

APPENDIX A

Strata Insurance Cross-jurisdictional Comparative Review

Australian Capital Territory (ACT)

ACT Legislation

Unit Titles (Management) Act 2011 (ACT)

Unit Titles (Management) Regulation 2011 (ACT)

Unit Titles Act 2001 (ACT)

In the ACT, there are two types of entities that may bear responsibility for obtaining and maintaining insurance for buildings subdivided by a unit plan. Most commonly, the responsible entity will be the owners corporation for the units plan. Alternatively, if the units plan is subject to a building management statement, a building management committee established by the statement may be the responsible entity.¹ For ease of reference, we will refer to the responsible entity as 'the owners corporation'.

ACT Insurable Interest

When a units plan creating a scheme is registered, the owners corporation is established and is granted a lease for the common property in the units plan.² The owners corporation is deemed to have an insurable interest in the buildings on the land to the extent of their replacement value.³

ACT Building Insurance

The owners corporation has a legal duty to obtain and maintain 'building insurance', for all the buildings on the land for their replacement value from time to time, against:

- a. the costs incidental to the reinstatement or replacement of the insured building(s);⁴
- b. the cost of removing debris;⁵
- c. fees of architects;⁶
- d. fees of other professional advisers;⁷ and
- e. the following specific risk events:
 - i. fire, lightning, tempest, earthquake and explosion;⁸
 - ii. riot, civil commotion, strikes and labour disturbances;⁹
 - iii. malicious damage;¹⁰
 - iv. bursting, leaking and overflowing of boilers, water tanks, water pipes and associated apparatus;¹¹
 - v. impact of aircraft (including parts of, and objects falling from, aircraft) and of road vehicles, horses and cattle;¹²

¹ *Unit Titles (Management) Act 2011* (ACT).

² *Unit Titles Act 2001* (ACT) s 33(2)(b).

³ *Unit Titles (Management) Act 2011* (ACT) s 100(4).

⁴ *Ibid* s 100(2).

⁵ *Ibid*.

⁶ *Ibid*.

⁷ *Ibid*.

⁸ *Ibid* s 100(1)(a).

⁹ *Ibid* s 100(1)(b).

¹⁰ *Ibid* s 100(1)(c).

¹¹ *Ibid* s 100(1)(d).

¹² *Ibid* s 100(1)(e).

- vi. any other risk prescribed by regulation (Note: the *Unit Titles (Management) Regulation 2011* presently does not prescribe any further risks to be insured against).¹³

(“ACT Building Insurance”)

There is no methodology set out in the legislation for how the replacement value of the insured buildings from time to time is to be calculated, nor is there any methodology prescribed for calculating the costs incidental to the reinstatement or replacement of the insured buildings.¹⁴

ACT Physical Scope of Insurance

The *ACT Building Insurance* must cover all buildings on the land. A “building” on the land is defined as including any improvements and fixtures forming part of the building, any improvements and fixtures consisting entirely of common property and anything prescribed by regulation as forming part of a building.¹⁵

Excluded from the definition of a “building” is:

1. Paint, wallpaper and temporary wall, floor and ceiling coverings; or
2. Fixtures, removable by a lessee or sublessee of a unit at the end of a lease; or
3. anything prescribed by regulation as not forming part of a building.¹⁶

Units plans that subdivide leasehold property in the ACT can create three categories of units, Class A units, Class B units and unit subsidiaries. The units plan itself specifies the type of unit created. Multiple types of units may be created within a units plan.¹⁷

Generally, Class A units are located within multi-storey buildings. In terms of legal boundaries of Class A units, common walls, floors and ceilings in between units and other units or common property are deemed to lie along the centre (mid-point) of the relevant building structure.¹⁸

Class B units are generally lots comprised of separate parcels of land unlimited in height, with separate, or horizontally attached buildings on each lot.¹⁹

ACT Public Liability Insurance

In addition to the duty to obtain building insurance, the owners corporation also has a duty to obtain and maintain public liability insurance in relation to all of the following events that could happen in relation to the common property:²⁰

1. Death, bodily injury or illness of anyone; and
2. Loss of, or damage to, the property of anyone.

(“ACT Public Liability Insurance”)

¹³ Ibid s 100(1)(f).

¹⁴ *Unit Titles (Management) Act 2011* (ACT).

¹⁵ *Unit Titles (Management) Act 2011* (ACT) s 99.

¹⁶ Ibid s 99(b).

¹⁷ Ibid Part 2.

¹⁸ *Unit Titles Act 2001* (ACT) s 14.

¹⁹ Ibid s 11.

²⁰ *Unit Titles (Management) Act 2011* (ACT) s 102(1).

ACT Public Liability Insurance must be for a total amount of not less than \$10 million.²¹ There does not appear to be any exemptions to the owners corporation's duty to obtain *ACT Public Liability Insurance* in relation to the events that could happen to the common property.

ACT Exemptions

If the replacement value of all common property buildings on the land is less than \$10,000 then the owners corporation has the option of passing a unanimous resolution exempting itself from the requirement to take out building insurance for any or all of the risks stated in the resolution, until the date of the owners corporation's next annual general meeting.²²

If a units plan for a scheme only contains Class B units²³, then the owners corporation also has the option of passing a unanimous resolution exempting itself from the requirement to take out *ACT Building Insurance* for any of the buildings that are on the Class B units, until the date of the next annual general meeting, at which time the owners corporation could reconsider whether to pass another unanimous resolution to give effect to the exemption again.²⁴ However, in this scenario the owners corporation would still need to obtain *ACT Building Insurance* for buildings on the common property.

ACT Power to Obtain Additional Insurance

The owners corporation has the right to take out additional insurance if it resolves to do so.²⁵ Unit owners also have the right to take out their own insurance against damage or destruction to their unit to the extent of the unit's replacement value.²⁶

ACT Insurance Premiums

The owners corporation's general fund budget approved at each annual general meeting must state an estimate of payments to be made out of the general fund for insurance premiums for the financial year in which the annual general meeting is held.²⁷

Whilst the regulations are entitled to prescribe the proportion of the insurance premium payable for an insurance policy by particular unit owners by way of a general fund contribution, they do not appear to have done so.²⁸

ACT Insurance Claims

Amendments made to the *Unit Titles (Management) Act 2011 (ACT)* by the *Unit Titles Legislation Amendment Act 2020 (ACT)* as reflected in the new section 100A have imposed new duties on the owners corporation to take effect from 31 October 2020 to:

1. lodge an insurance claim made in relation to a building on the land;²⁹ and
2. pay any excess payable in relation to any insurance claim.³⁰

²¹ *Unit Titles (Management) Act 2011 (ACT)* s 102(2); *Unit Titles (Management) Regulation 2011 (ACT)* r 7.

²² *Unit Titles (Management) Act 2011 (ACT)* s 101(1).

²³ *As opposed to Class A units, or a combination of Class A and Class B units.*

²⁴ *Unit Titles (Management) Act 2011 (ACT)* s 101(2).

²⁵ *Ibid* s 104.

²⁶ *Ibid* s 105.

²⁷ *Ibid* s 75.

²⁸ *Ibid* s 103(3)(d); *Unit Titles (Management) Regulation 2011 (ACT)*.

²⁹ *Unit Titles (Management) Act 2011 (ACT)* s 100A(2)(a).

³⁰ *Ibid* s 100A(2)(a).

It is yet to be seen how the new section 100A will be interpreted by courts, in particular whether that provision allows owners corporations any discretion in relation to whether an insurance claim will be made in relation to a particular insurable event having regard to the amount of the claim excess, the value of any claim and any impact the claim may have on the owners corporation's future insurance premium(s).

ACT Application of Insurance Money

If an owners corporation receives insurance money for damage to, or destruction of, any building on the land, it must, without delay, apply the insurance money to reinstating and replacing the building unless a court orders otherwise and subject to any other territory laws.³¹ In particular, before an owners corporation can apply insurance money to the rebuilding and reinstatement work required under a building damage scheme, it must first obtain building damage orders from the ACT Civil and Administrative Tribunal (ACAT).³²

ACT Disclosure Obligations

At every annual general meeting, the executive committee elected by the owners corporation must give the owners corporation the following details about every current insurance policy held by the owners corporation as at the time of the meeting:

1. the name of the insurer;
2. the amount of cover under the policy;
3. for the *ACT Building Insurance* – the details of any recent valuation of the insured buildings;
4. a summary of the type of cover under the policy;
5. the amount of the insurance premium;
6. the amount of any excess payable on the happening of an event for which the insurance gives cover;
7. the date the cover expires;
8. the amount and type of any financial or other benefit given, or to be given, by the insurer for the insurance being taken out, to any person (examples, commissions & discounts).³³ The disclosure requirement appears to require disclosure of the actual amount of the commission or discount received as opposed to a broad disclosure that a commission or discount is received or represented as a percentage of an insurance premium or other figure.

The owners corporation has a duty to allow a person to inspect and take a copy of any current insurance policies taken out by the owners corporation and the receipts for all premiums paid under those policies, and any exemption resolution passed by an owners corporation for a Class B only scheme or for an owners corporation with common property buildings on the land valued at less than \$10,000.³⁴

ACT Developer Obligations

The developer has a duty to give the owners corporation any insurance policy issued in the owners corporation's name at the first annual general meeting of the owners corporation.³⁵ This reflects the practical scenario where the owners corporation exists upon registration of the units plan for the scheme, but is often entirely controlled by the developer until the

³¹ Ibid s 103.

³² Ibid s 103(1).

³³ Ibid cl 2.3 sch 2.

³⁴ Ibid s 118.

³⁵ Ibid cl 3.4 sch 3.

preliminary sales of the units settle, meaning the developer must ensure the owners corporation has complied with its duty to obtain and maintain the mandatory insurance policies in the intervening period.

ACT Mortgage Insurance

If a unit owner's interest in the unit is subject to a mortgage, then the owner has the right to take out one or more insurance policies, called a mortgage insurance policy, for indemnity against liability under the mortgage arising out of damage or destruction to a unit ("**ACT Mortgage Insurance**").³⁶

The insurer for any *ACT Mortgage Insurance* policy is liable to pay an interested mortgagee, meaning a mortgagee whose interest is noted on the policy, at least the amount insured as stated in the policy or the amount of the loss or the amount sufficient, at the date of the loss, to discharge the mortgage noted in the policy.³⁷ If an insurer for an *ACT Mortgage Insurance* policy does pay a mortgagee, then the insurer is entitled to obtain a transfer of the mortgage or a proportionate part of the mortgage equal to the amount paid to the mortgagee.³⁸

ACT Valuations

Whilst the regulations are entitled to prescribe for valuation of the insured buildings, to date they do not appear to have done so.³⁹ Therefore, the obligation on the executive committee to give details to the owners corporation at each annual general meeting of any recent valuations obtained must refer to any valuations that the owners corporation has elected to obtain, as opposed to having a duty to obtain.

ACT Lot Owner Duties

Whilst the regulations are entitled to prescribe notification requirements by unit owners in relation to improvements made to units, they do not appear to have done so.⁴⁰

New South Wales (NSW) (Strata Schemes)

Legislation – NSW (Strata Schemes)

Strata Schemes Management Act 2015 (NSW)
Strata Schemes Management Regulation 2016 (NSW)
Strata Schemes Development Act 2015 (NSW)

Insurable Interest - NSW (Strata Schemes)

In NSW, the owners corporation of a strata scheme holds the common property in the scheme as agent for the lot owners as tenants in common in shares proportional to the unit entitlement of the owners' lots and manages it pursuant to the provisions of the *Strata Schemes Management Act 2015* (NSW) and *Strata Schemes Management Regulation 2016* (NSW).⁴¹

³⁶ Ibid s 142.

³⁷ Ibid s 143.

³⁸ Ibid s 144.

³⁹ Ibid s 103(3)(d).

⁴⁰ Ibid; *Unit Titles (Management) Regulation 2011* (ACT).

⁴¹ *Strata Schemes Development Act 2015* (NSW) s 28.

Owners corporations are taken to have an insurable interest in the subject matter of a contract of insurance entered into by it under the *Strata Schemes Management Act 2015* (NSW).⁴² Delegating the owners corporation's function of taking out insurance is restricted to being delegated to either a member of the strata committee or the strata managing agent.⁴³

Building Insurance – NSW (Strata Schemes)

In NSW, an owners corporation for a whole of a building, or part of a building, in a strata scheme has responsibility for taking out insurance for the scheme⁴⁴ and must insure the building and keep it insured under a 'damage policy' that insures the building if it is destroyed or damaged by fire, lightning, explosion or any other occurrence specified in the policy ("**NSW Damage Policy**").⁴⁵

Whilst it is not unusual for the legislation to specify particular risks that the NSW damage policy must insure against, such as fire, lightning and explosion, it is unusual that the mandatory scope of a *NSW Damage Policy* is also defined by reference to 'any other occurrence specified in the policy' itself.⁴⁶ The policy wording for a particular insurance policy is prepared by an insurer or underwriter and may vary between insurers and policies. Having a reference in the legal definition of a 'damage policy' to third party insurer policy wording documents, the contents of which may vary, does not appear to provide full clarity to a NSW owners corporation about the minimum mandatory requirements for its *NSW Damage Policy*.

Further requirements for a *NSW Damage Policy* include:

1. the policy must be with an 'approved insurer'.⁴⁷ An 'approved insurer' is defined as a general insurer within the meaning of the *Insurance Act 1973* of the Commonwealth or any other person prescribed by the regulations.⁴⁸ The *Strata Schemes Management Regulation 2016* confirms that a Lloyd's underwriter authorised to carry on insurance business, or exempted from authorisation, under the *Insurance Act 1973* of the Commonwealth is an approved insurer⁴⁹;
2. the building is to be insured for at least the amount determined in accordance with the regulations, which prescribe a method of calculation as follows:⁵⁰
 - a. the minimum amount for which a building is to be insured is to be not less than the sum of:
 - i. the estimated cost, as at the date of the commencement of the *NSW Damage Policy*, of:
 1. carrying out the work that the *NSW Damage Policy* is required to provide for;
 2. making the payments that the *NSW Damage Policy* is required to provide for;
 3. the estimated amount by which expenditure above may increase during the 24 month period following the date of commencement of the *NSW Damage Policy*;

⁴² *Strata Schemes Management Act 2015* (NSW) s 165, 160; Note: Lot owners are also taken to have an insurable interest in a building comprised in the lot in the intervening period between an owners corporation being prosecuted for failing to take out a damage policy and a court order being made.

⁴³ *Ibid* s 13.

⁴⁴ *Ibid* s 9(3)(d).

⁴⁵ *Ibid* s 160.

⁴⁶ *Ibid* s 160(1).

⁴⁷ *Ibid* s 161(1).

⁴⁸ *Ibid* s 4.

⁴⁹ *Strata Schemes Management Regulation 2016* (NSW) r 38.

⁵⁰ *Ibid* r 39.

4. any applicable taxes, fees and charges (both State and Federal).

(“NSW Damage Policy Cover Calculation”)

3. If the building is destroyed, the building is to be rebuilt or replaced so that the condition of every part of the rebuilt or replacement building is not worse or less than extensive than that part when new;⁵¹
4. If the building is damaged, but not destroyed, the damaged part of the building is to be repaired or restored so that the condition of the repaired or restored part is not worse or less extensive than that part when new;⁵²
5. Expenses in removing debris that are payable;⁵³
6. The remuneration of architects that is payable;⁵⁴
7. The remuneration of other persons whose services are necessary as an incident to the rebuilding, replacement, repair or restoration that is payable.⁵⁵

However, rather than requiring an insurer to make payments to repair damage if a building is destroyed or damage an insurer is permitted in its *NSW Damage Policy* to limit its liability to a specific amount.

However, if there is a specified amount payable by an insurer under a *NSW Damage Policy*, that amount must not be less than an amount calculated in accordance with the *NSW Damage Policy Cover Calculation* discussed above.⁵⁶

If there is a dispute about the amount for which a *NSW Damage Policy* should be taken out for, the Tribunal may make an order that it must be taken out for a specified amount.⁵⁷

Physical Scope of Building Insurance – NSW (Strata Schemes)

In NSW, the legal boundaries of a lot are generally defined as the inner surface of a wall, the upper surface of the floor and the under surface of the ceiling.⁵⁸ This legal definition of a lot boundary means that the physical structure of a subdivided building together with any common infrastructure within the building will generally be within the legal boundaries of common property. The definition of a ‘building’, for the purposes of the duty to insure, is a building containing a lot, or part of a lot, in the scheme, or a proposed lot, or part of a proposed lot, in a proposed scheme.⁵⁹

A *NSW Damage Policy* must cover a building consisting entirely of common property, owners’ improvements and fixtures forming part of the building and anything prescribed by the regulations as forming part of the building. The regulations do not appear to prescribe anything further in this regard.⁶⁰

Parts of a building that are not required to be covered under a *NSW Damage Policy* are fixtures removable by a tenant at the expiry of a tenancy, owners’ improvements and fixtures comprising paint, wallpaper and temporary wall, floor and ceiling coverings and anything

⁵¹ *Strata Schemes Management Act 2015* (NSW) s 161(1)(b).

⁵² *Ibid* s 161(1)(c).

⁵³ *Ibid* s 161(1)(d).

⁵⁴ *Ibid* s 161(1)(e).

⁵⁵ *Ibid*.

⁵⁶ *Strata Schemes Management Act 2015* (NSW) s 161(2).

⁵⁷ *Ibid* s 175.

⁵⁸ *Strata Schemes Development Act 2015* (NSW) s 6.

⁵⁹ *Strata Schemes Management Act 2015* (NSW) s 4.

⁶⁰ *Strata Schemes Management Regulation 2016* (NSW).

prescribed by the regulations as not forming part of a building for the purposes of a *NSW Damage Policy*. The regulations do not appear to prescribe anything further in this regard.⁶¹

Public Liability, Workers Compensation and Voluntary Workers' Insurance – NSW (Strata Schemes)

In addition to its duty to obtain a *NSW Damage Policy*, the owners corporation also has a duty to take out the following insurance with an approved insurer:⁶²

1. insurance in respect of damage to property, death or bodily injury for which the owners corporation could become liable in damages ("**NSW Public Liability Insurance**") for an amount not less than \$20 million for each event for which any claim or claims may be made;⁶³
2. insurance in respect of any occurrence against which it is required by law to insure including any insurance required by the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998* to be taken out ("**NSW Workers Compensation Insurance**");⁶⁴
3. insurance against any damages for which the Owners Corporation could become liable because, without fee or reward or any expectation of the same, a person acting on behalf of the owners corporation does work in a building or on common property in the strata scheme ("**Voluntary Workers' Insurance**");⁶⁵
4. any other insurance required by the regulations.⁶⁶ The *Strata Schemes Management Regulation 2016* does not prescribe any additional mandatory insurance to be obtained by the owners corporation.

Exemptions – NSW (Strata Schemes)

An owners corporation may apply to the NSW Civil and Administrative Tribunal (NCAT) for an order exempting the owners corporation from compliance with the requirement to obtain a *NSW Damage Policy* unconditionally or an order requiring the owners corporation to take out insurance for the building as specified by the Tribunal's order.⁶⁷ Such an order cannot be made by the Tribunal unless it is of the opinion that it is unnecessary or impracticable for the owners corporation to comply with the legal requirements for a *NSW Damage Policy* and the owners corporation has given its written consent by unanimous resolution to the making of the Tribunal's order, before it is made and on the basis that the owners corporation has been given an opportunity to make representations to the Tribunal with respect to its application for the order.⁶⁸

In addition, owners corporations for two-lot schemes are exempt from the duty to obtain a *NSW Damage Policy* if they meet the following requirements:

1. there are no physically attached buildings between the two lots;
2. no buildings or parts of buildings are situated outside of lots; and
3. the owners corporation has passed a unanimous resolution determining that it shall not insure the buildings under a *NSW Damage Policy*.⁶⁹

⁶¹ Ibid.

⁶² *Strata Schemes Management Act 2015* (NSW) s 164.

⁶³ *Strata Schemes Management Regulation 2016* (NSW) r 40.

⁶⁴ *Strata Schemes Management Act 2015* (NSW) s 164(1)(a).

⁶⁵ Ibid s 164(1)(c).

⁶⁶ Ibid s 164(1)(e).

⁶⁷ *Strata Schemes Management Act 2015* (NSW) s 172(1).

⁶⁸ Ibid s 172(2).

⁶⁹ Ibid s 160(3), s 160(4).

