

# **Terrorism Insurance Amendment Regulations 2003 (No. 1) 2003 No. 244**

## **EXPLANATORY STATEMENT**

### **STATUTORY RULES 2003 No. 244**

#### **Issued by authority of the Treasurer**

##### *Terrorism Insurance Act 2003*

##### Terrorism Insurance Amendment Regulations 2003 (No. 1)

The *Terrorism Insurance Act 2003* (the Act) sets up the framework for the Government's terrorism insurance scheme.

Section 43 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 7 of the Act specifies that a contract is not an eligible insurance contract to the extent to which it is prescribed by regulations. The *Terrorism Insurance Regulations 2003* (the Principal Regulations) list the various forms of insurance contracts that are not eligible insurance contracts.

The purpose of the amendment Regulations is to amend the list of insurance contracts that are not eligible for the purposes of the Act. In particular, the amendments ensure that the following insurance contracts are within the coverage of the terrorism insurance scheme:

- insurance contracts that provide cover to local government;
- insurance contracts entered into in the course of Territory insurance;
- aviation indemnity policies provided by parties (e.g. insurers) other than the Commonwealth;
- insurance contracts that provide cover for trailers and prime movers used in mining and construction, and not normally registrable for use on road;

and that insurance contracts for cash in transit are treated the same as contracts for goods in transit.

##### *Local Government Property*

Item 8(e) of Schedule 1 of the Principal Regulations was intended to exclude contracts of insurance that provide cover to State governments, except to the extent the State is carrying on a business. Legal advice confirmed that the drafting of Item 8(e) also excluded contracts of insurance that provide cover to a local council.

The policy intent has always been that local government property would be covered by the terrorism insurance scheme.

The substitute for Item 8(e) ensures that local government property will be covered by the scheme. The description of 'local governing body' is consistent with the definition of the term in the *Local Government (Financial Assistance) Act 1995*.

##### *Territory Insurance*

Section 7(3) of the Terrorism Insurance Act states that "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". This provision is necessary due to the Constitutional limitation on the Commonwealth's ability to make laws relating to State insurance.

Item 7 of Schedule 1 of the Principal Regulations provided that a contract of insurance entered into in the course of State insurance or Territory insurance, is not an eligible insurance contract.

The effect, inadvertently, has been to exclude from the scheme's coverage all insurance contracts issued by the Territory Insurance Office (TIO). The TIO is a general insurance company owned by the Northern Territory Government, and operating commercially in competition with other general insurers.

There is no Constitutional limitation on the Commonwealth's powers to make laws regarding Territory insurance. Thus Item 7 of the Principal Regulations went further than the exclusion of State insurance in the Act, and beyond the Constitutional need to exclude State insurance.

The TIO is the only Territory insurance provider. Because of the potential damage to the organisation's competitiveness of not being able to issue 'eligible insurance contracts', the Regulations have been amended such that Territory insurance contracts are eligible.

This has been achieved by deleting Item 7 of Schedule 1. Section 7(3) of the Terrorism Insurance Act will continue to exclude State insurance from coverage, consistent with the Constitution.

The Territory Insurance Office requested this amendment. They also asked for a period of adjustment to allow them time to reinsure their eligible insurance contracts with the Australian Reinsurance Pool Corporation. This need for time to put in place reinsurance arrangements explains the delayed commencement date for Schedule 2 of the Amendment Regulations.

#### *Aviation indemnities provided by entities other than the Commonwealth*

Following the events of September 11, 2001 in the US, the Australian Government provided certain indemnities to airlines and airports to enable them to remain operative in the wake of the withdrawal of terrorism risk cover by commercial insurers. In order to avoid duplicating this indemnity cover, Item 23(b) of Schedule 1 of the Principal Regulations was intended to exclude from coverage under the terrorism insurance scheme liabilities that are indemnified by the Commonwealth under these separate arrangements.

As drafted, however, Item 23(b) had the potential to exclude from the terrorism insurance scheme liability contracts that are commercially underwritten.

This arose because Item 23(b) of the Principal Regulations excluded an aviation liability indemnity contract within the meaning of subregulation 31(2) of the *Insurance Contracts Regulations 1985*, whether or not the indemnity is provided by the Commonwealth or by another person. Referring to contracts issued by parties other than the Commonwealth goes beyond the description contained in the Insurance Contracts Regulations, which refers to indemnities provided by the Commonwealth.

The Terrorism Insurance Amendment Regulations address this issue by removing the words "whether or not the indemnity is provided by the Commonwealth or by another person" in Item 23(b) of the Regulations. The effect will be that liability contracts held by the owner /operator of a building at an airport will be eligible insurance contracts, except if the Commonwealth provides the indemnity.

#### *Trailers and Prime Movers not normally registered for use on road*

Item 18 of the Principal Regulations excludes from the definition of eligible insurance contracts, insurance contracts for motor vehicles, other than moveable machinery or equipment, used in

mining or construction activities, that would not ordinarily be registered to travel by road. The exception for moveable machinery or equipment used in mining or construction activities was considered necessary to avoid excluding vehicle-type items that are not designed really to move on roads.

Item 26 of Schedule 1 of the Principal Regulations excluded contracts of insurance for loss of, damage to or liability arising in connection with prime movers, trailers, and rail and tram rolling stock.

The Insurance Council of Australia recently indicated that there is mining and construction equipment which may not constitute a motor vehicle, in that it is not capable of being self propelled, but would constitute a trailer and therefore be excluded by Item 26.

The amended Item 26 ensures consistency of treatment of vehicle-type items that are used in mining or construction activities, but not designed really to move on roads.

#### *Cash in transit*

Item 20 of Schedule 1 of the Principal Regulations excluded contracts of insurance for goods in transit from the scheme's coverage. As the insurance industry also issues separate policies for 'cash in transit', there was a risk that the interpretation of the word 'goods' in Item 20 would not extend to legal tender.

The amended Item 20 ensures that insurance contracts for legal tender that is in transit are treated the same, for the purposes of the Act, as insurance for other goods in transit.

#### *Commencement*

Regulations 1 to 3 and Schedule 1 of the Terrorism Insurance Amendment Regulations commenced on Gazettal. Schedule 2 will commence on 16 October 2003.