

29 July 2021

Manager
Insurance Unit
The Treasury
Langton Crescent
PARKES ACT 2600

By email: FSD.TIAreview@treasury.gov.au

Dear Sir/Madam

Property Council response to the 2021 Review of the Terrorism Insurance Act 2003

The Property Council of Australia welcomes the opportunity to comment on the *2021 Triennial Review of the Terrorism Insurance Act 2003* consultation paper by the Treasury's Insurance Market's Unit.

The Property Council is the peak body for owners and investors in Australia's \$670 billion property investment industry. Our members are the leaders of, and owners and investors in, Australia's property industry and have a long-term stake in helping our capital and regional cities to thrive. We represent owners, fund managers, superannuation trusts, developers, and investors across all four quadrants of property investments: debt, equity, public and private. Our members span commercial, retail, industrial, residential, retirement living and education sectors of the industry.

The property industry believes there is an ongoing need for the Terrorism Insurance Act 2003 (the Act) to continue and supports the operation of the Australian Reinsurance Pool Corporation (ARPC). We further recommend:

- **the current structure of scheme pricing and insurance premiums should be reviewed and revised to reward risk mitigation efforts by property owners** – consultation with industry should inform agreed criteria for risk mitigation activities and could leverage guidance material produced for the Crowded Places strategy and the Standards Australia handbook due to be published soon.
- **the Scheme should be extended to include cyber terrorism resulting in physical property damage and a review should be undertaken to examine private market constraints on insurance and size of potential claims for non-physical damages and business continuity disruption**– we support the extension of the Scheme to include cyber terrorism resulting in physical damage, as has occurred in foreign reinsurance

pools. In keeping with our comments regarding how risk mitigation efforts can be rewarded through premium discounts, this should be looked at in a cyber context as well. Further, we observe that the more substantial limitations in the market are more related to cyber insurance than they are to damage to physical property. We believe there would be merit in conducting a review of private market insurance coverage and limitations on non-physical damage arising from cyber terrorism, including general liability where there may be a loss of life as a result of a cyber terrorism event.

- **a strategic review should be undertaken to examine the need and potential structure for other reinsurance pools (including natural disasters) over time** – we supported the establishment of a reinsurance pool for cyclones and flood related damage recently consulted on by Treasury but wish to emphasise that without more decisive action to mitigate against and adapt to the increasing risks and frequency of natural disasters associated with climate change, there is a strong likelihood that insurance market failures will occur in other areas over time. This will inevitably prompt discussion on establishment of reinsurance pools for different natural disasters which could be difficult to wind down, require long term government support and would raise costs for all property owners and taxpayers.

A clear-eyed review should be undertaken to examine what the potential need for other reinsurance pools might be over time, risk mitigation and adaption efforts needed and how the Scheme could be structured to provide clear end dates for various pools and other measures to limit costs for property owners.

In response to the questions posed in the consultation paper, we provide the following feedback:

Should the terrorism reinsurance scheme continue?

1. *To what extent, if any, is terrorism cover available in the private market on commercially reasonable terms?*

Property Council feedback:

- our members confirm that terrorism cover is not available in the private market on commercially reasonable terms and therefore there is an ongoing need for the terrorism reinsurance pool to operate.

Should the Scheme be extended to include cyber terrorism causing physical property damage?

3. *To what extent, if any, is cover for cyber terrorism resulting in physical property damage available in the private market on commercially reasonable terms?*

Property Council feedback:

- our members' experience is that some cyber insurance policies cover particular aspects of property damage, such as fire and explosion, but most don't. Further there are usually exclusions in these policies relating to terrorism. There is therefore a strong case for the Scheme to extend its coverage to physical property damage from cyber terrorism events.
- we note the domestic market for cyber insurance has improved in the last couple of years, albeit with ever increasing premiums. Many policies still have limited coverage and exclusions around terrorism, rendering some products ineffective in managing the full range of cyber threats faced by Australian companies in 2021.

- we also believe there is a strong case to conduct a review of the private market capacity for non-physical damage linked to cyber terrorism events and quantify the potential size of claims for business continuity disruption. This review is required before determining whether it would be appropriate or feasible to expand the Scheme in this area.

4. *If there is insufficient private market capacity for cyber terrorism causing physical property damage insurance in Australia:*

4.3 *Are there international examples of market or policy responses to cyber terrorism causing physical property that are applicable to the Australian context?*

Property Council feedback:

- we note a recent example in the United States where the US Department of Justice has elevated investigations of ransomware attacks (stating some recent examples of events involving state actors) to a similar priority as terrorism. This now requires a more centralised policy response and investigations relating to: counter anti-virus services, illicit online forums or marketplaces, cryptocurrency exchanges, bulletproof hosting services, botnets and online money laundering services.

How might the ARPC's terrorism reinsurance pool functions interact with its new functions?

5. *Are there any changes in the governance, administration and resourcing of the terrorism reinsurance pool or the Terrorism Insurance Act that should be amended in light of potential interactions with the proposed cyclone and related-flood damage reinsurance pool?*

Property Council feedback:

- ensure the government guarantee and funds for the cyclone reinsurance pool are kept separate to the terrorism reinsurance pool and guarantee. We would strongly support the establishment of a mechanism to ensure the funds and government guarantee for the terrorism pool are held separately in reserve for their intended purpose, there should be no overlap or cross-subsidisation between pools as they are funded differently and should be maintained as such.
- ensure appropriate administrative support within the ARPC to manage the cyclone reinsurance pool, noting the different nature of resourcing support that may be required compared to the terrorism pool.

We look forward to working collaboratively with the Treasury and the ARPC and would welcome the chance to meet with you and discuss the details of our submission further. Please do not hesitate to contact Richard Lindsay, Government Relations Manager at rlindsay@propertycouncil.com.au or +61422022746 to arrange a meeting.

Your sincerely



Mike Zorbas

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