Additional Insurance – NSW (Strata Schemes)

Although not mandatory to obtain, the owners corporation has the ability to decide to take out other insurance with an approved insurer for any other property in which it has an insurable interest, and may also take out insurance to cover:

1. misappropriation of money or other property of the owners corporation (“**NSW Fidelity Insurance**”)⁷⁰; and
2. damage to property, death or bodily injury for which a person holding the office of chairperson, secretary, treasurer or committee member could become liable in damages because of an act or omission committed or omitted in good faith, in performing the functions of that office (“**NSW Office Bearer’s Liability Insurance**”).⁷¹

In addition, the owners corporation may decide by special resolution to insure against the possibility of the lot owners becoming jointly liable because of a claim arising in respect of any other occurrence.⁷²

Quotes - NSW (Strata Schemes)

The strata managing agent has a duty to provide the owners corporation with no less than three quotations from different providers for each type of insurance proposed to the owners corporation.⁷³ If the managing agent does not provide at least three quotations, the strata managing agent must provide written reasons to the owners corporation for not doing so.⁷⁴

Insurance Premiums – NSW (Strata Schemes)

The owners corporation has a duty at each annual general meeting to estimate how much money it will need to credit to its administrative fund for actual and expected expenditure to provide for insurance premiums.⁷⁵

If an owners corporation has a duty to obtain a *NSW Damage Policy* because it is responsible for part of a building together with another person, the premium for the *NSW Damage Policy* is to be paid according to the proportion that the replacement value of the part of the building that the owners corporation is responsible for represents in relation to the replacement value of the whole building, unless the Tribunal determines otherwise.⁷⁶

If a lot owner uses their lot in the scheme in a way that causes an insurance premium for the scheme to be greater than it would be in the absence of that use, then the lot owner’s contribution to the insurance premium may be increased by an amount attributable to the use, with the lot owner’s consent or by order of the Tribunal if the lot owner unreasonably refuses such consent.⁷⁷

⁷⁰ Ibid s 165(2)(b).

⁷¹ Ibid s 165(2)(a).

⁷² Ibid s 164(1)(c).

⁷³ Ibid s 166.

⁷⁴ Ibid.

⁷⁵ Ibid s 79(1).

⁷⁶ Ibid s 162.

⁷⁷ Ibid s 82.

Insurance Claims – NSW (Strata Schemes)

If an owners corporation refuses to make or pursue an insurance claim in relation to damage to the building or any other property to which the insurance relates, the Tribunal has the power to order the owners corporation to do so if the Tribunal considers that the owners corporation has unreasonably refused to make or pursue the claim.⁷⁸

If an insurance claim is made by the owners corporation due to an act or omission by a lot owner in the scheme, and the insurer accepts the claim, the insurer has no legal right of subrogation (meaning the ability to legally pursue the lot owner for the loss or damage paid for by the insurer under the insurance policy) in relation to the lot owner unless the insurer can prove that the lot owner's act or omission was wilful.⁷⁹

Application of Insurance Money – NSW (Strata Schemes)

If an owners corporation receives money from an insurer for the destruction or damage of a building, it must immediately apply that money in rebuilding, replacing, repairing or restoring the building unless it resolves by unanimous resolution not to apply the money in that manner – but subject to any variation order made by a court under the *Strata Schemes Development Act 2015 (NSW)* that directs how insurance amounts shall be applied by the owners corporation.⁸⁰

In the meantime, it appears that the owners corporation must pay any amounts it receives by way of discharge of insurance claims into its capital works fund⁸¹ or its administrative fund.⁸²

Owners Corporation Disclosure Obligations – NSW (Strata Schemes)

The strata roll that must be kept by the owners corporation must include particulars of insurance taken out by the owners corporation including:

1. the name of the insurance company;
2. the number of the insurance policy;
3. the nature of the risk insured;
4. the amount of the insurance;
5. the due date for payment of the premium;
6. the date on which the premium was last paid.⁸³

The owners corporation must make the strata roll, every current policy of insurance taken out by the owners corporation and receipt for the premium last paid for each insurance policy, available for inspection by a lot owner, mortgagee, covenant charge or a person authorised by any of those people, upon written request accompanied by the prescribed fee set by the regulations.⁸⁴

In addition, in every notice of annual general meeting there must be particulars of each insurance policy taken out by the owners corporation and a form of motion to consider whether the owners corporation wishes to take out *Office Bearer's Liability Insurance* and/or *Fidelity Insurance*.

⁷⁸ Ibid s 174.

⁷⁹ Ibid s 170.

⁸⁰ Ibid s 163.

⁸¹ Ibid s 74(2)(b).

⁸² Ibid s 73(3)(a).

⁸³ Ibid s 178(2)(d).

⁸⁴ Ibid s 182.

Developer Obligations – NSW (Strata Schemes)

The agenda for the first annual general meeting of the owners corporation, which is generally prepared by the developer or the strata managing agent acting on its instructions as the controller of the owners corporation, must include items to decide whether any insurance taken out by the owners corporation should be confirmed, varied or extended and to decide whether *NSW Office Bearer's Liability insurance* and/or *NSW Fidelity Insurance* should be taken out by the owners corporation.⁸⁵

The developer must provide the owners corporation all policies of insurance relating to the parcel or the building on the parcel at least 48 hours before the owners corporation's first annual general meeting.⁸⁶

Mortgage insurance – NSW (Strata Schemes)

A lot owner retains the right to take out their own insurance for an amount equal to the amount of their mortgage in respect of damage to the lot ("**NSW Mortgage Insurance**").⁸⁷ However, if an amount is paid out under a *NSW Mortgage Insurance* policy, the insurer must make the payment to the mortgagee and the insurer is entitled to an assignment of the mortgage (if the mortgage is paid out by the insurer), or a sub-mortgage (if part of the mortgage is paid out by the insurer).⁸⁸

A *NSW Mortgage Insurance* policy is not liable to be brought into contribution with any other such contract of insurance except another contract of insurance that is in respect of damage to the same lot and relates to the same debt.⁸⁹

Valuations – NSW (Strata Schemes)

Whilst the legislation does make reference to the concept of the 'replacement value' of insurable buildings and the regulations do provide the *NSW Damage Policy Cover Calculation*⁹⁰, there is no express duty on the owners corporation to obtain a valuation.⁹¹

Lot Owner Duties – NSW (Strata Schemes)

Lot owners have a duty to notify the owners corporation if the occupier of the lot changes the existing use of the lot in a way that may affect the insurance premiums for the strata scheme.⁹²

The legislation expressly permits lot owners to bring any legal action against the owners corporation that they are a member of.⁹³ This enables a lot owner to bring a legal claim against the owners corporation such as breach of statutory duty. However, there is no corresponding mandatory duty on the owners corporation to obtain insurance to protect itself from the costs of defending itself against such legal claims.

⁸⁵ Ibid s 15.

⁸⁶ Ibid s 16(1)(a).

⁸⁷ *Strata Schemes Management Act 2015* (NSW) s 169(1).

⁸⁸ Ibid s 16.

⁸⁹ Ibid s 169.

⁹⁰ *Strata Schemes Management Regulation 2011* (NSW) r 39(2).

⁹¹ Ibid; *Strata Schemes Management Act 2015* (NSW).

⁹² *Strata Schemes Management Regulation 2011* (NSW) cl 19 sch 2, cl 17(2) sch 3.

⁹³ *Strata Schemes Management Act 2015* (NSW) s 171.

NSW (Community Schemes)

Legislation – NSW (Community Schemes)

Community Land Management Act 1989 (NSW)
Community Land Management Regulation 2018 (NSW)

In NSW, there are other types of schemes known as community schemes, precinct schemes and neighbourhood schemes that apply to land subdivided under the *Community Land Development Act 1989*. An association is created for these kinds of schemes. The association is responsible for the management of shared land in the community plan pursuant to the *Community Land Management Act 1989* and the association's management statement.⁹⁴

Insurable Interest – NSW (Community Schemes)

An association is deemed to have an insurable interest in the subject matter of any insurance that it is required to maintain pursuant to the insurance division of the *Community Land Management Act 1989*.⁹⁵

Building Insurance – NSW (Community Schemes)

The association is deemed to commit an offence if it does not effect and maintain an insurance policy⁹⁶ that fully insures any building or structure on association property with an approved insurer against damage or destruction by fire, lightning, explosion or other prescribed risk for an amount not less than prescribed by the regulations ("**NSW Property Insurance**").⁹⁷ An approved insurer is defined as an insurer approved by the Minister, a record of which must be maintained by the Commissioner for Fair Trading, Department of Finance, Services and Innovation.⁹⁸

The regulations prescribe that the method for calculating the minimum amount of cover for a *NSW Property Insurance* policy is the sum of the following amounts:⁹⁹

1. the estimated cost (as at the date of the contract of insurance) of rebuilding the building, or replacing it with a similar building, so that every part of the rebuilt building or replacement building is in a condition no worse than that in which it was when new;¹⁰⁰
2. the estimated cost (as at the date of the contract of insurance) of removing debris in the event of the building being destroyed by an occurrence specified in the policy;¹⁰¹
3. the estimated fee (as at the date of the contract of insurance) payable to architects employed in the course of the rebuilding or replacing;¹⁰²
4. the estimated fee (as at the date of the contract of insurance) payable to other professional persons employed in the course of the rebuilding or replacing;¹⁰³

⁹⁴ *Community Land Management Act 1989* (NSW) s 5(1).

⁹⁵ *Ibid* s 43(1).

⁹⁶ *Ibid* cl 5 sch 1.

⁹⁷ *Ibid* s 39.

⁹⁸ *Ibid* s 44.

⁹⁹ *Community Land Management Regulation 2018* (NSW) r 16.

¹⁰⁰ *Ibid* r 16(a).

¹⁰¹ *Ibid* r 16(b).

¹⁰² *Ibid* r 16(c).

¹⁰³ *Ibid*.

5. the estimated amount by which expenditure referred to above may increase during the period of 18 months following the date of the contract of insurance.¹⁰⁴

("Method for Calculating Amount of NSW Property Insurance Policy")

Physical Scope – NSW (Community Schemes)

A *NSW Property Insurance* policy taken out by an association must cover any building or structure that is on a lot deemed by the association's plan to be 'association property' (either community property, precinct property or neighbourhood property).¹⁰⁵ Therefore, the physical scope of the insurance policy will depend on the association's particular plan for its scheme and the extent to which that plan is comprised of association property.

Public Liability, Workers Compensation & Voluntary Workers Insurance – NSW (Community Schemes)

In addition to maintaining a *NSW Property Insurance* policy, the association also has a duty to effect the following insurance:¹⁰⁶

1. in respect of damage to property and in respect of death and bodily injury (including damage, death and bodily injury occurring in an open access way or private access way) for which the association could become liable in damages ("**Public Liability Insurance**")¹⁰⁷ for an amount not less than \$10 million;¹⁰⁸
2. any insurance required to be effected under the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998* ("**Workers Compensation Insurance**");¹⁰⁹
3. against damages for which the association could become liable because of work done by a voluntary worker or accidental injury to, or accidental death of a voluntary worker ("**Voluntary Workers Insurance**").¹¹⁰

Exemptions – NSW (Community Schemes)

An Association may by unanimous resolution decide to apply to an Adjudicator for an exemption from its duty to obtain a *NSW Property Insurance* policy.¹¹¹ Also, NCAT has the power to vary the amount of the association's insurance cover if it considers that the amount that has been effected by the association is unreasonable.¹¹²

Additional Insurance – NSW (Community Schemes)

Although not mandatory, an association also has the option of:

1. insuring any other property in which it has an insurable interest;¹¹³
2. taking out insurance for damage to property, death or bodily injury for which the Chairperson, Secretary, Treasurer or member of the executive committee of the

¹⁰⁴ Ibid r 16(d).

¹⁰⁵ *Community Land Management Act 1989* (NSW) s 3, s 39(1).

¹⁰⁶ Ibid cl 5 sch 1.

¹⁰⁷ Ibid s 40(2)(b).

¹⁰⁸ *Community Management Regulation 2018* (NSW) r 17(a).

¹⁰⁹ *Community Land Management Act 1989* (NSW) s 40(2)(a).

¹¹⁰ Ibid s 40(2)(c), 40(2)(d).

¹¹¹ Ibid s 39(2).

¹¹² Ibid s 84.

¹¹³ Ibid s 41(1).

Association could become liable in damages because of an act or omission committed or omitted in good faith in the performance of their functions ("**Office Bearer's Liability Insurance**");¹¹⁴

3. taking out insurance to protect itself from the misappropriation of money or other property of the Association ("**Fidelity Insurance**").¹¹⁵

If the association passes a special resolution to insure itself against the possibility of members of the association becoming jointly liable under a claim arising out of any other event, then it must obtain insurance to protect itself from that specified event¹¹⁶ for the amount determined by the association's special resolution.¹¹⁷

Premiums – NSW (Community Schemes)

An association must estimate how much money it will need to credit to its administrative fund to provide for payment of insurance premiums.¹¹⁸

An association may levy from a member, any part of an increase in an insurance premium that is attributable to the member's use of their lot.¹¹⁹

Claims – NSW (Community Schemes)

The insurer of an association has no right of subrogation (right to legally pursue a member to recover loss or damage paid for by the insurer) against a member of the association unless the insurer can prove that the member's act or omission was wilful.¹²⁰

Application of Insurance Money – NSW (Community Schemes)

The association has a duty to apply any money paid by an insurer in respect of damage to or destruction of a building on association property, to the rebuilding, replacing, repairing or restoration of the building without delay, subject to any order in force under Part 7 of the *Community Land Development Act 1989* (which relates to variation or termination of a scheme).¹²¹

In the meantime, any insurance money received by an association must be paid either into either its administrative fund or sinking fund.¹²²

Disclosure Obligations – NSW (Community Schemes)

The association must keep in its community roll, the following particulars of each insurance policy affected by the association:

- (a) the name of the insurance company;
- (b) the number of the insurance policy;
- (c) the nature of the risk insured against;
- (d) the amount of the insurance;

¹¹⁴ Ibid s 41(3)(a).

¹¹⁵ Ibid s 41(3)(b).

¹¹⁶ Ibid s 40(2)(e).

¹¹⁷ *Community Management Regulation 2018* (NSW) r 17(b).

¹¹⁸ *Community Land Management Act 1989* (NSW) cl 13 sch 1.

¹¹⁹ Ibid cl 13(5) sch 1.

¹²⁰ Ibid s43(3).

¹²¹ Ibid s42.

¹²² Ibid cl 12 sch 1.

- (e) the due date for payment of the premium;
- (f) the date on which the premium was last paid.¹²³

In addition, every notice of annual general meeting after the first annual general meeting must include information relating to the insurance held by the association and must also include a form of motion to consider whether the association wishes to take out *Office Bearer's Liability Insurance* and/or *Fidelity Insurance*, if such insurance has not already been taken out by the association.¹²⁴

At each annual general meeting the agenda must include a decision whether the insurances effected by the association should be confirmed, varied or extended.¹²⁵

Developer Obligations – NSW (Community Schemes)

At the association's first general meeting the developer must deliver to the association all insurance policies relating to the land in the scheme.¹²⁶ The association must make any policies of insurance available for inspection by a lot owner or mortgagee, or a person authorised by an eligible person.¹²⁷

Mortgage Insurance – NSW (Community Schemes)

The legislation reserves the right of a mortgagee to make an application to the Tribunal for an order varying the amount of the association's insurance on the basis it is unreasonable.¹²⁸ It also confirms that lot owners retain the right to take out their own insurance.¹²⁹ However, it does not make express reference to mortgage insurance.¹³⁰

Valuation – NSW (Community Schemes)

The legislation makes no reference to any duty on the association to obtain a valuation of the buildings on association property.¹³¹

Lot Owner Duties – NSW (Community Schemes)

If lot owners in the scheme take out their own insurance, their insurance does not affect and is not to be taken into consideration in determining any amount payable by an insurer to an association under the association's insurance policy.¹³²

The legislation preserves a member's right to bring any legal action against the association which they are a member of.¹³³

¹²³ Ibid sch 3.

¹²⁴ *Community Land Management Act 1989* (NSW) cl 5 sch 6.

¹²⁵ Ibid cl 3,17, 31 sch 5.

¹²⁶ Ibid s9.

¹²⁷ Ibid c 1 sch 4, s 26.

¹²⁸ Ibid s 84(2)(b).

¹²⁹ Ibid s 41(2).

¹³⁰ *Community Land Management Act 1989* (NSW).

¹³¹ Ibid.

¹³² Ibid s 43(4).

¹³³ Ibid s 43(2).

Northern Territory (NT)

Legislation

Unit Titles Act 1975 (NT)

Unit Titles (Management Modules) Regulations 2009 (NT)

Unit Title Schemes Act 2009 (NT)

Unit Titles Schemes (Management Modules) Regulations 2009 (NT)

The NT presently has two primary pieces of legislation that govern the subdivision of unit title property, depending on whether the property was subdivided before or after 2009. For developments subdivided before 2009, the *Unit Titles Act 1975* (NT) applies and a 'corporation' is created to manage the land. For developments subdivided after 2009 the *Unit Titles Schemes Act 2009* (NT) applies and a 'body corporate' is created to manage the scheme.

NT Insurable Interest

Pre-2009 Schemes

A corporation for the subdivided parcel of land is deemed to have an interest in the buildings and improvements on the parcel to the extent of their replacement value.¹³⁴

Post-2009 Schemes

A body corporate for a unit titles scheme created under the *Unit Titles Schemes Act 2009* (NT) is deemed to have an insurable interest in the scheme land.¹³⁵

Building Insurance

Pre-2009 Schemes

A corporation must insure and keep insured all buildings and other improvements on the parcel for their replacement value from time to time against the following specified risks:¹³⁶

1. fire, lightning, tempest, earthquake and explosion;¹³⁷
2. riot, civil commotion, strikes and labour disturbances;¹³⁸
3. malicious damage;¹³⁹
4. bursting, leaking and overflowing of boilers, water tanks, water pipes and associated apparatus;¹⁴⁰ and
5. impact of aircraft (including parts of, and objects falling from aircraft) and of road vehicles, horses and cattle.¹⁴¹

("NT Pre-2009 Replacement Insurance")

¹³⁴ *Unit Titles Act 1975* (NT) s 81.

¹³⁵ *Unit Title Schemes Act 2009* (NT) s 52(1)(a).

¹³⁶ *Unit Titles Act 1975* (NT) s 80(1).

¹³⁷ *Ibid* s 80(1)(a).

¹³⁸ *Ibid* s 80(1)(b).

¹³⁹ *Ibid* s 80(1)(c).

¹⁴⁰ *Ibid* s 80(1)(d).

¹⁴¹ *Ibid* s 80(1)(e).

Post-2009 Schemes

A body corporate for a unit title scheme must ensure that there is an insurance policy in place for the common property that insures against all reasonable costs for the reinstatement of any damaged common property (including damaged scheme building that is common property) ("**NT Post-2009 Body Corporate Insurance**").¹⁴²

"Reinstatement" of the damaged common property is defined to mean work that is reasonably required for restoring it to substantially the same condition as existed immediately before it was damaged.¹⁴³

Other requirements for the *NT Post-2009 Body Corporate Insurance* policy are:¹⁴⁴

1. it must prohibit a cancellation of the policy on the sole basis of a breach of its conditions by someone other than the body corporate;¹⁴⁵
2. it must have effect as if the interests of the mortgagee of each unit had been recorded on the policy;¹⁴⁶
3. it must provide that if an insurer wishes to exercise a right to cancel the insurance policy it must give notice in writing of the proposed cancellation to the insured and also to the mortgagee of each unit;¹⁴⁷ and
4. it may provide for the insurer to have a right of indemnity against a unit owner who breaches a condition of the policy.¹⁴⁸

Physical Scope

Pre-2009 Schemes

The corporation's *NT Pre-2009 Replacement Insurance* policy must cover all buildings and other improvements, including fixtures and fittings, on the whole of the land comprised in the subdivision for their replacement value from time to time.¹⁴⁹ This is broader cover compared to the scope of cover required under the *NT Post-2009 Body Corporate Insurance* policy discussed below.

Post-2009 Schemes

The *NT Post-2009 Body Corporate Insurance* policy must cover any damaged common property and any damaged scheme building that is common property.¹⁵⁰ A scheme building is defined as a fixed structure on the scheme land (including for example a swimming pool).¹⁵¹ Common property has a residual legal definition, meaning so much of a parcel that is not within a unit.¹⁵² Unit property must be ascertained by reference to the particular units plan, but is generally defined as cubic spaces forming part of the parcel designated as a unit on the units plan, excluding 'structural cubic space' being vertical structural members, pipes, wire,

¹⁴² *Unit Title Schemes Act 2009* (NT) s 52, s 53.

¹⁴³ *Ibid* s 53(2).

¹⁴⁴ *Unit Titles Act 1975* (NT) s 55.

¹⁴⁵ *Ibid* s 55(1)(b).

¹⁴⁶ *Ibid* s 55(3).

¹⁴⁷ *Ibid* s 55(1)(a).

¹⁴⁸ *Ibid* s.55(2).

¹⁴⁹ *Ibid* s 80(1), s 4.

