or imperfect condition at the time of the occurrence giving rise to the claim; and
 - (ii) a wash basin or lavatory pan which is not of a type designed to be permanently connected to a plumbing system.

“(2) Nothing in sub-paragraph (1)(n)(ii) shall bar a claim in respect of the breakage of glass where the glass concerned has subsequently suffered further damage.”.

2. Regulation 45 of the Defence Service Homes Regulations is amended—

Interpretation.

- (a) by omitting sub-regulation (2) and substituting the following sub-regulation:—

“(2) For the purposes of this Part—

- (a) property shall be deemed not to have been damaged or destroyed by lightning unless it is damaged or destroyed by reason of the property or any adjoining premises being struck by lightning;
- (b) building material shall be deemed not to have been lost, damaged or destroyed as a result of flood or tempest where the loss of, damage to or destruction of the material was due to the failure of the applicant to take reasonable precautions to safeguard the material from loss, damage or destruction so caused;
- (c) a dwelling-house shall be deemed not to have been damaged or destroyed by flood or tempest where the damage or destruction occurred as a result of the failure of the applicant to keep the dwelling-house, and in particular the roofs, drains and spouting of the dwelling-house in good order and repair;
- (d) a dwelling-house shall be deemed not to have been damaged or destroyed by tempest unless the damage or destruction was caused by reason of a breach having been made in the dwelling-house by the tempest;

Defence Service Homes Regulations

- (e) a property shall be deemed not to have been damaged or destroyed by explosion or fire where the explosion or fire was caused by the explosion or ignition of an explosive or dangerously inflammable substance brought or kept upon the property in contravention of regulation 54 of these Regulations;
- (f) property shall be deemed not to have been lost as a result of or to have been damaged or destroyed by riot, civil commotion, strikes or labour disturbances where the assured was a party to the disturbances;
- (g) a dwelling-house shall be deemed not to have been damaged by burglary or housebreaking where, immediately prior to the occurrence of the burglary or housebreaking, the dwelling-house was not securely locked;
- (h) the interior of a dwelling-house shall be deemed not to have been affected in any way by theft or an attempt at theft where, immediately prior to the occurrence of the theft or the attempt at theft, the dwelling-house was not securely locked;
- (j) building materials shall be deemed—
 - (i) not to have been the subject of theft;
 - (ii) not to have been affected in any way by the theft of any part thereof; and
 - (iii) not to have been damaged or destroyed in an attempt at theft,
where the material was not, immediately prior to the theft or the attempt at theft, stored in a securely locked dwelling-house or a securely locked portion of a dwelling-house;
- (k) property shall be deemed not to have been the subject of theft or to have been affected in any way by theft where, at the time of the theft, the property formed part of the interior of an area of a dwelling-house which area was made available pursuant to a contract for the exclusive use of a person other than an unmarried child of the insured;
- (l) property shall be deemed not to have been damaged or destroyed in an attempt at theft where, at the time of the attempt at theft, the property formed part of the interior of an area of a dwelling-house which area was made available pursuant to a contract for the exclusive use of a person other than an unmarried child of the insured;
- (m) property shall be deemed not to have been lost, damaged or destroyed as a result of a prescribed risk if the loss, damage or destruction is caused by or arises out of war, invasion, act of foreign enemy, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection or military or usurped power;
- (n) where a blind or awning, being a blind or awning made of textile material which is affixed to the exterior of a dwelling-house, is damaged or destroyed by tempest, the damage to or destruction of the blind or awning shall be deemed not to be damage to or destruction of any portion of a dwelling-house;
- (o) a dwelling-house shall be deemed not to have been damaged or destroyed by the impact of a tree or part of a tree if the tree, or the tree from which the part was derived, was growing on the parcel of land on which the dwelling-house stood and the

impact was caused by, or was a consequence of, the felling or lopping of the tree;

