

EXPLANATORY STATEMENT

Issued by the authority of the Treasurer

Declaration of Terrorist Incident

Terrorism Insurance Act 2003

The *Terrorism Insurance Act 2003* (the Act) establishes the framework for the Australian Government's terrorism reinsurance scheme. Where the Minister makes a declaration that an incident is a terrorist incident, for the purposes of the Act, that declaration renders terrorism exclusion clauses in all eligible insurance contracts of no effect.

Subsection 6(1) of the Act provides that if, after consulting the Attorney General, the Minister is satisfied that a terrorist act has occurred in Australia or two or more related terrorist acts have occurred in Australia, the Minister must, by notice in the *Gazette*, declare that the act constitutes, or the acts together constitute, a terrorist incident for the purposes of the Act. The term 'terrorist act' is defined by reference to section 100.1 of the *Criminal Code Act 1995*. After consulting the Attorney-General, the Minister is satisfied that the incident that occurred on 15 and 16 December 2014 at the Lindt Café, Martin Place, Sydney, consisting of the threats and actions of Man Haron Monis, is a terrorist act or acts. Accordingly, this instrument declares a terrorist incident for the purposes of the Act.

This declaration renders terrorism exclusions in eligible insurance contracts of no effect. Insurers can reinsure their terrorism risk with the Australian Reinsurance Pool Corporation (ARPC). The ARPC charges insurers a premium for reinsurance and requires that they retain some terrorism risk.

Information supplied by the ARPC indicates that the total insured losses from this incident are not expected to exceed the portion attributable to individual insurers and so are not likely to involve claims on ARPC reserves. Because the Commonwealth is not expected to be liable for payments under section 35 of the Act exceeding \$10,000 million, no reduction percentage applies to this declaration.

Note: Subsection 6(7) of the Act requires the Minister to declare a reduction percentage if the total amount payable by the Commonwealth under section 35 of the Act is expected to exceed \$10,000 million. Subsection 6(6) of the Act authorises the Minister to declare a reduction percentage in any other case. A reduction percentage proportionately reduces the amount insurers pay in response to claims if those insurers are reinsured with the ARPC.

Prior to making this declaration, consultation was undertaken with the Attorney-General and the Insurance Council of Australia.

Declaration of the terrorist incident is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*, but is not subject to disallowance (see paragraph 9A of Schedule 2 of the *Legislative Instruments Regulations 2004*).