¹⁵⁰ *Unit Titles Schemes Act 2009* (NT) s 53(1).

¹⁵¹ *Ibid* s 32.

¹⁵² *Unit Titles Act 1975* (NT) s 4.

cables or ducts in a building that are not for the exclusive enjoyment of one unit, and the structures enclosing that utility infrastructure.¹⁵³

NT Public Liability Insurance

Pre-2009 Schemes

In addition to being required to obtain a *NT Pre-2009 Replacement Insurance* policy, a corporation must also insure itself against liability in respect of death, bodily injury or illness or loss of or damage to property occurring in connection with the common property for an amount not less than \$2 million ("**NT Pre-2009 Public Liability Insurance**").¹⁵⁴

Post-2009 Schemes

In addition to having a duty to obtain *NT Post-2009 Body Corporate Insurance*, the body corporate must also insure against the liability of the body corporate for a claim relating to an individual's illness, injury or death, or the loss of or damage to property, suffered on the common property for an amount of not less than \$10 million ("**NT Public Liability Insurance**").¹⁵⁵

NT Exemptions

Pre-2009 Schemes

A corporation may pass a unanimous resolution to not insure some or all of the risks required to be insured against under a *NT Pre-2009 Replacement Insurance* policy or *NT Pre-2009 Public Liability Insurance* policy.¹⁵⁶ However, there is a mechanism for requiring the corporation to obtain the required insurance again even if it does pass such a unanimous resolution.¹⁵⁷ Any unit owner or mortgagee may serve a written notice on the corporation requiring it to obtain the required insurance, and the corporation has an obligation to do so within 28 days after receipt of the notice.¹⁵⁸

Insurance duties do not apply to a corporation of an estate development except in relation to improvements and buildings that are part of the common property of the estate development.¹⁵⁹

Post-2009 Schemes

There do not appear to be any exemptions in the *Unit Titles Schemes Act 2009* to the requirement for bodies corporate to ensure that there is a *NT Body Corporate Insurance* policy in place.

¹⁵³ Ibid.

¹⁵⁴ Ibid s 80(2).

¹⁵⁵ *Unit Title Schemes Act 2009* (NT) s 54.

¹⁵⁶ *Unit Titles Act 1975* (NT) s 80(3), 80(4).

¹⁵⁷ Ibid s 80(4).

¹⁵⁸ Ibid s 80(5).

¹⁵⁹ Ibid s 80A.

NT Additional insurance

Pre-2009 Schemes

A corporation is not limited in its right to effect additional insurance.¹⁶⁰

Post-2009 Schemes

A body corporate may by ordinary resolution decide to obtain and maintain other additional insurance policies against liabilities relating to the exercise or performance of its functions and powers or more broadly.¹⁶¹

NT Insurance Premiums

Pre-2009 Schemes

The regulations provide that the approval of a budget for the next financial year must be a matter on the agenda for the corporation's annual general meeting, but does not make specific reference to insurance premiums.¹⁶²

Post-2009 Schemes

The regulations specify that for a standard scheme, the agenda for an annual general meeting must include the approval of a budget for the next financial year and that annual contributions paid by unit owners to the body corporate must be used to fund the insurance policies to be maintained by the body corporate.¹⁶³

NT Insurance Claims

The legislation does not prescribe who must or may make claims against a corporation's insurance policies or a body corporate's insurance policies or who is liable for any claim excess payable under such policies.

NT Application of insurance money

Pre-2009 Schemes

The corporation must apply insurance money received in respect of damage or destruction to a building or improvement on the parcel, to the rebuilding and reinstatement of the building or improvement, without delay, subject to any order of the Tribunal.¹⁶⁴

Insurance money received by a corporation from an insurer under a *NT Pre-2009 Replacement Insurance* policy or *NT Pre-2009 Public Liability Insurance* policy are not liable to be brought into contribution with money received under any other policy of insurance, except another policy that is in place in respect of the same buildings or improvements.¹⁶⁵

¹⁶⁰ Ibid s 80(7).

¹⁶¹ *Unit Title Schemes Act 2009* (NT) s 56.

¹⁶² *Unit Titles (Management Modules) Regulations 2009* (NT) r 28.

¹⁶³ Ibid cl 28, cl 49, sch 1.

¹⁶⁴ *Unit Titles Act 1975* (NT) s 89.

¹⁶⁵ Ibid s 82.

Post-2009 Schemes

Damaged scheme land may only be reinstated under an approved reinstatement process outlining the steps that must be taken for the reinstatement of the damaged scheme land and any related matters.¹⁶⁶

The body corporate of the scheme, or bodies corporate of the schemes (if there is a layered scheme) may pass a resolution without dissent to approve a reinstatement process for damaged scheme land that is covered by the body corporate's insurance policy and approved by the insurer.¹⁶⁷ If approved, the bodies corporate may do anything reasonably required to give effective implementation to the reinstatement process, including applying insurance money to the same.¹⁶⁸

Alternatively, a body corporate or unit owner or mortgagee may make an application to the Local Court specifying the proposed reinstatement process and naming the body corporate's insurer and the body corporate of each of the schemes as respondents to the application.¹⁶⁹ Then, the Local Court has the power to approve the proposed reinstatement process or an amended version of it, or may refuse the application.¹⁷⁰

NT Owners Corporation Disclosure Obligations

Pre-2009 Schemes

At its first annual general meeting, the corporation must decide whether any insurance policies in force for the plan should be retained, varied or extended.¹⁷¹

The corporation shall on the written request of a member of the mortgagee of a unit, produce for inspection the policy of insurance affected by the owners corporation and the receipt for premiums paid under the policy.¹⁷²

The committee has a duty to ensure that insurance policies maintained by the corporation are kept and that owners, mortgagees, prospective purchasers or other people with an interest in the documents, or their agents, are allowed to inspect the policies within 10 working days after receiving an application for access to those records.¹⁷³

Post-2009 Schemes

At its first annual general meeting the body corporate must decide whether any insurance policies in force for the plan should be retained, varied or extended.¹⁷⁴

The committee has a duty to ensure that insurance policies maintained by the body corporate are kept and that access to those records are provided if a compliant application for access is made.¹⁷⁵

¹⁶⁶ *Unit Title Schemes Act 2009* (NT) s 58.

¹⁶⁷ *Ibid* s 60.

¹⁶⁸ *Ibid* s 60(3).

¹⁶⁹ *Ibid* s 58(2).

¹⁷⁰ *Ibid* s 58(4).

¹⁷¹ *Unit Titles (Management Modules) Regulations 2009* (NT) cl 26(a) sch 1.

¹⁷² *Unit Titles Act 1975* (NT) s 83.

¹⁷³ *Unit Titles (Management Modules) Regulations 2009* (NT) cl 48 sch 1, cl 49 sch 1.

¹⁷⁴ *Ibid* r 28.

¹⁷⁵ *Ibid* r 57, r 58.

NT Developer Obligations

Pre-2009 Schemes

At the first annual general meeting of the corporation, the developer must give the committee documents of each contract benefitting the owners corporation and each certificate of insurance in force for the plan.¹⁷⁶

Post-2009 Schemes

At the first annual general meeting of the body corporate, the developer must give the committee documents of each contract benefitting the owners corporation and each certificate of insurance in force for the scheme.¹⁷⁷

NT Mortgage Insurance

Pre-2009 Schemes

The owner of a unit that is subject to a mortgage has the right to effect an insurance policy that indemnifies the unit owner against liability under the mortgage arising from damage or destruction to the unit ("**NT Pre-2009 Mortgage Insurance**").¹⁷⁸ If a *NT Pre-2009 Mortgage Insurance* policy is in place, the insurer is liable to pay the mortgagee the sum in the policy, the amount of the loss or an amount sufficient to discharge the mortgage noted on the policy, whichever is the least amount.¹⁷⁹

The insurer is entitled to receive a transfer of the mortgage or a share of the mortgage, if payment is made by an insurer to a mortgagee under a *NT Pre-2009 Mortgage Insurance* policy.¹⁸⁰

Money paid out under a *NT Pre-2009 Mortgage Insurance* policy is not allowed to be brought into contribution with money received under any other insurance policy, except for a policy that indemnifies a person against liability arising out of damage or destruction to the same unit.¹⁸¹

Post-2009 Schemes

The mortgagee of a unit is prohibited from requiring a unit owner to maintain an insurance policy ("**NT Owner Policy**") for an interest that is already covered by the *NT Body Corporate Insurance* policy, unless the amount insured under the *NT Body Corporate Insurance* policy is less than the amount owing under the unit owner's mortgage.¹⁸²

The mortgagee may require a unit owner to obtain a *NT Owner Policy* for the difference between the unit owner's mortgage amount and the *NT Body Corporate Insurance* policy amount.¹⁸³

¹⁷⁶ Ibid cl 25(1)(f), cl 25(1)(g) sch 1.

¹⁷⁷ Ibid cl 27 sch 1.

¹⁷⁸ *Unit Titles Act 1975* (NT) s 84.

¹⁷⁹ Ibid s 85.

¹⁸⁰ Ibid s 86.

¹⁸¹ Ibid s 87.

¹⁸² *Unit Title Schemes Act 2009* (NT) s 57(a).

¹⁸³ Ibid s 57(b).

NT Valuations

There is no duty on either a corporation or a body corporate to obtain a valuation for the purposes of the *NT Body Corporate Insurance* policy.¹⁸⁴

NT Lot Owner Duties

There do not appear to be any express duties on lot owners in regards to acts or omissions that may affect body corporate insurance policies.¹⁸⁵

Queensland (Qld) (BCCM)

Legislation – Qld (BCCM)

Body Corporate and Community Management Act 1997 (Qld)

Body Corporate and Community Management Regulation 2008 (Qld)

Body Corporate and Community Management (Standard Module) Regulation 2020 (Qld)

Body Corporate and Community Management (Accommodation Module) Regulation 2020 (Qld)

Body Corporate and Community Management (Commercial Module) Regulation 2020 (Qld)

Body Corporate and Community Management (Small Schemes Module) Regulation 2020 (Qld)

Body Corporate and Community Management (Specified Two-lot Schemes Module) Regulation 2011 (Qld)

Insurable Interest – Qld (BCCM)

In Qld, a body corporate is created to for a community titles scheme.¹⁸⁶ Its members are the owners of all the lots in the scheme.¹⁸⁷ There are five types of regulation modules that can apply to a community titles scheme being the Standard Module, Accommodation Module, Commercial Module, Small Schemes Module and Specified Two-Lot Schemes Module.¹⁸⁸ There are also a range of layered arrangements that may exist.¹⁸⁹ For the purposes of insurance obligations, all Modules except for the Specified Two-Lot Schemes Module are identical.¹⁹⁰ Therefore, in this schedule only the Standard Module will be referred to. The insurance obligations prescribed in the Specified Two-lot Schemes Module are less comprehensive than the Standard Module primarily due to the absence of any requirement of those schemes to maintain administrative and sinking funds or hold annual general

¹⁸⁴ *Unit Titles Act 1975* (NT); *Unit Title Schemes Act 2009* (NT).

¹⁸⁵ *Ibid.*

¹⁸⁶ *Body Corporate and Community Management Act 1997* (Qld) s 30.

¹⁸⁷ *Ibid* s 31.

¹⁸⁸ *Body Corporate and Community Management (Standard Module) Regulation 2020* (Qld); *Body Corporate and Community Management (Accommodation Module) Regulation 2020* (Qld); *Body Corporate and Community Management (Commercial Module) Regulation 2020* (Qld); *Body Corporate and Community Management (Small Schemes Module) Regulation 2020* (Qld); *Body Corporate and Community Management (Specified Two-lot Schemes Module) Regulation 2011* (Qld).

¹⁸⁹ *Body Corporate and Community Management Act 1997* s 92.

¹⁹⁰ *Body Corporate and Community Management (Standard Module) Regulation 2023* (Qld); *Body Corporate and Community Management (Accommodation Module) Regulation 2020* (Qld); *Body Corporate and Community Management (Commercial Module) Regulation 2020* (Qld); *Body Corporate and Community Management (Small Schemes Module) Regulation 2020* (Qld); *Body Corporate and Community Management (Specified Two-lot Schemes Module) Regulation 2011* (Qld).

meetings.¹⁹¹ Where the Specified Two-lot Schemes Module differs, the difference is set out in this schedule separately.

The common property for a community titles scheme is owned by the lot owners as tenants in common, in shares proportionate to the interest schedule lot entitlements of their respective lots.¹⁹²

The body corporate is deemed to have an insurable interest for the purpose of insurance that it is required to put in place under the regulation module that applies to its community titles scheme.¹⁹³

An 'insurer' of a building is defined as any person who has given a policy of insurance for insuring the building against loss or damage.¹⁹⁴

Building Insurance – Qld (BCCM)

A body corporate has a duty to insure:

1. the common property and body corporate assets for their full replacement value;¹⁹⁵
2. each building which is located in the scheme for its full replacement value to the extent that the building is scheme land if it is a body corporate for a community titles scheme is created under a building format plan of subdivision or a volumetric plan of subdivision.¹⁹⁶

("Qld Reinstatement Insurance")

A *Qld Reinstatement Insurance* policy must cover to the greatest possible extent damage and costs incidental to the reinstatement or replacement of insured buildings, including the cost of taking away debris and the fees of architects and other professional advisers.¹⁹⁷ It must also provide for the reinstatement of property to its condition when new.¹⁹⁸ The *Qld Reinstatement Insurance* policy may be obtained on the basis that an excess, which would not impose an unreasonable burden on the lot owners, is payable.¹⁹⁹

A 'building' is defined as including improvements and fixtures forming part of the building. However, the definition of building excludes:²⁰⁰

1. Carpet;²⁰¹
2. Temporary wall, floor and ceiling coverings;²⁰²
3. Fixtures removable by a lessee or tenant at the end of a lease or tenancy;²⁰³
4. Mobile or fixed air conditioning units servicing a particular lot;²⁰⁴

¹⁹¹ Ibid.

¹⁹² *Body Corporate and Community Management Act 1997* (Qld) s 35.

¹⁹³ Ibid s 190.

¹⁹⁴ Ibid sch 6.

¹⁹⁵ *Body Corporate and Community Management (Standard Module) Regulation 2020* (Qld) r 197.

¹⁹⁶ Ibid r 198(1), r 198(2).

¹⁹⁷ Ibid r 197(3)(a), r 198(3)(a).

¹⁹⁸ Ibid r 197(3)(b), r 198(3)(b).

¹⁹⁹ Ibid r 203(1), r 203(2).

²⁰⁰ Ibid r 195.

²⁰¹ Ibid r 195(e).

²⁰² Ibid 'building' r 195(a).

²⁰³ Ibid 'building' r 195(b).

²⁰⁴ Ibid 'building' r 195(c).

5. Curtains, blinds or other internal window coverings;²⁰⁵
6. Or mobile dishwashers, clothes dryers or other electrical or gas appliances not wired or plumbed in.²⁰⁶

The definition of 'damage' for which coverage under the *Qld Reinstatement Insurance* policy is required means:²⁰⁷

- a. Earthquake, explosion, fire, lightning, storm, tempest and water damage;²⁰⁸
- b. Glass breakage²⁰⁹; and
- c. Damage from impact, malicious act and riot.²¹⁰

An adjudicator has the power to make an order requiring the body corporate to take out insurance, increase the amount of insurance or take action under an insurance policy to recover an amount or have repairs carried out.²¹¹

If the body corporate's *Qld Reinstatement Insurance* policy is not for the full replacement value of the insured property, then the body corporate is liable to pay any contribution to the cost of reinstatement or repair because of the inadequate cover.²¹²

Physical Scope – Qld (BCCM)

A *Qld Reinstatement Insurance* policy must cover common property and body corporate assets.²¹³

Common property is defined by reference to a residual definition, namely, other land in the scheme land that is not included in a lot.²¹⁴

Body corporate assets are defined as items of real or personal property acquired by the body corporate, other than property that is incorporated into and becomes common property.²¹⁵ An example of personal property that may be owned by a body corporate is a billiard table, gardening equipment, freehold land, a lease and a licence to use land for a particular purpose.²¹⁶ The legislation gives an example of an item that is incorporated into common property as being an air-conditioning unit which might be bought as a body corporate asset, but becomes incorporated into common property when it is installed as a fixture.²¹⁷

Public Liability Insurance – Qld (BCCM)

The body corporate has a duty to maintain public risk insurance of the common property and body corporate assets for which it is practicable to maintain public risk insurance, for amounts that the body corporate becomes liable to pay for compensation for death, illness and bodily

²⁰⁵ Ibid 'building' r 195(d).

²⁰⁶ Ibid 'building' r 195(f).

²⁰⁷ Ibid r 195.

²⁰⁸ Ibid 'damage' (a).

²⁰⁹ Ibid 'damage' (b).

²¹⁰ Ibid 'damage' (c).

²¹¹ *Body Corporate and Community Management Act 1997* (Qld) cl 3 sch 5.

²¹² *Body Corporate and Community Management (Standard Module) Regulation 2020* (Qld) r 198(5).

²¹³ Ibid r 197(1).

²¹⁴ *Body Corporate and Community Management Act 1997* (Qld) s 10(2).

²¹⁵ Ibid s 11(1).

²¹⁶ Ibid s 11(2).

²¹⁷ Ibid s 11(1).

injury and damage to property for at least \$10m for a single event and in a single period of insurance (“**Qld Public Risk Insurance**”).²¹⁸

Exemptions – Qld (BCCM)

The body corporate has a duty to obtain a *Qld Reinstatement Insurance* policy unless the common property is already required to be insured under another provision, for example, a body corporate does not need to insure a building if the scheme is a subsidiary scheme for another community titles scheme or there is an equivalent provision of another regulation module that requires another body corporate to insure the building.²¹⁹ In addition, if there is a registered building management statement which provides for insurance to a level comparable with a *Qld Reinstatement Insurance* policy, and that insurance is already in place, then a body corporate need to take out a *Qld Reinstatement Insurance* policy.²²⁰

If the body corporate cannot comply with the requirement to obtain *Qld Reinstatement Insurance*, it may apply in writing to the commissioner, who may authorise the body corporate to put alternative insurance in place in a form approved by the commissioner, if the commissioner is satisfied that the approved insurance gives cover as close as practicable to the cover given by a *Qld Reinstatement Insurance* policy.²²¹

Additional insurance – Qld (BCCM)

The regulations permit the body corporate to combine its *Qld Reinstatement Insurance* policy with any voluntary insurance scheme that it elects to put in place covering other lots in the scheme.²²²

A body corporate for a basic scheme created under a standard format plan of subdivision with lots that have unconnected stand-alone buildings has the power to establish a voluntary insurance scheme under which it places insurance over stand-alone buildings for the lot owners in the scheme (“**Qld Voluntary Lot Insurance Scheme**”).²²³ If a body corporate does not establish a *Qld Voluntary Lot Insurance Scheme* for the lot owners of stand-alone buildings, then the lot owners have duties to insure any improvements made to the common property for their full replacement value and give the insurance details to the body corporate.²²⁴

Insurance Premiums – Qld (BCCM)

The basis for calculating a lot owner’s share of amounts levied by the body corporate is the contribution schedule lot entitlement for a lot unless a regulation module applying to a community titles scheme provides that a lot owner’s contribution is to be calculated in some other manner.²²⁵

²¹⁸ *Body Corporate and Community Management (Standard Module) Regulation 2020* (Qld) r 206(3)(b).

²¹⁹ *Ibid* r 198(6).

²²⁰ *Ibid* s 198(7).

²²¹ *Ibid* r 198.

²²² *Ibid* r 204, r 205.

²²³ *Ibid* r 204(2).

²²⁴ *Ibid* r 204(6).

²²⁵ *Body Corporate and Community Management Act 1997* (Qld) s 47.

The body corporate's administrative fund budget must contain estimates for the cost of insurance.²²⁶ The body corporate's insurance premium must be paid out from its administrative fund.²²⁷

Each lot owner is liable to pay a contribution levied by the body corporate that is a proportionate amount of the premium for the *Qld Reinstatement Insurance* that reflects the interest schedule lot entitlement of the lot.²²⁸

The lot owners in a body corporate regulated by the Specified Two-Lot Schemes Module must contribute to the *Qld Reinstatement Insurance* premium:

1. If the lot is created under a building or volumetric plan of subdivision – based on the interest schedule lot entitlement of the lot;²²⁹ or
2. If the lot is created under a standard format plan of subdivision – based on the cost of reinstating the buildings on the lot.²³⁰

However, a body corporate does have the power to adjust a lot owner's contribution in a way that fairly reflects:²³¹

- a. the extent to which the premium relates to fixtures and fittings that are of a higher standard than generally in the scheme and which form part of the lot;²³² or
- b. the extent to which the premium relates to improvements made on the common property that benefit the lot;²³³ or
- c. the proportion of the total risks covered by the policy that are attributable to the activities carried on the lot.²³⁴ An example given in the legislation is:

*"In a community titles scheme, the owner of a lot starts a small manufacturing business requiring the use and storage of flammable chemicals. The insurance premium for the body corporate policy is increased by the insurer because of the increased risk of damage through fire. The contribution payable by the owner for the insurance premium will include the amount of the increase."*²³⁵

Claims – Qld (BCCM)

If an insurable event only affects one lot, then the lot owner is liable to pay the excess unless the body corporate decides that it is unreasonable in all of the circumstances for the lot owner to bear the liability for the excess.²³⁶

If an insurable event affects two or more lots, or one lot and common property, the body corporate is liable to pay the excess, unless it decides it is reasonable in all the circumstances

²²⁶ *Body Corporate and Community Management (Standard Module) Regulation 2020* (Qld) r 139; This obligation does not apply to schemes regulated by the Specified Two-Lot Scheme Module.