- (p) property shall be deemed not to be damaged by a leakage of oil from an oil heater where the damage is caused by defective vaporization or by smoke or smudge from the heater;
- (q) damage to an oil heater as a result of a leakage of oil from the oil heater shall be deemed not to be damage to the dwelling-house;
- (r) damage to or the destruction of a boiler, tank, pipe or associated apparatus caused by the bursting, leaking or overflowing of the boiler, tank, pipe or associated apparatus, as the case may be, shall be deemed not to be damage to the dwelling-house or the destruction of any part of the dwelling-house;
- (s) property shall be deemed not to have been damaged or destroyed by the bursting, leaking or overflowing of a boiler, tank, pipe or associated apparatus where the applicant has failed to keep the boiler, tank, pipe or associated apparatus in good working order and repair;
- (t) property shall be deemed not to have suffered malicious damage where the damage was caused—
 - (i) to a dwelling-house under construction; or
 - (ii) by the applicant or the occupier of the damaged property, or a member of the family of the applicant or the occupier; and
- (u) glass, a wash basin, a lavatory pan, a lavatory cistern or a sink shall be deemed not to have been damaged or destroyed where the glass, wash basin, lavatory pan, lavatory cistern or sink, as the case may be, formed part of a dwelling-house under construction and the damage or destruction was caused by a person engaged in the construction of the dwelling-house.”; and

(b) by adding at the end thereof the following sub-regulation:—

“ (3) Paragraphs (2) (g) and (h) do not apply where, at the time of the occurrence of the housebreaking, burglary, theft or attempt at theft, as the case may be, a person who resided in the dwelling-house was upon the parcel of land upon which the dwelling-house is erected.”.

3. Regulation 46A of the Defence Service Homes Regulations is amended—

- (a) by omitting from sub-regulation (1) the words “ loss or damage to ” and substituting the words “ the loss of, damage to or destruction of ”;
- (b) by omitting from sub-regulation (1) the words “ the loss or damage ” and substituting the words “ the loss, damage or destruction ”; and
- (c) by omitting from sub-regulation (2) the words “ loss or damage ” and substituting the words “ loss, damage or destruction ”.

Extent of Director's liability.

4. Regulation 58 of the Defence Service Homes Regulations is amended by omitting the words “ destruction or damage ” wherever occurring and substituting the words “ loss, damage or destruction ”.

Duty of applicant to notify damage to property.

5. Regulation 59 of the Defence Service Homes Regulations is amended by omitting the words “ destruction or damage ” wherever occurring, and substituting the words “ loss, damage or destruction ”.

Failure of applicant to notify damage.

Repeal of regulation 61.

6. Regulation 61 of the Defence Service Homes Regulations is repealed.

Reparation of loss, damage or destruction from a prescribed risk.

7. Regulation 62 of the Defence Service Homes Regulations is amended—

- (a) by omitting from sub-regulation (1) the words “the property is destroyed or damaged by” and substituting the words “any property insured in pursuance of the Act is lost, damaged or destroyed as a result of”;
- (b) by omitting from sub-regulation (1) the words “loss or damage” wherever occurring and substituting the words “loss, damage or destruction”;
- (c) by omitting from sub-regulation (1) the words “lost or damaged” and substituting the words “lost, damaged or destroyed”; and
- (d) by omitting from sub-regulation (2) the words “loss or damage” wherever occurring and substituting the words “loss, damage or destruction”.

Existing insurance to be notified.

8. Regulation 64 of the Defence Service Homes Regulations is amended—

- (a) by omitting from paragraph 1 (b) all the words after the words “upon an” and substituting the words “insurer in respect of loss, damage or destruction caused by a prescribed risk to any property of the applicant.”;
- (b) by omitting from paragraph 3 (a) the words “destroyed or damaged by” and substituting the words “lost, damaged or destroyed as a result of”; and
- (c) by omitting from sub-regulation (3) the words “loss or damage”, wherever occurring, and substituting the words, “loss, damage or destruction”.

Loss, damage or destruction arising from negligence.

9. Regulation 67 of the Defence Service Homes Regulations is amended by omitting the words “destruction or damage” and substituting the words “loss, damage or destruction”.

Rights Against third persons.

10. Regulation 72 of the Defence Service Homes Regulations is amended by omitting the words “destruction or damage” wherever occurring and substituting the words “loss, damage or destruction”.

Damage and destruction by fire brigade.

11. Regulation 73 of the Defence Service Homes Regulations is amended—

- (a) by inserting after the words “Any damage done to” the words “or destruction of”; and
- (b) by inserting after the words “be damage” the words “or destruction”.