²²⁷ *Ibid* r 169(2).

²²⁸ *Ibid* r 197(4).

²²⁹ *Body Corporate and Community Management (Specified Two-Lot Schemes Module) Regulation 2011* (Qld) r 52(1)(a).

²³⁰ *Ibid* r 52(1)(b).

²³¹ *Body Corporate and Community Management (Standard Module) Regulation 2020* (Qld) r 182.

²³² *Ibid* r 201(2)(a).

²³³ *Ibid* r 201(2)(b).

²³⁴ *Ibid* r 201(2)(c).

²³⁵ *Ibid*.

²³⁶ *Ibid* r 203.

for the excess to be paid by a lot owner, shared between lot owners or shared between the body corporate and particular lot owners.²³⁷

Application of Insurance Money – Qld (BCCM)

If there is damage to all or part of building that is scheme land, then either:

1. the body corporate may pass a resolution without dissent to approve a process for reinstating the building in whole or in part, as long as the insurer approves the process;²³⁸ or
2. an application may be made to the District Court for approval of a process for reinstating the building in whole or in part.²³⁹ The court's powers to make orders under such an application include the power to make an order directing how insurance money is to be applied.²⁴⁰

The body corporate must pay into its sinking fund amounts received under policies of insurance for destruction of items of a major capital nature.²⁴¹

If a body corporate receives insurance money for damage to property, then it must apply that amount as soon as practicable to the repair or replacement of the damaged property unless it is authorised by a resolution without dissent to apply it for another purpose.²⁴²

If a body corporate receives insurance for damage to property under a voluntary insurance scheme, the amount must be paid to the lot owner of the damaged property, subject to any prior claim of a registered mortgagee for the lot.²⁴³

Owners Corporation Disclosure Obligations – Qld (BCCM)

The body corporate has a duty to keep on its records each policy of insurance that it puts in place.²⁴⁴ This obligation does not apply to bodies corporate for two-lot schemes.²⁴⁵

The body corporate's notice of annual general meeting, or a note attached to the administrative fund budget proposed for adoption at the annual general meeting must include the following insurance details:²⁴⁶

1. the name of the insurer;²⁴⁷
2. the amount of cover under the policy;²⁴⁸
3. a summary of the type of cover under the policy;²⁴⁹

²³⁷ Ibid.

²³⁸ *Body Corporate and Community Management Act 1997* (Qld) s 74.

²³⁹ Ibid s 72.

²⁴⁰ Ibid s 72(4).

²⁴¹ *Body Corporate and Community Management (Standard Module) Regulation 2020* (Qld) r 167(3)(b).

²⁴² Ibid r 208.

²⁴³ Ibid r 209.

²⁴⁴ Ibid r 231;

²⁴⁵ *Body Corporate and Community Management (Specified Two-Lot Schemes Module) Regulation 2011* (Qld).

²⁴⁶ *Body Corporate and Community Management (Standard Module) Regulation 2020* (Qld) r 196; This obligation does not apply to schemes regulated by the Specified Two-Lot Scheme Module.

²⁴⁷ Ibid r 196(2)(a).

²⁴⁸ Ibid r 196(2)(b).

²⁴⁹ Ibid r 196(2)(c).

4. the amount of the premium;²⁵⁰
5. the amount of any excess payable on the happening of an event for which the insurance gives cover;²⁵¹
6. the date the cover expires;²⁵²
7. the amount and type of any financial or other benefit given, or to be given, by the insurer, for the insurance being taken out, to any of the following—
 - a. the body corporate;²⁵³
 - b. a member of the body corporate;²⁵⁴
 - c. a member of the committee for the body corporate;²⁵⁵
 - d. a person engaged as a body corporate manager or service contractor for the community titles scheme;²⁵⁶
 - e. an associate of a person mentioned in subparagraph (iv).²⁵⁷

examples of financial or other benefit—
payments of commission or the provision of discounts.²⁵⁸
8. details about buildings the body corporate must insure including the full replacement value for the buildings as stated in the most recent valuation and the date of the valuation.²⁵⁹

Developer Obligations – Qld (BCCM)

The developer of a community titles scheme has a duty to ensure that when the scheme is established, there are immediately policies of insurance in force under the regulation module that applies to the scheme, for at least 12 months.²⁶⁰ If the developer fails to comply with this duty, the body corporate can take out the insurance and recover the cost as a debt from the developer.²⁶¹

The developer must give a copy of all insurance policies taken out by it for the body corporate, and a copy of the independent valuation for each building the body corporate is required to insure, to the body corporate at the first annual general meeting.²⁶²

If a regulation module requires a building to be insured for full replacement value, then the developer has a duty to obtain an independent valuation stating the replacement value of the building from a quantity surveyor or a registered valuer, and ensure that the policy of insurance for the building covers the full replacement value stated in the valuation.²⁶³

²⁵⁰ Ibid r 196(2)(d).

²⁵¹ Ibid r 196(2)(e).

²⁵² Ibid r 196(2)(f).

²⁵³ Ibid r 196(2)(g)(i).

²⁵⁴ Ibid r 196(2)((g)(ii).

²⁵⁵ Ibid r 196(2)((g)(iii).

²⁵⁶ Ibid r 196(2)((g)(iv).

²⁵⁷ Ibid r 196(2)((g)(v).

²⁵⁸ Ibid r 196(2)((g).

²⁵⁹ Ibid r 196(3); This obligation does not apply to schemes regulated by the Specified Two-Lot Scheme Module.

²⁶⁰ *Body Corporate and Community Management Act 1997* (Qld) s 191.

²⁶¹ Ibid s 191(4).

²⁶² *Body Corporate and Community Management (Standard Module) Regulation 2020* (Qld) r 96.

²⁶³ *Body Corporate and Community Management Act 1997* (Qld) s 191(3).

Mortgage Insurance – Qld (BCCM)

If there is a registered mortgage over a lot in a community titles scheme, and there is a *Qld Reinstatement Insurance* policy in place, the mortgagee's interest in the lot is taken to be noted on the policy.²⁶⁴

Valuations – Qld (BCCM)

If a body corporate has a duty to obtain a *Qld Reinstatement Insurance* policy, then it also has a duty to obtain an independent valuation stating the full replacement value of the insured building(s), at least every five years.²⁶⁵ The body corporate has the power to recover the cost of the valuation from each lot owner as part of their annual contribution to the administrative fund.²⁶⁶

Lot Owner Duties – Qld (BCCM)

Lot owners have a duty to notify the body corporate of the details of the nature and value of any improvements made to:

- a. the lot that increases the standard of the fixtures and fittings; or
- b. the common property for the benefit of the lot;
and which are likely to increase the premium for the body corporate's *Qld Reinstatement Insurance* policy.²⁶⁷ Notification must be given by the lot owner as soon as practicable after the improvements are substantially completed.²⁶⁸

Lot owners also have a duty to give the body corporate details of any use of the lot that is likely to increase the premium of the body corporate's *Qld Public Risk Insurance* policy.²⁶⁹

In a scheme regulated by the Specified Two-Lot Scheme Module, a seller has a duty to provide a disclosure statement to the buyer that includes details about each insurance policy held by the body corporate including the amount of coverage, the premium paid and the policy expiry date.²⁷⁰

Other Disclosure Obligations – Qld (BCCM)

If a person is entitled to receive a commission, payment or other benefit associated with the body corporate considering entering into a contract of insurance, the person must give written notice to the body corporate disclosing the commission, payment or other benefit.²⁷¹

²⁶⁴ Ibid s 192.

²⁶⁵ *Body Corporate and Community Management (Standard Module) Regulation 2020* (Qld) r 200.

²⁶⁶ Ibid r 200(4).

²⁶⁷ Ibid r 202.

²⁶⁸ Ibid r 202(3).

²⁶⁹ Ibid r 207.

²⁷⁰ *Body Corporate and Community Management (Specified Two-Lot Schemes Module) Regulation 2008* (Qld) r 74.

²⁷¹ *Body Corporate and Community Management (Standard Module) Regulation 2020* (Qld) r 156;

Qld (BUGT)

Legislation - Qld (BUGT)

Building Units and Group Titles Act 1980 (Qld)

Building Units and Group Titles Regulation 2008 (Qld)

Insurable Interest - Qld (BUGT)

The body corporate is deemed to have a sufficient insurable interest in the subject matter of any contract of insurance entered into under the legislation.²⁷²

Building Insurance – Qld (BUGT)

For land subdivided by the *Building Units and Group Titles Act 1980 (Qld)* the body corporate has a duty to insure and keep insured the common property, including any improvements thereon and in the case of a building units plan, the building, under a damage policy to the reinstatement or replacement value thereof.²⁷³

A damage policy is defined as in relation to a building or the common property including improvements thereon, means a contract of insurance that provides, in the event of the building or the common property including improvements thereon being destroyed or damaged by fire, storm, tempest, explosion or any other occurrence specified in the policy for:²⁷⁴

- a. the rebuilding of the building or the common property including improvements thereon or its replacement by a similar building or the common property including improvements thereon in the event of its destruction;²⁷⁵ and
- b. the repair of damage to or the restoration of the damaged portion of the building or the common property including improvements thereon in the event of its being damaged but not destroyed;²⁷⁶

so that, in the case of destruction, every part of the rebuilt building or the common property including improvements thereon or the replacement building or the common property including improvements thereon and, in the case of damage, the repaired or restored portion, is in a condition no worse nor less extensive than that part or portion or its condition when that part or portion was new;²⁷⁷ and

²⁷² *Building Units and Group Titles Act 1980 (Qld)* s 60.

²⁷³ *Ibid* s 55.

²⁷⁴ *Ibid* s 54.

²⁷⁵ *Ibid* s 54(1)(a)(i).

²⁷⁶ *Ibid* s 54(1)(a)(ii).

²⁷⁷ *Ibid* s 54(1)(a).

- c. for the payment of expenses incurred in the removal of debris and the remuneration of architects and other persons whose services are necessary as an incident to the rebuilding, replacement, repair or restoration.²⁷⁸

Physical Scope - Qld (BUGT)

A 'building' means a building or buildings shown on the building units plan, but does not include a proprietor's fixture.²⁷⁹

A 'proprietor's fixture' means a structure of fixture made after the registration of the building unit's plan forming part of a building and which is exclusively for the use and enjoyment of a lot and which is not made for the necessary renewal or replacement of a structure or fixture made before the registration of the plan or has replaced such a structure or fixture but is of a greater value than necessary replacement of and a like nature to the original structure.²⁸⁰

Public Liability Insurance & Workplace Compensation Insurance - Qld (BUGT)

The body corporate is required to obtain insurance in respect of its liability for damage to property, death or bodily injury occurring upon the common property for at least \$10 million.²⁸¹

The body corporate also has a duty to obtain mandatory insurance required under the *Workers' Compensation and Rehabilitation Act 2003* (Qld).

Exemptions - Qld (BUGT)

There do not appear to be any exemptions contained in the legislation to the duties to maintain mandatory insurance.

Additional Insurance - Qld (BUGT)

The body corporate may insure any property which it does not have a mandatory duty to insure and in which it has an insurable interest.²⁸²

Premiums - Qld (BUGT)

Insurance premiums are required to be included in the amounts that are reasonable and necessary to be raised by contributions for the purpose of the body corporate meeting its actual or expected liabilities.²⁸³

²⁷⁸ Ibid s 54(1)(b).

²⁷⁹ Ibid s 54(1).

²⁸⁰ Ibid s 54.

²⁸¹ Ibid s 56, *Building Units and Group Titles Regulation 2008* (Qld) r 13.

²⁸² *Building Units and Group Titles Act 1980* (Qld) s 56(3).

²⁸³ Ibid s 38A.

Insurance Claims – Qld (Building Units Scheme)

If a body corporate has unreasonably refused to make or pursue an insurance claim, a lot owner may apply for an order that it must.²⁸⁴

Application of Insurance Money - Qld (BUGT)

A body corporate's administrative or sinking fund must include amounts paid to the body corporate by way of discharge of insurance claims.²⁸⁵

If a body corporate receives insurance money in respect of destruction of or damage to a building or common property, it must apply that money to rebuild, replace, repair or restore the damaged building unless it passes a unanimous resolution to do otherwise.²⁸⁶

Disclosure Obligations - Qld (BUGT)

The body corporate must make every current policy of insurance effected by it and the receipt for the premium last paid in respect of each policy to an eligible person wishing to inspect those documents.²⁸⁷

Developer Obligations – Qld (BUGT)

The developer has a duty to effect the body corporate's mandatory insurances covering the first year after registration of the plan.²⁸⁸ This duty on the developer does not prevent the developer from recouping the insurance premium cost from the original purchasers under an agreement for sale of a lot in the scheme.²⁸⁹

The developer has a duty to deliver to the body corporate a copy of all insurance policies in place for the body corporate within 14 days after the body corporate gives the developer notice requiring such delivery.²⁹⁰

Mortgage Insurance - Qld (BUGT)

If a lot owner enters into a contract of insurance to cover damage to its lot, then any money paid out by the insurer shall be paid to the mortgagee, and the insurer is entitled to an assignment of all or a transfer of so much of the mortgage as is paid out by the insurer.²⁹¹

Mortgage insurance policies are not to be brought into contribution with any other insurance policy unless the policy is in respect of the same lot and the same mortgage debt.²⁹²

²⁸⁴ Ibid s 82.

²⁸⁵ Ibid s 38.

²⁸⁶ Ibid s 59.

²⁸⁷ Ibid s 40.

²⁸⁸ Ibid s 55A.

²⁸⁹ Ibid s 55A(3).

²⁹⁰ Ibid s 5(7E).

²⁹¹ Ibid s 58.

²⁹² Ibid s 58(2).

Valuations – Qld (BUGT)

There is no mandatory duty on a body corporate to obtain a valuation for the purposes of the mandatory building insurance.²⁹³

Lot Owner Duties – Qld (BUGT)

There does not appear to be any specific duties on lot owners in relation to insurance.

South Australia (SA)

Legislation – SA (Strata Schemes)

Strata Titles Act 1988 (SA)

Strata Titles Regulations 2018 (SA)

In SA, a strata corporation for a strata plan holds the common property in trust for the unit holders in equitable shares proportionate to the unit entitlement of the unit.²⁹⁴

Insurable Interest – SA (Strata Schemes)

The legislation does not make express reference to the strata corporation having an insurable interest in the buildings and land that it is required to insure.²⁹⁵

Building Insurance – SA (Strata Schemes)

A strata corporation has a duty to keep all buildings and improvements on the site insured to their replacement value against the following risks:²⁹⁶

1. risk of damage caused by events (other than subsidence) declared to be prescribed events in relation to home building insurance under Part 5 of the *Insurance Contracts Act 1984* of the Commonwealth and which are summarised below:
 - a. Fire, storm, lightning, thunderbolt, tempest;
 - b. Earthquake, explosion;
 - c. Riot and civil commotion;
 - d. Malicious damage;
 - e. Bursting, leaking, discharging or overflowing of fixed apparatus, fixed tanks or fixed pipes used to hold or carry liquid of any kind;
 - f. Flood (generally described as the covering of normally dry land that has escaped from the normal confines of natural water courses).²⁹⁷

²⁹³ *Building Units and Group Titles Act 1980* (Qld).

²⁹⁴ *Strata Titles Act 1988* (SA) s 10.

²⁹⁵ *Strata Titles Act 1988* (SA).

²⁹⁶ *Ibid* s 30(1).

²⁹⁷ *Insurance Contracts Regulation 2017* (Cth) r 19.

(“SA Replacement Insurance”)

The replacement value of the buildings and improvements is defined as the cost of their complete replacement including the cost of any necessary preliminary demolition work, any necessary surveying, architectural or engineering work and any other associated or incidental costs.²⁹⁸

A strata corporation has the power to delegate the function of entering into contracts of insurance with insurers on behalf of the strata corporation to any person.²⁹⁹

Physical Scope – SA (Strata Schemes)

All buildings and improvements on the site must be covered by a *SA Replacement Insurance* policy.³⁰⁰

Tortious Liability Insurance & Fidelity Guarantee Insurance – SA (Strata Schemes)

The strata corporation has a duty to keep itself insured against liability in tort with cover of at least \$10 million (“**SA Tortious Liability Insurance**”).³⁰¹ The scope of the mandatory *SA Tortious Liability Insurance* is broader than the scope of public liability insurance required by all other jurisdictions.

The strata corporation must also maintain fidelity guarantee insurance³⁰² for the maximum total balance of the strata corporation’s bank accounts at any time in the preceding three years, or \$50,000, whichever amount is higher (“**SA Fidelity Guarantee Insurance**”).³⁰³

Exemptions – SA (Strata Schemes)

The duty to insure does not apply a strata corporation if all units comprised in the scheme are held by the same registered owner and no unit in the scheme is subject to a contract for sale.³⁰⁴

Strata corporations with no administrative or sinking funds are not required to maintain *SA Fidelity Guarantee Insurance*.³⁰⁵ Also, the Minister may, by Gazette, exempt other strata corporations from the requirement to maintain *SA Fidelity Guarantee Insurance*.³⁰⁶

Additional Insurance – SA (Strata Schemes)

If a strata corporation determines by special resolution to insure itself against any other liability, then it must obtain such additional insurance.³⁰⁷

²⁹⁸ *Strata Titles Act 1988* (SA) s 30(2).

²⁹⁹ *Ibid* s 27A.

³⁰⁰ *Ibid* s 30.

³⁰¹ *Ibid* s 31; *Strata Titles Regulations 2018* (SA) r 14.

³⁰² *Strata Titles Act 1988* (SA) s 31(2a).

³⁰³ *Strata Titles Regulations 2018* (SA) r 14(2).

³⁰⁴ *Strata Titles Act 1988* (SA) s 29A.

³⁰⁵ *Strata Titles Regulations 2018* (SA) r 14(2)(b).

³⁰⁶ *Strata Titles Act 1988* (SA) s 31(2b).

³⁰⁷ *Ibid* s 31(3).

Insurance Premiums – SA (Strata Schemes)

The legislation imposes general duties on strata corporations to present a statement to each general meeting of the estimated expenditure of a recurrent nature to be made by the corporation in the current financial year.³⁰⁸

Insurance Claims – SA (Strata Schemes)

The legislation does not prescribe how insurance claims may be made or by whom, or deal with who is liable to pay any claim excess.

Application of Insurance Money – SA (Strata Schemes)

Any insurance money received by a strata corporation under an insurance policy in relation to damage to buildings or building improvements must be applied to reinstating or repairing the damaged buildings or building improvements, subject to any contrary court order.³⁰⁹

Disclosure Obligations – SA (Strata Schemes)

A strata corporation must allow an inspection all current policies of insurance taken out by the owners corporation within five business days after a lot owner, mortgagee or prospective purchaser makes a request addressed to the secretary.³¹⁰

The agenda for each annual general meeting of the strata corporation must include the policies of insurance that the strata corporation is required to hold.³¹¹

Developer Obligations – SA (Strata Schemes)

The developer has an obligation to place in the strata corporation's possession at its first annual general meeting, any documents in its possession relating to the strata scheme of which the strata corporation will need to know in order to carry out its statutory functions.³¹²

Mortgage Insurance – SA (Strata Schemes)

A unit owner may enter into a contract of insurance in respect of damage to the unit for an amount equal to the amount secured by mortgages over the unit ("**SA Mortgage Insurance**").³¹³ If *SA Mortgage Insurance* has been obtained, all payments made by the insurer under the contract must be made to the mortgagee whose interest is noted in the contract of insurance.³¹⁴ Furthermore, the insurer is liable to pay to the mortgagee the amount

³⁰⁸ Ibid s 33A.

³⁰⁹ Ibid s 30(4).

³¹⁰ Ibid s 32, s 41.

³¹¹ *Strata Titles Regulations 2018* (SA) r 15.

³¹² *Strata Titles Act 1988* (SA) s 38(3).

³¹³ Ibid s 43.

³¹⁴ Ibid s 43(3)(a).

stated in the contract, the amount of the damage or the amount sufficient to discharge the mortgage, whichever is the least amount.³¹⁵

If an insurer pays a mortgagee under a *SA Mortgage Insurance* policy, the insurer is entitled to an assignment of that mortgage, or part of it, equal to the amount paid under the policy.³¹⁶

Money received under a *SA Mortgage Insurance* policy is not liable to be brought into contribution with any other money received under another insurance contract, except when the other insurance contract is in respect of damage to the same unit and relates to the same mortgage debt.³¹⁷

Valuations – SA (Strata Schemes)

The legislation does not impose a duty on the strata corporation to obtain a valuation for the purposes of its *SA Replacement Insurance*.³¹⁸

Lot Owner Duties – SA (Strata Schemes)

There does not appear to be any express duties on lot owners in relation to insurance.

SA (Community Schemes)

Legislation – SA (Community Schemes)

Community Titles Act 1996 (SA)

Community Titles Regulations 2011 (SA)

Insurable Interest – SA (Community Schemes)

The legislation does not make express reference to a community corporation having an insurable interest in the buildings and land that it is required to insure.³¹⁹

Building Insurance – SA (Community Schemes)

A community corporation has a duty to insure the buildings and other improvements on the common property and in the case of a strata scheme, the building or buildings divided by the strata plan.³²⁰

The mandatory building insurance must insure the community corporation against risks that a normally prudent person would insure against or any other risks that are prescribed by regulation.³²¹ The insurance must be for the full cost of replacing the buildings or

³¹⁵ Ibid s 43(3).

³¹⁶ Ibid s 41(4).

³¹⁷ Ibid s 41(5).

³¹⁸ *Strata Titles Act 1988 (SA)*.

³¹⁹ *Community Titles Act 1996 (SA)*.

³²⁰ Ibid s 103(1).

³²¹ Ibid s 103(2)(a).

improvements with new materials and must cover incidental costs such as demolition, site clearance and architect's fees.³²²

The community corporation has the power to delegate the function of entering into insurance contracts to any person.³²³

Physical Scope – SA (Community Schemes)

The mandatory building insurance must cover the buildings and other improvements on the common property and in the case of a strata scheme, the building or buildings divided by the strata plan.³²⁴

Public Liability and Fidelity Guarantee Insurance – SA (Community Schemes)

The community corporation also has a duty to insure itself against risks that a normally prudent person would insure against and any other such risks that the regulations prescribe.³²⁵

For insurance that a normally prudent person would insure against in the case of bodily injury, the community corporation must be insured for a minimum amount of \$10 million.³²⁶

In addition, a community corporation must maintain fidelity guarantee insurance for the maximum total balance of its bank accounts at any time in the preceding three years or \$50,000, whichever is the higher amount.

Exemptions – SA (Community Schemes)

Community corporations that have buildings and other improvements on common property insured for a sum that does not exceed \$100,000 and 2-lot community corporations with no administrative or sinking funds are exempt from the duty to maintain fidelity guarantee insurance.³²⁷

Additional Insurance – SA (Community Schemes)

The by-laws for a community corporation may authorise or require it to act as agents for the lot owners in arranging insurance policies.³²⁸

Premiums – SA (Community Schemes)

The by-laws for a community corporation may impose a monetary obligation on a lot owner to pay an insurance premium where the by-laws have authorised or required a community corporation to arrange an insurance policy as the lot owner's agent.³²⁹

³²² Ibid s 103(2)(b); s 103(2)(c).

³²³ Ibid s 78A.

³²⁴ Ibid s 103(1).

³²⁵ Ibid s 103(2)(a).

³²⁶ Ibid s 104(2).

³²⁷ Ibid s 104(3); *Community Titles Regulations 2011* (SA) r 16C.

³²⁸ *Community Titles Act 1996* (SA) s 34(3).

³²⁹ Ibid s 37(2)(b).

Claims – SA (Community Schemes)

In the event of a claim, any excess or shortfall resulting from under insurance must be met by the community corporation.³³⁰

Application of Insurance Money – SA (Community Schemes)

A community corporation must apply insurance money and any excess shortfall that it is required to meet to making good loss and damage that is or should have been covered by the mandatory building insurance, unless it passes a unanimous resolution to the contrary.³³¹

In the meantime, any insurance money received must be credited to the community corporation's administrative or sinking fund according to the purpose for which the money will be used.³³²

Owners Corporation Disclosure Obligations – SA (Community Schemes)

The agenda for an annual general meeting must include presentation of copies of all mandatory insurance policies.³³³ The community corporation's first statutory general meeting must address whether the policies of insurance taken out by the developer are adequate.³³⁴

The community corporation has a duty to provide a statement that sets out the current policies of insurance policies taken out by it within five (5) business days after an eligible person makes an application for such a statement, subject to any fee payable by the applicant.³³⁵ Owners, prospective owners, mortgagees and prospective mortgagees are entitled to inspect the insurance policies held by the community corporation within five (5) business days after making a request for inspection.³³⁶

Developer Obligations – SA (Community Schemes)

The developer has a duty to take out the mandatory insurance for the community corporation and it must be in place for at least six (6) months after the plan is deposited.³³⁷ It is an offence punishable by a maximum fine of \$15,000 for a developer to enter into a contract to sell a lot without the mandatory insurance being in place unless a written statement to the effect that the mandatory insurance has not been obtained has been served personally on the lot owner.³³⁸

³³⁰ Ibid s 103(3).

³³¹ Ibid s 105.

³³² Ibid s 116(4).

³³³ Ibid s 81(5)(d)(iii); *Community Titles Regulations 2011* (SA) r 16.

³³⁴ *Community Titles Regulations 2011* (SA) r 15.

³³⁵ *Community Titles Act 1996* (SA) s 139.

³³⁶ Ibid s 108.

³³⁷ Ibid s 107(1).

³³⁸ Ibid s 107(2), 107(3).

The developer has a duty to deliver all insurance policies taken out by it for the community corporation to the corporation at its first statutory general meeting.³³⁹

Mortgage Insurance – SA (Community Schemes)

Nothing in the legislation limits a lot owner's right to effect insurance in respect of their lot.³⁴⁰ A lot owner may enter into a contract of insurance in respect of damage to the lot or a building on the lot, for an amount equal to the amount secured by mortgages over the lot at the date of the insurance contract.³⁴¹ Where a mortgagee insurance policy is in place, payment must be made by the insurer to the mortgagee, and the mortgagee is entitled to an assignment of the mortgage or a transfer of part of the mortgage equal to the proportion of the amount paid by the insurer.³⁴²

Insurance money paid under a mortgagee insurance policy is not liable to be brought into contribution with any other money received under another insurance contract unless the other contract is in respect of damage to the same lot and relates to the same mortgage debt.³⁴³

Valuations – SA (Community Schemes)

There is no express duty in the legislation on a community scheme to obtain a valuation for insurance purposes.³⁴⁴

Lot Owner Duties – SA (Community Schemes)

Where support or shelter required by an easement is provided by a building on a lot, the lot owner must obtain the mandatory building insurance covering the full cost of replacing the building with new materials and cover incidental costs such as demolition, site clearance and architect's fees.³⁴⁵ The lot owner has a duty to provide evidence to the community corporation of the insurance being in place.³⁴⁶ The evidence must be in the form of a photocopy of the current certificate of the insurance taken out.³⁴⁷

TASMANIA (Tas)

Tas Legislation

Strata Titles Act 1998 (Tas)

Strata Titles (Insurance) Regulations 2019 (Tas)

Tas Insurable Interest

³³⁹ Ibid s 80(1)(e).

³⁴⁰ Ibid s 109(1).

³⁴¹ Ibid s 109(2).

³⁴² Ibid s 109(3), 109(4).

³⁴³ Ibid s 109(5).

³⁴⁴ *Community Titles Act 1996* (SA).

³⁴⁵ Ibid s 106(1).

³⁴⁶ Ibid s 106(2).

³⁴⁷ *Community Titles Regulations 2011* (SA) r 17.

A body corporate is taken to have an insurable interest in property that it is required to insure.³⁴⁸

Tas Building Insurance

The body corporate must take out and maintain a policy of insurance for the buildings and other improvements on the site that covers damage from fire, storm, tempest or explosion and any other prescribed risks and costs incidental to the reinstatement of the buildings and improvements to their condition when new ("**Tas Reinstatement Insurance**").³⁴⁹

Tas Physical Scope

The common property consists of parts of a site (including buildings or parts of buildings and improvements) and service infrastructure.³⁵⁰

Tas Public Risk Insurance

The body corporate must maintain public risk insurance covering accidental death, personal injury and property damage) over the site for a minimum amount of \$10 million.³⁵¹

Tas Exemptions

If the body corporate can show that despite having taken all reasonable steps available to it to comply with the requirement to obtain a damage and reinstatement policy, no insurer is willing to enter into a policy of insurance on reasonable terms that meets the statutory obligations, then the body corporate shall have a defence to any offence proceedings under s.99(1) against it.³⁵²

Tas Additional Insurance

The body corporate may by ordinary resolution insure against loss from dishonesty, negligence or other wrongful conduct or against any other risk.³⁵³

Tas Insurance Premiums

If a body corporate is unable to obtain insurance on reasonable terms because of a lot owner's activity on the lot, or work is required to the lot to reduce the insurance risk to a reasonable level, the body corporate may give written notice to the owner requiring the activity cease or

³⁴⁸ *Strata Titles Act 1998* (Tas) s 98.

³⁴⁹ *Ibid* s 99.

³⁵⁰ *Ibid* s 9, s 2. Note: service infrastructure within a lot and solely relating to supplying services to the lot is only common property if it is within a boundary structure between the lot and another lot or common property.

³⁵¹ *Ibid* s 101(1); *Strata Titles (Insurance) Regulations 2019* (Tas) r3.

³⁵² *Strata Titles Act 1998* (Tas) s 99(7).

³⁵³ *Ibid* s 99(3).

the work be carried out, or alternatively that the owner pay the additional insurance premium payable if the activity continues or the work is not performed.³⁵⁴

If the body corporate breaches its duty to take out insurance, the lot owner may take out and maintain the required insurance and the costs are recoverable from the body corporate as a debt or may be set off against any liability owed by the lot owner to the body corporate.³⁵⁵

Tas Insurance Claims

Despite any provision of the *Tas Reinstatement Insurance* policy, the body corporate remains liable to pay, by way of excess, any contribution that has to be made to the cost of reinstatement or repair because the insurance is not for the full replacement value of the insured's property.³⁵⁶ This is the position unless the insurable event affects only one lot.³⁵⁷ In that case, the lot owner is liable to pay the excess unless the OC decides by ordinary resolution that it would be unreasonable that the lot owner alone be required to pay the excess.³⁵⁸

If an insurer accepts a claim by the body corporate based on an act or omission by a lot owner, the insurer has no right of subrogation in respect of the owner unless it is proved that the act or omission was wilful.³⁵⁹

Tas Application of Insurance Money

If a building on the site is damaged or destroyed, then a scheme for reinstating the building in whole or part may be approved either by agreement in writing between all interested parties, or by Supreme Court order.³⁶⁰ Such a reinstatement scheme may direct how insurance money is to be applied.³⁶¹

Tas Disclosure Obligations

The body corporate must at the request of a lot owner, produce for inspection the policies of insurance currently maintained by the body corporate.³⁶²

The body corporate does not need to comply with any request by a lot owner if it has previously produced the policies and the request is in the circumstances of the case not reasonable.³⁶³

³⁵⁴ Ibid s 100.

³⁵⁵ Ibid s 103.

³⁵⁶ Ibid s 99(4).

³⁵⁷ Ibid.

³⁵⁸ Ibid.

³⁵⁹ Ibid s 99(6).

³⁶⁰ Ibid s 32.

³⁶¹ Ibid s 31(3).

³⁶² Ibid s 104(1).

³⁶³ Ibid s 104(2).

Tas Developer Obligations

There does not appear to be any express obligation on the developer in relation to insurance.³⁶⁴

Tas Mortgage Insurance

A lot owner may enter into a policy of insurance insuring the lot for an amount that is equal to the amount secured by mortgages over the lot, at the date of the future loss to which the policy relates, by mortgages over the lot ("**Tas Mortgage Insurance**").³⁶⁵

Money received under a *Tas Mortgage Insurance* policy is not liable to be brought into contribution with any other money received under another policy of insurance except where the policy is in respect of damage to the same lot and relates to the same mortgage debt.³⁶⁶

Tas Valuations

The legislation does not impose a duty on the body corporate to obtain a valuation.³⁶⁷

Tas Lot Owner Duties

If a body corporate is unable to obtain insurance for a building or part of it on reasonable terms because the owner or occupier of a lot is carrying on a particular activity, or work to the lot is required to reduce the insurance risk to a reasonable level, then the body corporate may give a written notice to the owner requiring that the activity cease or the work be completed.³⁶⁸ The written notice must give the lot owner the option of paying any additional insurance premium payable in the event the activity continues or the work is not completed.³⁶⁹

VICTORIA (Vic)

Vic Legislation

Owners Corporations Act 2006 (Vic)

Owners Corporations Regulations 2018 (Vic)

Owners Corporations and Other Acts Amendment Act 2021 (Vic)

Subdivision Act 1988 (Vic)

Subdivision (Registrar's Requirements) Regulations 2011 (Vic)

In Vic, upon registration of a plan of subdivision, an owners corporation is created to manage and administer the common property.³⁷⁰ The legal boundaries of common property are defined

³⁶⁴ *Strata Titles Act 1998* (Tas).

³⁶⁵ *Ibid* s 102.

³⁶⁶ *Ibid* s 102(4).

³⁶⁷ *Strata Titles Act 1998* (Tas).

³⁶⁸ *Ibid* s 100(1).

³⁶⁹ *Ibid* s 100(2).

³⁷⁰ *Subdivision Act 1988* (Vic) s 28.

by reference to each particular registered plan of subdivision, as opposed to having universally applicable boundary rules across all schemes.³⁷¹ The common property vests in the owners corporation for the lot owners as tenants in common in shares proportional to their lot entitlement.³⁷²

One of the owners corporation's functions is to take out, maintain and pay premiums on insurance required under the legislation and any other insurance that the owners corporation considers appropriate.³⁷³

Vic Insurable Interest

An owners corporation must be taken to have an insurable interest in the land affected by the owners corporation.³⁷⁴

Vic Building Insurance

An owners corporation must take out reinstatement and replacement insurance for all buildings on the common property for the cost necessary to:³⁷⁵

1. replace, repair or rebuild the property to a condition substantially the same, but not better or more extensive than its condition when new;³⁷⁶ and
2. pay the expenses necessarily and reasonably incurred in the removal of debris and the remuneration of architects and other persons whose services are necessary, being incidental to the replacement, repair or rebuilding of the damaged property and the OC's portion of any shared services.³⁷⁷

("Vic Reinstatement and Replacement Insurance")

The *Vic Reinstatement and Replacement Insurance* policy must ensure that the interests of mortgagees are noted.³⁷⁸

If a building on a plan of subdivision is located above or below common property, a reserve or a lot, the owners corporation must take out *Vic Reinstatement and Replacement Insurance* for all buildings on each lot.³⁷⁹

³⁷¹ *Subdivision (Registrar's Requirements) Regulations 2011* (Vic) r 11.

³⁷² *Subdivision Act 1988* (Vic) Ibid s 30.

³⁷³ *Owners Corporations Act 2006* (Vic) s 4(c).

³⁷⁴ Ibid s 56.

³⁷⁵ Ibid s 59.

³⁷⁶ Ibid s 59(2)(a).

³⁷⁷ Ibid s 59(2)(b).

³⁷⁸ Ibid s 59(3).

³⁷⁹ Ibid s 61.

Vic Physical Scope

For multi-storey strata properties, the *Vic Reinstatement and Replacement Insurance* policy must cover all buildings on a lot or common property.³⁸⁰

For other strata properties, the *Vic Reinstatement and Replacement Insurance* policy must cover all buildings on the common property.³⁸¹

An insurable building is defined as including any building on the plan of subdivision and any improvements and fixtures forming part of the building, and any shared services and anything prescribed as forming part of a building.³⁸² 'Shared services' are defined as including any pipes or cables used to provide services including water, electricity, gas and telecommunications to the building that are shared with a person other than the owners corporation or any of its members.³⁸³

However, an insurable building does not include:³⁸⁴

1. Carpet and temporary floor, wall and ceiling coverings;³⁸⁵
2. Fixtures removable by a lessee at the end of a lease;³⁸⁶
3. Anything prescribed as not forming part of a building.³⁸⁷ The regulations do not appear to prescribe any further items that do not form part of an insurable building.³⁸⁸

Vic Public Liability Insurance

An owners corporation must take out public liability insurance in respect of any bodily injury to, or death, or illness, of a person and any damage to, or loss, of property which is sustained as a result of an occurrence, or happening, in connection with the common property for at least \$10 million for any one claim or in the aggregate during any one period of insurance.³⁸⁹

Vic Exemptions

There are a range of exemptions to the duties to obtain the mandatory insurance:

1. An owners corporation is not required to take out insurance over single storey buildings on lots.³⁹⁰

³⁸⁰ Ibid s 61(1)(a).

³⁸¹ Ibid s 59(1).

³⁸² Ibid s 54 'building'.

³⁸³ Ibid s 54 'shared services'.

³⁸⁴ Ibid s 54 'building'.

³⁸⁵ Ibid s 54(c).

³⁸⁶ Ibid s54(d).

³⁸⁷ Ibid s 54(e).

³⁸⁸ *Owners Corporations Regulations 2018* (Vic).

³⁸⁹ *Owners Corporations Act 2006* (Vic) s 60.

³⁹⁰ Ibid s 61(2).

2. An owners corporation is not required to take out insurance over lots in plans of subdivision registered under the *Cluster Titles Act 1974* (Vic) or *Strata Titles Act 1967* (Vic) unless one or more of the lots is located above another lot.³⁹¹
3. If there is no common property, the owners corporation may resolve that each lot owner must arrange for the lot owner's own insurance.³⁹²
4. If the owners corporation's land is affected by another owners corporation which has the insurance required by the insurance division then the owners corporation does not need to insure.³⁹³

Vic Additional insurance

The owners corporation may by ordinary resolution resolve to insure any additional insurable interest in the land affected by the owners corporation and relating to its performance of its functions.³⁹⁴

Vic Insurance Premiums

The owners corporation has the power to set annual fees to cover insurance.³⁹⁵

Vic Insurance Claims

The legislation does not prescribe how an insurance claim may be made, or by whom.³⁹⁶ Nor does it address who is liable to pay the excess for an insurance claim.³⁹⁷

Vic Application of Insurance Money

Any amounts received by an owners corporation under an insurance policy in respect of the damage or destruction of property covered by an approved maintenance plan, must be paid into the owners corporation's maintenance fund.³⁹⁸

Vic Disclosure obligations

The agenda for every annual general meeting must provide the details of the insurance held by the owners corporation.³⁹⁹

In addition, the owners corporation has a duty to keep records of its insurance policies.⁴⁰⁰ On its owners corporation register, it must keep the following details of insurance policies that it takes out:⁴⁰¹

³⁹¹ Ibid.

³⁹² Ibid s 63.

³⁹³ Ibid s 64.

³⁹⁴ Ibid s 62.

³⁹⁵ Ibid s 23.

³⁹⁶ *Owners Corporations Act 2006* (Vic).

³⁹⁷ Ibid.

³⁹⁸ Ibid s 42.

³⁹⁹ Ibid s 71(2)(c).

⁴⁰⁰ Ibid s 144.

⁴⁰¹ Ibid s 148(j).

1. the name of the insurance company;⁴⁰²
2. the number of the insurance policy;⁴⁰³
3. the nature of the risk insured;⁴⁰⁴
4. the amount of insurance;⁴⁰⁵
5. the due date of the premium;⁴⁰⁶
6. the date that the premium was last paid.⁴⁰⁷

Any owners corporation certificate issued by the owners corporation must include the prescribed details relating to insurance,⁴⁰⁸ namely:

1. the name of the insurance company;⁴⁰⁹
2. the number of the policy;⁴¹⁰
3. the kind of policy;⁴¹¹
4. the buildings covered;⁴¹²
5. the building amount;⁴¹³
6. the public liability amount;⁴¹⁴
7. the renewal date.⁴¹⁵

Vic Developer Obligations

The developer must provide the owners corporation at its first annual general meeting with any insurance policies in force in relation to the property.⁴¹⁶

Vic Mortgage Insurance

Mortgagees can only require lot owners to obtain extra insurance to cover the difference between the mortgage amount and any amount already covered by the mortgagee's interest in the owners corporation's insurance.⁴¹⁷

In calculating any amount payable under an insurance policy taken out by an owners corporation, any amount payable under an insurance policy taken out by a lot owner over that lot or the lot owner's interest in the common property must be disregarded.⁴¹⁸

⁴⁰² Ibid s 148(j)(i).

⁴⁰³ Ibid s 148(j)(ii).

⁴⁰⁴ Ibid s 148(j)(iii).

⁴⁰⁵ Ibid s 148(j)(iv).

⁴⁰⁶ Ibid s 148(j)(v).

⁴⁰⁷ Ibid s 148(j)(vi).

⁴⁰⁸ Ibid s 151(4)(iv).

⁴⁰⁹ *Owners Corporations Regulations 2018* (Vic) r 16(f)(i).

⁴¹⁰ Ibid r 16(f)(ii).

⁴¹¹ Ibid r 16(f)(iii).

⁴¹² Ibid r 16(f)(iv).

⁴¹³ Ibid r 16(f)(v).

⁴¹⁴ Ibid r 16(f)(vi).

⁴¹⁵ Ibid r 16(f)(vii).

⁴¹⁶ *Owners Corporations Act 2006* (VIC) s 67(h).

⁴¹⁷ Ibid s 58.

⁴¹⁸ Ibid s 57.

Vic Valuations

A 'prescribed owners corporation' (being an owners corporation that affects more than 100 lots or raises funds of more than \$200k per annum) must obtain a valuation of all buildings that it is required to insure.⁴¹⁹ A prescribed owners corporation must obtain a valuation every five (5) years or earlier as determined by the owners corporation.⁴²⁰

Vic Lot Owner Duties

Nothing in the legislation or the regulations limits the right of a lot owner to effect a policy of insurance in respect of destruction of or damage to the lot owner's lot or the lot owner's interest in the common property.⁴²¹

Model Rule 5.1 says that an owner or occupier of a lot must give written notification to the owners corporation if the owner or occupier changes the use of the lot in a way that will affect the insurance premiums for the owners corporation.⁴²²

2021 Victorian Strata Legislation Amendments

The *Owners Corporations and Other Acts Amendment Act 2021* (Vic) will come into effect on 1 December 2021 unless proclaimed to come into operation on an earlier day.⁴²³

It will have the effect of amending the insurance provisions of the *Owners Corporations Act 2006* (Vic) in the following ways:

1. the purposes of the legislation will include a new purpose of allowing owners corporations to levy fees to cover the premiums for reinstatement and replacement insurance or for any excess amount on an insurance claim;⁴²⁴
2. the minimum amount of public liability cover will increase from \$10 million to \$20 million,⁴²⁵ in line with the minimum public liability cover required in NSW;
3. five 'tiers' of owners corporations will be created based on the number of occupiable lots affected by the owners corporation;⁴²⁶
4. there is an addition that provides for an owners corporation that is responsible for a particular multi-level development building within a scheme to take out Vic Building Insurance;⁴²⁷
5. there is an addition that expressly empowers an owners corporation to levy a lot owner:

⁴¹⁹ Ibid s 65(1).

⁴²⁰ Ibid s 65(2).

⁴²¹ Ibid s 55.

⁴²² *Owners Corporations Regulations 2018* (VIC) rule 5.1 sch 2.

⁴²³ *Owners Corporations and Other Acts Amendment Act 2021* (Vic) s 2.

⁴²⁴ Ibid s 1(a)(iii).

⁴²⁵ Ibid s 30.

⁴²⁶ Ibid s 5.

⁴²⁷ Ibid s 31.

- a. an insurance excess amount for a claim that is caused by a 'culpable or wilful' act or the gross negligence of a lot owner, lessee or guest;⁴²⁸
 - b. the cost of damage to common property caused by a lot owner or its lessee where the damage is not covered by insurance, is less than the excess amount to make an insurance claim or solely relates to the lot owner's lot;⁴²⁹
6. owners corporations for plans of subdivision with multiple single-storey dwellings with common property will be able to pass a unanimous resolution that each lot owner is responsible to insure their lot;⁴³⁰
7. managers must disclose by written notice to the chairperson of the owners corporation, the commission received by it for any insurance contract placed on behalf of the owners corporation, in the manner of a percentage of the premium, rather than the actual amount of the commission.⁴³¹ If the percentage of the commission changes, the manager must make further disclosure in writing to the chairperson of the owners corporation.⁴³² Failure to make written disclosure shall amount to a breach of the manager's statutory duties;⁴³³
8. all owners corporations, except for 'tier five' owners corporations (for 2-lot subdivisions or services-only), will have a statutory duty to obtain a valuation of all buildings that they are liable to insure.⁴³⁴ In schemes with multi-level developments, an owners corporation must only obtain a valuation for the particular multi-level development for which it is liable to insure.⁴³⁵

Western Australia (WA)

WA Legislation

Strata Titles Act 1985 (WA)

Strata Titles (General) Regulations 2019 (WA)

In WA, a strata company is established for a strata titles scheme on registration of the strata titles scheme and its members are comprised of the owners of the strata title lots in the scheme.⁴³⁶

The common property in a strata scheme is generally defined by reference to a residual definition, being any part of the parcel of land subdivided by the strata titles scheme, that does not form part of a lot.⁴³⁷

⁴²⁸ Ibid s.13(3)(a).

⁴²⁹ Ibid s 13(b), s 13(c).

⁴³⁰ Ibid s 32.

⁴³¹ Ibid s 54.

⁴³² Ibid.

⁴³³ Ibid.

⁴³⁴ Ibid s 33.

⁴³⁵ Ibid.

⁴³⁶ *Strata Titles Act 1985 (WA)* s 14.

⁴³⁷ Ibid s 10.

WA Insurable Interest

The strata company has the power to enter into a contract of insurance relating to the insurable assets of its strata titles scheme and execute documents relating to the contract in its own name, as if it were the owner of the assets.⁴³⁸

WA Building Insurance

The strata company must ensure that all insurable assets of the scheme are insured against fire, storm and tempest (excluding damage by sea, flood or erosion), lightning, explosion and earthquake:

- (i) to replacement value; or
- (ii) to replacement value up to, for an event of a specified kind, a maximum amount specified in the contract of insurance that is a reasonable limitation in the circumstances.⁴³⁹

(“WA Replacement Insurance”)

A strata company has the ability to enter into a contract with a person under which the person owns and operates utility infrastructure or sustainability infrastructure on common property and in the strata titles scheme (“**Infrastructure Contract**”).

It is deemed to be a condition of every *Infrastructure Contract* that if the strata company is unable to obtain the mandatory insurance as a result of the presence of that infrastructure on common property, then the strata company can give a written notice to the infrastructure owner to either:

- (a) take or refrain from taking specified action⁴⁴⁰; or
- (b) pay that part of the insurance premium that is attributable to the risk associated with the presence of the infrastructure on the common property.⁴⁴¹

The strata company has a duty to negotiate with the infrastructure owner with a view to achieving a fair and reasonable outcome to such an issue.⁴⁴²

WA Physical Scope

‘Insurable assets’ that must be insured by a *WA Replacement Insurance* policy are defined as:⁴⁴³

1. the common property, including the fixtures and improvements on the common property; or

⁴³⁸ Ibid s 97(4).

⁴³⁹ Ibid s 97(1)(a).

⁴⁴⁰ *Strata Titles (General) Regulations 2019* (WA) r 70(2)(a), r 70(2)(b).

⁴⁴¹ Ibid r 70(2)(c).

⁴⁴² Ibid r 70(3).

⁴⁴³ *Strata Titles Act 1985* (WA) s 3.

2. the parts of scheme buildings that comprise lots in the scheme (including the paint and wallpaper); or
3. anything included in the definition of 'insurable assets' by the regulations, namely carpet and flooring coverings on and within common property that are not temporary and buildings on the parcel of a strata scheme (whether or not shown on the scheme plan).⁴⁴⁴

The definition of 'insurable assets' excludes:⁴⁴⁵

- a. fixtures or improvements on the common property that are not themselves common property; or
- b. carpet and temporary wall, floor and ceiling coverings in a scheme building; or
- c. fixtures removable by a lessee at the expiration of a tenancy; or
4. anything excluded from the definition of 'insurable assets' by the regulations, namely temporary wall, floor and ceiling coverings on common property.⁴⁴⁶

WA Public Liability Insurance & Workers Compensation

In addition to the duty to obtain a *WA Replacement Insurance* policy, the strata company must also be insured against damage to property, death, bodily injury or illness for which it could become liable in damages to an amount of not less than \$10 million.⁴⁴⁷

The legislation confirms that nothing in its insurance provisions derogates from any other requirement that may be imposed on the strata company to obtain mandatory insurance, for example, workers' compensation insurance.⁴⁴⁸

WA Exemptions

If a strata company has taken all reasonably practicable steps available to it to obtain the required *WA Replacement Insurance* policy, and no insurer is willing to enter into a contract of insurance on reasonable terms, then the strata company has an obligation to obtain whatever insurance it can obtain on reasonable terms that most closely meets the requirements of a *WA Replacement Insurance* policy.⁴⁴⁹

The WA State Administrative Tribunal also has the power to exempt a strata company from compliance with the requirement to obtain a *WA Replacement Insurance* Policy subject to any conditions in the exemption.⁴⁵⁰

Strata companies for single tier strata schemes⁴⁵¹ have slightly different insurance obligations. They are required to obtain public liability insurance and insurance for insurable assets that

⁴⁴⁴ *Strata Titles (General) Regulations 2019* (WA) r 9.

⁴⁴⁵ *Strata Titles Act 1985* (WA) s 3.

⁴⁴⁶ *Strata Titles (General) Regulations 2019* (WA) r 9.

⁴⁴⁷ *Strata Titles Act 1985* (WA) s 97(1)(b).

⁴⁴⁸ *Ibid* s 97(6)(c).

⁴⁴⁹ *Ibid* s 97(3).

⁴⁵⁰ *Ibid*.

⁴⁵¹ *Ibid* cl 3 sch 2A - being strata schemes in which no lot or part of a lot is above or below another lot.

are within the common property in the single tier strata scheme unless there is no common property, or they have passed a resolution without dissent determining that the strata company does not need to insure insurable assets that are within the common property in the single tier strata scheme.⁴⁵² A lot owner has the right to serve a written notice on a single tier scheme strata company which has the effect of revoking any resolution without dissent not to obtain the mandatory insurance.⁴⁵³

WA Additional insurance

The strata company has the power to obtain other insurance in its capacity as a body corporate.⁴⁵⁴

WA Insurance Premiums

The strata company has a general duty to establish an administrative fund which includes funds to pay for insurance premiums.⁴⁵⁵

A strata company for a single tier strata scheme with no administrative fund has the power to require lot owners to pay their unit entitlement share of the insurance premium or If the scheme's by-laws provide for a different basis for levying contributions, they may be raised in accordance with that basis.⁴⁵⁶

WA Insurance Claims

The Tribunal has the power to make orders requiring a strata company to pursue a particular insurance claim.⁴⁵⁷ In addition, if the Tribunal is satisfied that the amount of insurance cover is either inadequate or excessive, it has the power to vary the amount of insurance cover that the strata company must maintain.⁴⁵⁸

WA Application of Insurance Money

A strata company must apply any money received from an insurer in respect of damage or destruction to an insurable asset of the strata title scheme, to the rebuilding, replacing, repairing or restoring of the insurable asset, as far as it can lawfully be done.⁴⁵⁹ This duty applies unless the strata company relates to a survey strata scheme and the strata company passes a resolution without dissent determining that the insurance money shall be used or distributed otherwise, but only where the damaged insurable asset is left in a safe condition.⁴⁶⁰

⁴⁵² Ibid cl 53C sch 2A.

⁴⁵³ Ibid.

⁴⁵⁴ Ibid s 97(7)(b).

⁴⁵⁵ Ibid s 100(1)©.

⁴⁵⁶ Ibid cl 53E sch 2A.

⁴⁵⁷ Ibid s 200(2)(l)(iii).

⁴⁵⁸ Ibid s 200(2)(l)(iv), s 204(c).

⁴⁵⁹ Ibid s 97(5).

⁴⁶⁰ Ibid s 97(6).

If a scheme building is damaged or destroyed, the Tribunal has the power to make an order with respect to varying the existing strata scheme, which includes the power to make directions about the application of insurance money received by the strata company.⁴⁶¹

WA Owners Corporation Disclosure Obligations

The strata company has a duty to keep a copy of each insurance contract entered into by it on its records for at least twenty years.⁴⁶² Although the strata company has a duty to maintain a strata roll, it is not required to keep insurance information on that strata roll.⁴⁶³ A person with a proper interest in the information, or their authorised agent, is entitled to make an application to inspect the insurance contracts on the strata company's records.⁴⁶⁴ The strata company must make those records available for inspection to an eligible applicant, subject to any applicable fee payable being paid.⁴⁶⁵

It must also ensure that details of any insurance contracts maintained by it, including the insurer's name, the contract number, the type of cover and the expiry date, is included in any certificate issued by it under s110 of the *Strata Titles Act 1985* (WA).

At every annual general meeting, there must be an item of business presenting copies of certificates and schedules for the mandatory insurance required to be held by the strata corporation as at the date of the meeting.⁴⁶⁶

WA Developer Obligations

The developer of the scheme has a general duty to ensure that all of the key documents that it possesses or controls are given to the strata company at its first annual general meeting.⁴⁶⁷

WA Mortgage Insurance

A lot owner is permitted to enter into a contract of mortgage insurance against damage or destruction to a lot or a building or other improvement on the lot, for an amount equal to the amount secured by the mortgage over the lot ("**WA Mortgage Insurance**").⁴⁶⁸

The insurer for a *WA Mortgage Insurance* policy has a duty to make payments under the policy to the mortgagee named in the contract, subject to any terms and conditions of the contract.⁴⁶⁹ The insurer is then entitled to an assignment of all, or transfer of part, of the mortgage in proportion to the amount paid to the mortgagee.⁴⁷⁰

⁴⁶¹ Ibid s 166.

⁴⁶² Ibid s 104(1)(c)(vii)(II), *Strata Titles (General) Regulations 2019* (WA) r 83.

⁴⁶³ *Strata Titles Act 1985* (WA) s 105.

⁴⁶⁴ Ibid s 107.

⁴⁶⁵ Ibid s 109.

⁴⁶⁶ Ibid s 127(3).

⁴⁶⁷ Ibid s 78.

⁴⁶⁸ Ibid s 84(1).

⁴⁶⁹ Ibid s 84(2).

⁴⁷⁰ Ibid s 84(2)(c).

A *WA Mortgage Insurance* policy is not liable to be brought into contribution with any other *WA Mortgage Insurance* policy unless both contracts cover the same lot and relate to the same mortgage debt.⁴⁷¹

WA Valuations

There is no duty on the strata corporation to obtain a valuation for the purposes of a *WA Replacement Insurance* policy.

However, as part of any proposal to terminate a strata scheme there is detailed duty to obtain a termination valuation report which must be prepared and certified by a licensed valuer setting out a valuation for the market value of each lot in the strata title scheme as part of any proposal for the termination of the strata scheme.⁴⁷² The regulations specify that the market value of a lot must be determined using a 'sales comparison approach' taking into account relevant recent sales history, the highest and best use of the lot and the value attributable to the lot owner's interest in the common property of the strata titles scheme.⁴⁷³

WA Lot Owner Duties

If it is reasonably necessary, in order for a strata company to obtain the mandatory insurance on reasonable terms, it may give written notice to a lot owner, requiring it to take or refrain from taking specific action within a specified period or to pay a specified amount equal to that part of the insurance premium that is attributable to risk within the lot owner's control, within a specified period.⁴⁷⁴ If a lot owner receives such a notice from the strata corporation, the lot owner may negotiate with the strata company to enable the required insurance to be obtained on reasonable terms.⁴⁷⁵ The strata company has a duty to negotiate with the lot owner with a view to achieving a fair and reasonable outcome.⁴⁷⁶

If a strata company fails to obtain the mandatory insurance, then a lot owner may obtain the mandatory insurance in the strata company's name and apply to the Tribunal to recover the costs incurred as a debt from the strata company.⁴⁷⁷

New Zealand (NZ)

NZ Legislation

Unit Titles Act 2010 (NZ)

Unit Titles Regulations 2011 (NZ)

⁴⁷¹ Ibid s 84(3).

⁴⁷² Ibid s 179(3).

⁴⁷³ Ibid s 179(4), *Strata Titles (General) Regulations 2019* (WA) r 117.

⁴⁷⁴ *Strata Titles Act 1985* (WA) s 98(1).

⁴⁷⁵ Ibid s 98(2).

⁴⁷⁶ Ibid s 98(3).

⁴⁷⁷ Ibid s 99.

NZ Insurable Interest

The body corporate, every unit owner and every mortgagee of a unit is deemed to have an insurable interest in the property covered by the NZ Principal Insurance Policy.⁴⁷⁸

NZ Building Insurance

A body corporate has a duty to insure all buildings and other improvements on the base land to their full insurable value ("**NZ Principal Insurance**").⁴⁷⁹ If full replacement cover is not available in the market, then indemnity cover is permitted.⁴⁸⁰

The legislation prescribes how an insurer may cancel a *NZ Principal Insurance* policy, namely:

1. It shall remain in full force and effect until the insurer serves a notice on the body corporate or its insurance broker and any mortgagee to the effect that the policy will lapse or be cancelled within a specified time;⁴⁸¹
2. If the insurer considers that a unit owner or mortgagee is in default under the policy, the notice must state that the lapsing or cancellation of the policy unless the default is remedied by the date specified in the notice.⁴⁸²

NZ Physical Scope

The *NZ Principal Insurance* policy must cover all buildings and other improvements on the base land. The base land is generally the parcel of land that is subdivided into a unit title development.⁴⁸³

NZ Public Liability Insurance

In NZ, there is no obligation on a body corporate to take out public liability insurance due to the existence of the accident compensation corporation's no-fault scheme for injuries caused by accidents under the *Accident Compensation Act 2001*.

A body corporate must take out any other insurance it is required by law to take out.⁴⁸⁴

NZ Exemptions

If the principal and accessory units in a unit plan are stand-alone units, a body corporate may pass a special resolution at a general meeting requiring each unit owner to insure all the improvements within their unit boundaries.⁴⁸⁵ However, the body corporate still remains responsible for insuring all improvements within the boundaries of common property.⁴⁸⁶

⁴⁷⁸ *Unit Titles Act 2010* (NZ) s 134(3).

⁴⁷⁹ *Ibid* s 135(1).

⁴⁸⁰ *Ibid* s 137(2)(b).

⁴⁸¹ *Ibid* s 136(1).

⁴⁸² *Ibid* s 136(3).

⁴⁸³ *Ibid* s 5.

⁴⁸⁴ *Ibid* s 135(1).

⁴⁸⁵ *Ibid* s 137(1).

⁴⁸⁶ *Ibid* s 137(2).

NZ Additional Insurance

A body corporate has the power to take out any additional insurance if it considers it practical to do so.⁴⁸⁷

NZ Insurance Premiums

There is no express reference in the legislation to the insurance premiums.⁴⁸⁸

NZ Insurance Claims

There is no express reference in the legislation to how insurance claims can or must be made.⁴⁸⁹

NZ Application of Insurance Money

Any money paid by an insurer under a *NZ Principal Insurance* policy must be applied towards the reinstatement of the unit title development unless the body corporate decides otherwise by special resolution.⁴⁹⁰ Mortgagees are prohibited from demanding that insurance money be used to pay their mortgage debt if the insurance money is being applied towards reinstatement of the unit.⁴⁹¹

The District Court has jurisdiction to hear and determine unit title disputes relating to the application of insurance money for amounts up to and including \$50,000.⁴⁹² For amounts over \$50,000, the High Court has jurisdiction.⁴⁹³

NZ Disclosure Obligations

The body corporate has a duty to make copies of all current insurance policies held by the body corporate in respect of the buildings and improvements on the base land to any unit owner who requests copies, within a reasonable time and subject to reasonable costs incurred in providing the documents being payable.⁴⁹⁴

In addition, if a buyer of a unit requests an additional disclosure statement from the body corporate, then the statement must include the following details of every current insurance policy held by the body corporate:⁴⁹⁵

- (i) the name of the insurer;⁴⁹⁶ and

⁴⁸⁷ Ibid s 35(2).

⁴⁸⁸ *Unit Titles Act 2010* (NZ).

⁴⁸⁹ Ibid.

⁴⁹⁰ Ibid s 136(4).

⁴⁹¹ Ibid s 136(6).

⁴⁹² Ibid s 172(2).

⁴⁹³ Ibid s 173(1A).

⁴⁹⁴ Ibid s 206(1)(b).

⁴⁹⁵ *Unit Titles Regulations 2011* (NZ) r 35(f).

⁴⁹⁶ Ibid r 35(f)(i).

- (ii) the type of policy;⁴⁹⁷ and
- (iii) the amount of the current premium;⁴⁹⁸ and
- (iv) the amount of any excess payable under the policy.⁴⁹⁹

The body corporate has an ongoing duty to inform the insurer in writing of the name and address of every unit owner and mortgagee.⁵⁰⁰

Before any additions or structural alterations are made to any unit by the body corporate or a unit owner, the body corporate must notify its insurer of the work before it starts.⁵⁰¹

NZ Developer Obligations

There does not appear to be any obligations on the developer in regards to insurance.

NZ Mortgage Insurance

Lot owners are entitled to take out an insurance policy against destruction or damage to their unit.⁵⁰²

Mortgagees are entitled to require a unit owner, as a condition of their mortgage, to effect a mortgage redemption policy (“**NZ Mortgage Redemption**”) to indemnify the unit owner against liability to repay the whole or any part of the mortgage debt in the event of destruction or damage to the unit.⁵⁰³

NZ Lot Owner Duties

Payments made under a *NZ Mortgage Redemption* policy must be made to ⁵⁰⁴ the relevant mortgagee.⁵⁰⁵ *NZ Mortgage Redemption* policies may not be brought into contribution with any other insurance policy except another mortgage redemption policy taken out in respect of the same debt.⁵⁰⁶

NZ Valuations

There is no duty on the body corporate to obtain a valuation for the purposes of the *NZ Principal Insurance* policy.

⁴⁹⁷ Ibid r 35(f)(ii).

⁴⁹⁸ Ibid r 35(f)(iii).

⁴⁹⁹ Ibid r 25(f)(iv).

⁵⁰⁰ *Unit Titles Act 2010* (NZ) s 134(5).

⁵⁰¹ Ibid s 135(3).

⁵⁰² Ibid s 137(1)(a).

⁵⁰³ Ibid s 137(1)(b).

⁵⁰⁴ Ibid s 137(3).

⁵⁰⁵ Ibid s 137(3).

⁵⁰⁶ Ibid s 137(4).

APPENDIX B

GOODS AND SERVICES TAX ON INSURANCE PREMIUMS IN AUSTRALIA AND NEW ZEALAND

	AU (Cth)	NZ	Comments
Legislation	A New Tax System (Goods and Services Tax) Act 1999 ("GSTA99"). Main rules in Div.78. A New Tax System (Goods and Services Tax) Regulations 2019 ("GSTR19")	Goods and Services Act 1985 [NZ] ("GSTA85").	NZ: some aspects of new guidance (3 rd party output tax)
Body Corporate (BC): Definition, Registration and Legal Status	BC includes strata title bodies corporate established under Acts, such as Conveyancing and Law of Property Act 1884 [TAS], see ATO, MT 2006/1, [32]. BC is an "entity" for GST purposes considered to be carrying on an enterprise by providing services to members: ss 23-5, 23-10, 184-1 GSTA99. BC registration compulsory for BCs where turnover ≥ \$75,000: s23-15(2)(b) GSTA99 & s23-15.01 GSTR19. BC includes non-profit bodies. "Non-profit" is not defined. ATO considers it means BC prevented from distributing profit among members by constituent documents/law/previous conduct, etc: ATO ID 2016/1. See also Taxation Ruling IT 2505. <i>Body Corporate, Villa Edgewater Cts 23092 v FCT</i> 2004 ATC 2056 & ATO GSTD 2006/6 (reference to business-like activities not carried out for profit) BC registration voluntary for non-profit if GST turnover ≤ \$150,000: s23-15(1)(b) GSTA99 & s23-15.02 GSTR19. There is a registration requirement for claiming input tax credits.	BC: legal entity created under Unit Titles Act 2010. From 24/02/2016, amounts & levies paid to BC by members are consideration for services supplied by the BC: s5(8A) For registration purposes, all amounts supplied to members from total supplies made are excluded, which means that if BC only makes supplies to members, it can voluntarily register for GST but not required to so do: s5(8AB) & s51(1) Definition of "Unit Title Body Corporate" (retirement villages excluded): ss 2 & 5(8AB). Base protection measures: - From 26/2/2015, when BC decides or is required to register for GST, it is treated as receiving value of all assets/money that is not common property as exempt supplies (i.e. return GST equal to 3/23 of value of money & assets that are not commonly held): s5(8AB) - No input tax deduction for goods/services acquired pre-registration: s21B - No backdating of registration: s52(B) - Four-year lock in rule: s52(9)	<u>AU</u> : Registration automatic for BCs with turnover above certain threshold but threshold varies according to status of BC: non-profit (\$150,000) profit BC (\$75,000). Cf Income Tax Assessment Act 1997: strata title body cannot be a non-profit company for income tax purposes, see TR 2015/3. <u>NZ</u> : all amounts paid to BC are consideration and so supplies are taxable. However, only 3 rd party supplies (i.e. non-member supplies & 3 rd party settlements) count towards \$60,000 registration threshold. Various base protection measures due to the option to register for GST. Note that "look-through" rule proposed in 2014 to treat taxable supplies received by BC to be provided directly to unit owners in proportion to their ownership interest with the result that GST registered unit owners could back GST on supplies provided to the BC by third parties (e.g. insurance) to the extent these related to the unit owner's taxable supply. However, "look-through" never adopted, see Todd McClay, "GST treatment of bodies corporate: A government discussion document" (IR, June 2014).
Insurance Policy/ Insurance Definition	A policy of insurance or reinsurance against loss, damage, injury, risk of any kind, whether or not under a contract or a law. Such a policy MUST relate to insurance (or reinsurance) against loss, damage, injury or risk of any kind: s195-1 GSTA99 GSTR 2006/1 ATO, [38]-[46] considers insurance has these features: insurer has primary liability, bears risk of loss and has no right to be reimbursed; contract made in utmost good faith & insured must disclose anything relevant; insured must not profit from contract; usually made in commercial context & insurer receives premium; insurer must be authorised to carry on insurance business.	Insurance means insurance or guarantee against loss, damage, injury or risk of any kind whatsoever, whether pursuant to any contract or enactment; and includes reinsurance: s2(1), GSTA85	<u>AU</u> : All insurance except life insurance is general insurance. Defines insurance policy but not insurance. Therefore, non-tax definitions apply. It includes reinsurance. <u>NZ</u> : defines insurance. Includes reinsurance but warranty not included.
Included in insurance	Warranty (unless it has character of guarantee/indemnity). Not listed as financial supply in s40-5.09 GSTR19		<u>AU</u> : warranty (unless has features of guarantee indemnity)
Excluded from insurance	Guarantee & indemnity are both financial supplies: s40-5.09 GSTR19	Warranty payments: <i>CIR v Motorcorp Holdings Ltd.</i> (2005) 22 NZTC 19,126	<u>AU</u> : need to distinguish warranty from guarantee/indemnity, which are financial supplies.
Contract of Insurance (COI)	No definition but see ATO view on nature of insurance ("Insurance Policy/ Insurance Definition" above)	COI includes a policy of insurance, insurance cover & a renewal of a contract of insurance provided that nothing in the definition of COI applies to s3, which refers to certain types of insurance that fall within the definition of financial	

	AU (Cth)	NZ	Comments
		services (i.e. life insurance & reinsurance of life insurance have a distinct GST treatment)	
Supply	Any form of supply whatsoever, including supply of goods, services, financial supply, entry into, or release from, obligation to do anything: s9-10	Supply includes all forms of supply: s5(1)	
Rate	10%	15%	
Gen. Insurance: Taxable Supply?	Yes (as not a financial supply) where: insurer (required to be) registered, relevant connection with AU, & supply in furtherance of enterprise of insurer. For non-financial supplies: s40-5.12 GSTR19. General insurance Item 10.	Yes (it is not the supply of a financial service; s3 only covers life insurance)	<u>AU & NZ</u> : provision of general insurance is supply of a service subject to the normal rules (i.e. not a financial supply / service).
Other	Reinsurance is a taxable supply: Item 10, s40-5.12 GSTR19 Gen. Ins. Brokerage is a taxable supply: Item 11, s40-5.12 GSTR19	Reinsurance is a taxable supply: s2(1)	<u>AU & NZ</u> : provision of reinsurance is supply of a service subject to the normal rules (i.e. not a financial supply/service).
Included in Taxable Supply	Levy inclusion unclear but CCH suggests levies are included as there is no express carve out as there is with duty: s78-5 Default rule is that Australian fees & charges are not consideration, so not a supply: s81-10(1). If fee or charge is prescribed or addressed in regulations, there is no consideration/supply: ss 81-10 & 81-15; s81-15.01(1)(d) GSTR19	Fire Service Levy charged under FENZ 2017 is subject to GST as it is considered to be consideration for a supply of services to the levy payer: s5(6AB) Shortfall penalty and interest are not included in the supply.	<u>AU</u> : It's possible that levies are non-regulatory (s81-10.01(1)(g)) BUT they might also fall under ss 81-15.01(c)&(d) & 81-15.02 GSTR19, so not consideration. See ATO Class Ruling 2013/1, which references NSW & aspects of its emergency services levy that are exempt from duty. Note: if levy classified as a tax, more likely exempt.
Excluded from Taxable Supply	Duty an express carve out: s 78-5. See ATO Practice Statement – PS LA 2013/2 (GA): “GST Treatment of Australian Fees and Charges under Division 81, A New Tax System (Goods and Services Tax) Act 1999”	No stamp duty as of 20/5/1999. But GST wasn't payable on stamp duty when it did exist.	<u>AU</u> : More likely than not that levies are excluded but requires further consideration (see above).
Relevant Connection with AU/NZ	Supply must be connected with indirect tax zone (s9-27) to be a taxable supply. Degree of connection varies but for property insurance: insurance done in AU ; insurer provides a supply through an enterprise that it carries on in AU ; or insurance provider provides insurance to an AU consumer : s9-25(5)(d) GSTA99. <ul style="list-style-type: none"> “insurance done in AU”: executed; completed; performed; location where obligation entered into (GSTR 2000/31). “enterprise that it carries on in AU”: enterprise carried on (i) by one or more people in AU & (ii) through a fixed place in AU; or entity carried on (or intends to carry on) through one or more places in AU for more than 183 days in 12-month period. “AU consumer”: entity is AU resident & not registered or is registered but does not acquire insurance solely or partly for the purposes of enterprise that it carries on (s84-100 GSTA99) See also: ATO Law Companion Guideline LCG 2016/1	Supply made in NZ generally determined by residence of supplier. NR supplier: general rule is that if services physically performed in NZ = NZ supply. However, an exception is supply made to registered person for use in taxable activity, then deemed to be outside NZ & no input/output tax. An exception to the exception is where there is an agreement between NR & registered person to the contrary: ss 8(3)(b) & 8(4) BUT special remote service rules apply NR supply of insurance (s8(3)(c)): as of 1 Oct. 2016 <u>must</u> register for GST where taxable supplies > \$60,000. “Offshore registration model” where insured is not GST registered (i.e., <u>resident consumers</u>). <u>Remote Services</u> defined in s2: at time of performance of service, has no necessary connection between (a) place where service performed & (b) location of recipient of the services (ss 8(3)(c) & (4)(d)). If NR chooses to treat services as being supplied in NZ under s8(4)(D), supply of insurance is zero-rated (s11A(1)(x)) unless NR supplier provides a tax invoice under s24(5B).	<u>AU</u> : insurance effected in AU; provided through an enterprise carrying on business in AU; supply to Australian consumer <u>NZ</u> : general rule is service performed in NZ = supplied in NZ. Previous position re: NRs has been amended as of 1/10/16 for remote services (incl insurance) such that NR required to register where taxable supplies > \$60,000 where insured is not GST registered. Where insured is registered registration for NR supplier is optional (no need for agreement between resident registered person & NR supplier for remote services, incl. insurance) – in such a case the supply will be zero-rated unless tax invoice issued by NR.

	AU (Cth)	NZ	Comments
		Agent resident who acts for NR insurer and supplies remote services to NZ consumers can agree to make the supply part of agent's taxable activity & thus return GST on all relevant supplies: ss60(1A) & (1AB)	
Overseas Insurer	Where NR supplies service to Australian consumer (i.e. non-registered or registered and acquires insurance for private purposes) = connected with indirect tax zone: s9-25(5)(d) Where NR supplies insurance to GST registered person for purposes of taxable activity (i.e. not an Australian consumer) & this is either treated as being "done in AU" or the supply of the service is carried on through enterprise that insurer carries on in AU = connected with indirect zone: s 9-25(5)(d) GSTA99	NR insurer can apply to register as of 01/10/2016 where recipient GST registered. NR insurer = GST supply of insurance to NZ resident consumer. Input tax deduction possible when a claim arises & settlement of claim made. NR insurer supplying registered resident = no GST. However, can choose to treat supply as zero-rated such that no output tax on premium but non-resident insurer can claim input tax credit.	<u>AU</u> : where supply made to Australian consumer = connected, so satisfies part of supply test. Input tax credits available for premium & decreasing adjustments (DAs) for payout at relevant time. Where supply to GST registered, need to demonstrate insurance "done in AU" or carried on through enterprise that insurer carries on in AU to satisfy connection part of supply test. <u>NZ</u> : different treatment when insured is a consumer (GST supply) & when insured is a registered person (not a taxable supply, unless supplier chooses to treat as zero-rated).
Input Tax	Generally available where registered entity supplies insurance but varied rules where settlement payout (See DA below). Input tax credits available where entities make "creditable acquisitions." See GSTR 2000/15 for "Creditable purpose".	Input generally available as a taxable supply but different treatment for settlement/premium. WRT a registered person: tax charged under s8(1) on supply acquired & tax levied under s12(1) Customs and Excise Act 2018: s3A Input tax may be deducted to extent which goods/services used available for use in making taxable supplies: s20(3)	In relation to premium yes available in both but different rules apply for payouts.
Pooled Basis of Valuation	Yes. Divides supplies into premium & payout.	Yes. Divides supplies into premium & payout.	<u>AU & NZ</u> : different treatment for premium & settlement
Payouts/ Settlements of Claims to Insured and GST	General GST & specific insurance GST rules apply (https://treasury.gov.au/sites/default/files/2019-03/4gst.pdf) Money/Digital Currency/Supply : settlement of claim is <u>not</u> a taxable supply. So, <i>prima facie</i> , no output tax or input tax. However, DA available for inability to access input tax credits., 1/11 of GST inclusive settlement expenditure multiplied by the proportion of the premium that the insured was not entitled an input tax credit: ss 78-20 & 78-45 GSTA99 overriding s9-15 GSTA99 Non-Cash : different rules may apply where insurer pays third party supplier to provide goods/services to insured; depends on how acquisition arranged. See GSTR 2006/10	Unless s5(13B) (subrogation payment) or s20(3) apply, where a registered person (whether insured person or 3 rd party) receives payment for a loss while carrying on a taxable activity this constitutes a deemed supply & the registered person must return GST but can also claim an input tax credit of the payout = deemed supply: s5(13)	<u>AU</u> : aim of distinct treatment of settlement for the insurer, who pays money/digital currency, etc. Specifically DA method to enable net GST payable on insurance to better reflect insurer's margins after settlement of claims factored in. Payout is not a taxable supply, i.e. no output tax but it may be possible to get a DA for input tax. <u>NZ</u> : different treatment in relation to output tax depending on whether recipient is GST registered. However, the GST registered person basis does not apply where a supplier chose to treat their supply as being made in NZ per s8(4D) and that supplier supplies remote services that are zero-rated under s11A(1)(x). NB: the difference in treatment of payments as "not taxable supplies in AU" and as "deemed supplies" in NZ.
Decreasing Adjustments (DA)	Insurer has a DA if, in settlement of a claim under an insurance policy, the insurer makes one or more of: payment of money/digital currency/a supply: s78-10 GSTA99. <i>Not</i> available for non-creditable insurance events. Working out DA: - Ensure no entitlement to input tax credit for premium in period event arose <u>or</u> input tax credit available less than GST payable by insurer for the taxable supply. There will be no entitlement if insurer unregistered/no creditable transaction. Partial entitlement where	No DAs	<u>AU</u> : Non-creditable insurance events appear to be events that: - have been insured against - do not involve a taxable supply (health, life, overseas travel & exported insurance) - whose policy only covers the specific insurance event claimed against i.e. no DA to extent that supply insurance is not a taxable supply.

	AU (Cth)	NZ	Comments
	<p>acquisition partially creditable (e.g. insurance related to taxable & input taxed supplies).</p> <ul style="list-style-type: none"> - Ensure settlement doesn't relate to non-creditable ins. events: s78-10(3) - Ensure registered insurer/required to be registered - Ensure claim settled for creditable purpose - Ensure supply partly/wholly taxable supply - Ensure DA relates to period in which event giving rise to claim occurred - Disregard annual apportionment: s78-10(2A) - Disregard annual apportionment rules in ss 131-40, 131-50 & s78-10(2A) <p>Formula requires reference to ss 78-10 & 78-15</p>		
Increasing Adjustments (IAs) for Payments of Excess under Insurance Policies	<p>Insurer has IAs if: (i) payment of excess to insurer under policy; (ii) insurer makes, or has made, payments or supplies in settlement of claim under the policy; & (iii) insurer makes creditable acquisitions or creditable importations directly for the purpose of settling the claim: s78-18(1)</p> <p>IA Amount: 1/11 of the amount that represents the extent to which the payment of excess relates to creditable acquisitions & creditable importations made by the insurer directly for the purpose of settling the claim.</p>		
Insurance Pay Out Third Parties (not insured)	<p>No GST consequences for 3rd party, whether settlement of claim made by insured/insurer as the transaction is <u>not</u> considered to be "consideration for a supply" that involves a claim under an insurance policy with the entity that is not insured & payment is to discharge liability owed by the entity insured": ss 78-65 & 78-70</p>	<p>Feb. 2020, CIR released a Policy Issues Paper (CS 20/01) on IR position that <u>GST registered 3rd parties</u> who receive a payout under the insured person's policy, are liable to GST on the payout. Insurer is entitled to input tax credit when payment made in these circumstances. Unless s5(13B) (subrogation payment) or s20(3) apply, registered person receives payment for a loss while carrying on a taxable activity is a supply of services: s5(13)</p> <p>Non-registered BC, example of situation involving non-registered BC that received payout on behalf of members: BC claimed for damage & determined not to reinstate building & instead distributed payment amongst members in proportion to their interests. Majority of members registered. Inland revenue determined that BC was not registered & distribution by BC to registered members was not consideration. IRD, BR Pd 14/08.</p>	<p><u>AU</u>: No consideration in these circumstances & consideration is key component of taxable supply.</p> <p><u>NZ</u>: IR's recently stated position & s5(13) is that GST registered 3rd parties are liable to GST on the payout. However, see the position for non-registered third parties in Product Ruling BR 14/08 (not classified as constituting consideration).</p>
Calculation	<p>Amounts of GST & input tax credit are set off against each other to produce a net amount for a tax period (which may be altered to take into account adjustments): s7-5. Net amount for a tax period is worked out using the following formula: GST – input tax credits: s17-5(1)</p> <p>GST is the sum of all of the GST for which you are liable on the "taxable supplies" that are attributable to the tax period: s17-5(1)</p> <p>Net amount can be adjusted for the tax period – see above DAs & IAs: s17-5(2)(a)</p>	<p>In calculating the amount of tax payable in each taxable period, there shall be deducted from the amount of output tax of a registered person attributable to the taxable period *** i.e. credit offset basis: s20(3)</p> <p>Deduction from output tax: insurance payment by insurer to another person against loss where COI taxable supply is not zero-rated, recipient is not registered/resident in NZ. Input tax credit is 3/23 of insurance payment</p>	<p><u>AU</u>: input tax = net GST amount (adjustments to be taken in)</p> <p><u>NZ</u>: output – input tax = net GST payable / refundable (adjustments to be taken in)</p>

DUTIES ON STRATA INSURANCE PREMIUMS COLLECTED IN ALL AUSTRALIAN STATES & TERRITORIES (EXCEPT ACT)

	NSW	NT	QLD	SA	TAS	VIC	WA	Comments
Legislation Section references without more are a reference to these main acts.	Duties Act 1997 [NSW] ("DA")	Stamp Duty Act 1978 [NT] ("SDA"), Div. 6 Insurance Business	Duties Act 2001 [QLD] ("DA"), Chapter 8	Stamp Duties Act 1923 ("SDA"), Division 3 "Insurance"	Duties Act 2001 [TAS] ("DA"), Chapter 7	Duties Act 2000 [VIC] ("DA"), Chapter 8	Duties Act 2008 [WA] ("DA"), Chapter 4	<u>ACT</u> : no duty on premiums <u>NZ</u> : stamp duty abolished 20/5/99 <u>VIC & TAS</u> : considered to have broadly similar rules.
General Insurance	Type A Insurance includes: any kind of insurance that is applicable to property in NSW, or a risk, contingency or event concerning a risk, contingency or event concerning an act or omission that, in <i>normal course of events</i> , may occur within, or partly within, NSW, or both. <i>Excludes</i> : <ul style="list-style-type: none">life insurance/life insurance rider exempt from duty under s233(2): s230reinsurance is exempt from duty: s259(1)(k)	Undertaking if liability to make good, or indemnify against, loss or damage (including liability to pay damages or compensation) or insuring the payment of money, contingent upon the happening of a specified event & includes: accepting of a premium in consideration of granting, issuing or renewal of a policy of insurance; & the granting of a cover note or receiving a letter of declaration of interest attaching to a policy of insurance; & carrying out of means of insurance effected outside the Territory of a contract or undertaking in the Territory to effect that insurance. <i>Excludes</i> : reinsurance effected with another insurer: s4	<i>General insurance</i> applicable to property in Qld or a risk that may occur in Qld. but excludes life & accident insurance: s350 Class 2 General Insurance, general insurance that is not professional indemnity / personal injury on aircraft / motor vehicle / home mortgage on 1 st mortgage / life insurance rider: Sch.6 & s350 Reinsurance excluded. Exemption from duty: s376	<i>General insurer</i> is an insurer who carries on insurance business that is not life insurance: s32(1) Reinsurance excluded: s36(a)	<i>General insurance</i> any kind of insurance that is applicable to a property in Tasmania or a risk, contingency or event concerning an act or omission that, in the normal course of events, may occur within or partly within Tasmania or both: s163 General Insurer s178(2) Reinsurance excluded: s190(h)	Any kind of insurance that is applicable to (a) property in Victoria or (b) a risk, contingency or event concerning an act or omission that in the <i>normal course of events</i> may occur within or partly within Victoria or both (a) & (b): s176(1) Reinsurance exempt: s196(d) Div.5 lists exempt insurance duty.	Any kind of insurance that is applicable to (a) property in WA; or (b) risk, contingency or event concerning an act or omission that, in the normal course of events, may occur within, or partly within WA; or both: s209(1) Excludes reinsurance: s209(2)(c)	<u>NSW</u> : life insurance/life insurer rider excluded. Reinsurance exempt. "Normal course of events." <u>NT</u> : reinsurance excluded from insurance. <u>QLD</u> : Reinsurance excluded. Exemption from duty. <u>SA</u> : reinsurance excluded. Exemption from duty. <u>TAS</u> : reinsurance excluded. Exemption from duty. <u>VIC</u> : Normal course of events." Reinsurance exempt from duty. <u>WA</u> : Excludes reinsurance.
Premium	A premium for general insurance is a dutiable transaction	Gross amount charged or payable in respect of insurance: s4	The total consideration given to an insurer by or for the insured person to effect insurance per s353(1)	An amount paid or payable for insurance: s32(1)	Premium of general insurance given to an insurer or an insurance intermediary by or on behalf of the insured person to effect insurance: s164(1)	Gen. insurance premium given to insurer/insurance intermediary by (on behalf of) the insured person to effect	Total consideration paid to an insurer by on or behalf of an insured person to effect insurance: s211	

	NSW	NT	QLD	SA	TAS	VIC	WA	Comments
						insurance: s177(1)		
Premium Includes ESL = emergency services levy FSL = fire services levy	The total consideration given to an insurer by an insured person to effect insurance without deductions for commission/discount to insurance intermediary: s231(1) ESL & FSL: s231(2)	No deduction for commission/discount to an agent for securing/arranging insurance for or on behalf of insurer: s4 GST payable in relation to the supply of insurance: s4 An instalment of a premium: s4 So: commission/discounts/GST & instalments.	Any amounts paid or payable, allowed or allowable by way of commission or discount to an insurance intermediary: s353 So, includes commission/discounts/GST	Amounts paid or payable for ins. including amounts charged to offset, reimburse or defray insurer's liability for GST in respect of insurance; levy charged to policy holder; instalments & part premium: s32(1)	Commission discount to insurance intermediary: s164(1) FSL: s164(2)	Commission/discount to insurance intermediary: s177(1) FSL: s177(2) GST: s177(2A)	Commission/discount to insurance intermediary: s211 GST: s6 So, includes commission, discounts & GST.	<u>NSW</u> : includes commission/discount/ESL (all express). <u>SA</u> : GST (but capped at same level as input tax?), levy (but no ESL in SA) instalment & part premium included. <u>VIC</u> : same as TAS but no FSL in VIC BUT GST included in VIC not TAS.
Premium Excludes	Excludes an amount identifiable as a fee paid to an intermediary (express): s231(3) As noted above, no exemption for small businesses.	Stamp duty: s4	Fee: s353(2)(a) Duties: s353 (2)(b)	Duty: s34(5)(a) Refunded premiums: s34(5)(b)(i)	Amount paid to an insurance intermediary as a fee provided readily identifiable: s164(3) Duty under this or corresponding Act: s164(3)	Amount paid to an insurance intermediary as a fee provided readily identifiable: s177(3)(a) Duty: s177(3)(b)	Fee if readily identifiable: s211 Duty: s211	<u>NSW</u> : expressly excludes fees & duties under 1997 Act or corresponding Act. Note that IAG included GST in dutiable <u>NT</u> : reinsurance excluded from insurance. Does not have ESL so not included but fees not mentioned as forming premium or not? <u>QLD</u> : excludes fees & duties (same with NSW). <u>SA</u> : excludes duty. <u>TAS</u> : excludes fees & duty. <u>VIC</u> : Fee (provided readily identifiable as a fee) and duty are excluded. Same as TAS but VIC includes GST & VIC has no FSL. <u>WA</u> : Excludes fee & duty.
Rate or Manner in which Duty Calculated	Type A insurance: 9% of premium paid: s231(3)	10% on insurance (not life or Work Health Act): Sch.1	9% net insurance premiums: s362(1)(b) Class 2 General Insurance	11% of all premiums received by insurer in the previous month (various rules where premiums are credited to the account of but not actually received): s34(1)(b)	10% of the premium paid in relation to a contract of insurance: s166(1)	10% of the amount of the premium paid: s179	10% of premium, instalment, that is attributable to general insurance: s215	<u>NSW</u> : 10% <u>NT</u> : 10% <u>QLD</u> : 9% <u>SA</u> : 11% <u>TAS</u> : 10% (8% prior to 2012) <u>VIC</u> : 10% <u>WA</u> : 10%

	NSW	NT	QLD	SA	TAS	VIC	WA	Comments
				Special rules apply where premiums credited to the account of insurer but not actually received & the insurer does not include these premiums at the time: s34(3)&(4).				
Calculate	Premium + comm/discount + ESL = total Total x 10% Unclear whether GST included.	Premium + comm/discount + GST = total Total x 10% Unclear whether fees included.	Premium + commission/discount = total Total x 9% Unclear whether GST included.	Premium + GST (capped to level of insurer input credit) = total Total x 11% Unclear whether commission, discount or fees included.	Premium + commission / discount + FSL = total Total x 10% Unclear whether GST included.	Premium + commission / discount + GST = total Total x 10%	Premium + commission/discount + GST = total Total x 10%	<u>NSW</u> : no clear carve out for GST <u>NT</u> : unclear whether fees excluded <u>QLD</u> : unclear whether GST added <u>SA</u> : commission/discount included? <u>TAS</u> : GST added? <u>VIC & WA</u> : all relevant amounts expressly in/excluded in legislation
General Insurer			Insurance applicable to Qld property & risks/contingencies/acts/omissions that in normal course of events may happen wholly/partly in Qld: s350. General insurer must <u>not</u> carry on business in Qld unless registered under Ch.12, Pt.I: s369 Ins. intermediary is not a general insurer: s354(2)	An insurer who carries on insurance business that is not life insurance: ss 32(1) & 33(5)(b)	A general insurer is a person (a) who writes general insurance & (b) who does so otherwise than as an insurance intermediary & (c) who is authorised as a general insurer under the Insurance Act 1973 (Cth): s178(2)		Insurer authorised that is either (a)li) authorised under the Insurance Act 1973 (Cth); (ii) registered under the Life Insurance Act 1995 (Cth); (b) Insurance Commission of WA & any similar body of another State or a Territory that is prescribed for the purposes of this definition: s214	
Insurer	Person who writes general insurance & who does so otherwise than as an intermediary & who is authorised as a general	Person who grants, issues or renews policy of insurance in respect of which duty imposed: s4 AUS Insurer must be registered under Div.6	A person who is a general insurer of general & life insurer: Sch.6	Person who carries out ins. business: s32(1). Compulsory registration under Div.3. Carrying on ins. business in	Insurer is either life company that writes life insurance or a general insurer: s178(2)	An insurer is a person who writes general insurance & does so otherwise than	A person that writes general insurance otherwise than as an intermediary of an insurer: s206	<u>NSW</u> : Link with insured person liability & <i>Qantas</i> . <u>NT</u> : generic category & then AUS/overseas sub-categories with s44. <u>VIC</u> : writes general insurance & not an intermediary.

	NSW	NT	QLD	SA	TAS	VIC	WA	Comments
	insurer under Cth: s247	but this does not impact the liability of that insurer in respect of duty for policies granted, etc: s39		SA where insurer grants/issues in SA gen. ins. for an ins. risk within the State: s33(5)(b)(1). Commission can permit a non-registered insurer: s39(1)	Insurer must be registered under Pt.3, s179	as an insurance intermediary: s184 Insurer must be registered under Pt.2, Ch.8: 185(a) Registered insurer is an insurer registered under Pt.2, Ch.8	Registered insurer is an insurer that is registered under s218: s206	
Australian Insurer	Insurers must be registered under s247 DA	BC or registered as a co. under a Cth/State/Territory (CST) law; or BC registered as a foreign body or a foreign co. under a CST law: s37						<u>NT</u> : Lack of registration does not impact liability of Australian insurer for duty. Would seem to address <i>Qantas</i> (NSWCA) point (see "Liability of Insured" below)
Overseas Insurer		An insurer who is not an AUS insurer: s37						
Liability of Insurer	Default position is that general insurer pays unless s236 applies: s235 So, there are exceptions.		Insurance duty imposed on general ins. must be paid by the insurer: s357(1) Lodgement of forms & payment of duty on total amount of premiums received for the return period: s370(1)	General insurer who is registered or required to be registered liable to pay duty in respect of each premium relating to general insurance paid to insurer: s34(1)	Insurer is liable unless s168 applies: s167	Insurer is liable unless s181 applies: s180	Liability attached to the insurer <u>only</u> where the insurer is a general insurer (if not a general insurer liability attaches to the insured): s213(a). s214 requires authorisation under Cth Acts/WA body.	<u>QLD, SA, TAS & VIC</u> : default position is that insurer liable. But there are exceptions <u>WA</u> : liability always rests with insurer where they are a general insurer (i.e. registered under Insurance Act 1973 (Cth)).
Returns & Payment General Insurer	Submit monthly return showing total premiums & duty for Type A: ss 229 & 253(a) Pay Commissioner according to s234 (9% premium): s253(b) Amount of duty is required to be	Australian insurer who is registered or required to be registered must submit return within 21 days after end of each month that details all premiums received & on which duty imposed & pay the duty in respect of said premiums: s42	Insurance is to be paid each time a premium is paid for a contract of general insurance: s358 A premium is paid when first of following two occurs: (a) premium received by insurer or (b)	General insurer must lodge forms & pay duty to Commissioner on or before 15 th day of each month: s 34(1)	Registered insurer must, on or before 21 st day of each month lodge return & pay duty: s184(a)(i) Duty is payable on the premium each time a premium is paid in relation to a general insurance contract: s 162	Registered insurer must, on or before, 21 st day of each month lodge return for all previous month's returns & pay duty per s179: s190	<i>Return Period for Registered Insurer (RI)</i> . RI w/out special arrangement for tax return = 1 month. RI w/ such an arrangement = return period: s219 <i>Lodgement of returns for RI</i>	<u>NSW</u> : monthly returns & pay 9% of premium each time a premium paid. Monthly return. <u>NT</u> : monthly returns & payment for Australian insurer within 21 days after end of each month. <u>QLD</u> : Each time a premium is paid. Possible that duty payable on premiums not fully paid up? s 359(1)(b) but s 362(1)(b) refers

	NSW	NT	QLD	SA	TAS	VIC	WA	Comments
	paid each time a premium is paid in relation to a COI that effects general insurance: s229(2)		part of premium is received by insurer: s359(1) Premium received by insurer if (a) received by insurer or another person on behalf of insurer or (b) account of insurer is credited with amount or part amount of premium: s359(2)		A premium, or an instalment, is paid when first of following occur (s165(1)): (a) premium received by insurer or intermediary (b) account of insurer/ intermediary is credited.		Approved form on/ before 21 st day after end of return period: s220(1) Requirement to lodge returns applies even if no duty due in a return period: s220(6) <i>Payment by RI.</i> Duty on premium or instalment is due on last day for lodging the return under s220(1) or (2): s221 <i>Non-General Insurer (NGI).</i> NGI must notify Commissioner for each month they are paid premium, on or before the 21 st day after the end of each month: s225(1) The NGI can enter into an arrangement with Commissioner: s225(3)	to 9% applied to premium or part premium paid? <u>SA</u> : On or before 15 th day of each month. <u>TAS</u> : On or before 21 st day of each month. <u>VIC</u> : On or before 21 st day of each month for previous month's premiums. <u>WA</u> : Return period dependent upon special arrangement with Commissioner, where none then monthly. Payment & lodgement on or before 21 st day after the end of the return period. Must submit return even if no duty due.
Recovery of Duty by Insurer	Registered insurer may require insured to pay duty amount but must be in writing & given to insured: s254(1)&(2) Where the person does not pay, insurer can recover as a debt: s254(3)	Insurer may recover duty paid from person who pays the premiums on the policy: s44	Not mentioned	Not mentioned	Registered Insurer may require person by whom premium is payable to the insurer to pay the insurer an amount equal to the duty: s185(1) Where the amount is not paid the insurer can recover it as a debt: s185(3)	Identical to TAS: s191(1)&(3)		<u>NSW & TAS</u> : registered insurer can require insured to pay &, if they don't, can recover as a debt. <u>NT</u> : reference to insurer appears to encompass both Australian & overseas insurer but overseas insurer "jointly and severally liable" with insured person in s44A <u>WA</u> : depends whether registered insurer has a special tax return arrangement: if so then that period & if not 1 month.

	NSW	NT	QLD	SA	TAS	VIC	WA	Comments
Liability of Insured Person	Person who obtains/ effects/renews general insurance with a person who is not registered must lodge with Commissioner a return day to Chief Commissioner under s234 within 21 days after end of the month in which premium is paid to non-registered insurer. <i>Chief Commissioner of State Revenue v Qantas Airways Ltd [2009]</i> NSWCA 163 ("Qantas"): apparently Duties Act amended to factor in decision	Person who effects insurance granted/issued/ renewed by overseas insurer is jointly & severally liable for duty imposed: s44A(2)	Pt.6: general rules. Person effects/ renews general insurance with insurer who is not registered under Pts.1 or 2 BUT not where insured has been charged by the insurer for relevant duty: s371 & Pt.6	Company, person or firm obtaining/ effecting /renewing a SA property insurance policy & is not required to be registered under s33 then that person must within one month of obtaining/renewing /effecting policy lodge & pay: s38(1) Can be apportioned & rebate issued to extent insurance only partially attributable to property in SA: s39(2)	Insured person liable where person obtains effects/renews policy who is not a registered person: s168	Insured person liable to pay & lodge return per s179, where they effect/obtain/ renew insurance with non-registered insurer: s181	Liability attaches to the insured person where the insurer is not a general insurer (i.e. not registered under Cth. Acts / WA body): s213(a) So, insured liable only where insurer is not a general insurer	<u>NSW</u> : insured person liable where insurer not registered; onus on insured to check register: s236 Note Duties Act 1997 [NSW] <u>NT</u> : Joint & several liability for insured / intermediary & overseas. Insurer where overseas insurer. Unclear how this liability squares with s44 (recovery from insured as overseas insurer seems to fall within s44 as falls within insurer definition). Suggests overseas may be liable but can recover from insured. <u>SA</u> : appears that separate liability attaches (away from insurer) to insured for SA property insured where the policy is obtained/ renewed/effected outside SA = insured person liable where insurer not required to be registered under s33. <u>VIC</u> : unclear if NSW <i>Qantas</i> case might apply here.
Returns & Payment by Insured Person	Where s236 applies, insured person must pay duty within 21 days after the end of the month in which the premium is paid to the insurer/ intermediary.	Where a person effects insurance in respect of NT property or a risk/ contingency/event concerning an act/omission that in the normal course of events may occur (partly) within the Territory; for which an insurance policy is or is to be granted, issued or renewed (in)directly by an overseas insurer must within 30 days after effecting the insurance, lodge with Commissioner return & pay relevant duty: s44A	Within 30 days after payment of premium must lodge form & pay insurance duty to Commissioner: s372	Insured pays where s38 applies: s38(1). Where s38 applies, person who pays premium to insurer must lodge/pay duty within 1 month of effecting/ obtaining/renewing policy: s38(1)	Within 21 days after the end of the month in which premium paid to an insurer (not being a registered insurer) or insurance intermediary must lodge & pay in accordance with s166(2): s168		Insured person liable must lodge return on or before 21 st day after the end of the month) or each month) in which they paid the premium or instalment: s223(1) Duty payable by insured due on last day for lodging return under s223(1): s224	<u>NT</u> : it is worth considering the impact of joint & several liability on this matter. It is also worth considering the meaning of "normal course of events".

	NSW	NT	QLD	SA	TAS	VIC	WA	Comments
Liability of Intermediary			No specific reference to intermediary re: liability. Insurance intermediary is not a general insurer & term is defined by Contracts Act 1994 (Cth), Sch.6	No specific reference to intermediary re: liability but could be included in s38 scenario as it references "company, person, firm" not requiring to be registered but obtaining, effecting, renewing insurance: s38(1)	Insurance intermediary is (a) a person who arranges COI in TAS for reward or as agent for a person carrying on a business or (b) a financial services licensee (c) a regulated principal when carrying on business as an insurance broker: s3	Same as TAS: s3(1)	<i>Intermediary of Non-General Insurer</i> Each month intermediary receives premium/instalment must notify Commissioner of amounts & details of contracts: s225(2). May enter into a special arrangement with Commissioner: s225(3)	<u>NT</u> : Joint & several liability for insured/intermediary & overseas. Insurer where overseas insurer. <u>QLD</u> : insurance intermediary is not a general insurer & no reference to liability of intermediary. <u>SA</u> : same as QLD but possible it falls within s38 if an intermediary could be described as being a company, person or firm not required to be registered under s33.

LEVIES ON INSURANCE PREMIUMS (NSW, TAS & NZ)

	NSW	TAS	NZ	COMMENTS
Name	Emergency Services Levy: s6 Emergency Services Levy Act 2017	Insurance Fire Levy: Division 2B Fire Service Act 1979 [TAS]	Fire and Emergency Levy: s85 Fire and Emergency New Zealand Act 2017	Only 3 out of the 8 relevant jurisdictions under consideration have such a levy. All distinguish residential & commercial insurance but there are significant differences in the operation of these levies.
Legislation Assume all section references without more to be references to ESLA, FSA and FENZA respectively.	Emergency Services Levy Act 2017 [NSW] ("ESLA").	Fire Service Act 1979 [TAS] ("FSA"); Fire Service (Finance) Regulations 2006 ("FSR"). FSA under review	Fire and Emergency New Zealand Act 2017 ("FENZA"); Fire and Emergency NZ (Levy Rates and Information Regulations in Transitional Period) 2017 ("FESR"); Fire Service Act 1975 ("FSA"); Earthquake Commission Act 1993 ("ECA").	<u>NSW & TAS</u> : the primary acts are state legislation, which is why ACT, VIC, NT, SA & WA have no such levy. <u>NZ</u> : most of the FSA 1975 has been repealed but some sections remain in force. .
General	To fund 73.7% of Rural Fire Service, State Emergency Service & Fire and Rescue NSW. Also collects 11.7% from local councils & foreign insurers. Considered abolishing the levy on insurance in 2016.	Payable by insurance companies for commercial insurance only: ss74 & 77C. Provides 19.1% of the State Fire Commission's Budget. Also collects contributions from local rates & motor vehicle insurance, etc. The levy was subject to a review in 2018.	Only for contracts of fire insurance . Funds approx. 95% of FENZ operations. The levy currently under review. Submissions hint at move to rates-basis. Previously, the Fire Review Panel proposed the levy attach to commercial property ins. premiums (vs the amount insured) and apply to all damage policies, not just fire. <i>Report of the Fire Review Panel</i> (Dept. Internal Affairs, 11 Dec. 2012) 77 (42 & 43).	Different treatment of residential/commercial in all three: <u>NSW</u> : different portion included for residential/commercial. <u>TAS</u> : residential not included <u>NZ</u> : residential levy capped. Fire and Emergency NZ ("FENZA") is NZ's integrated fire & emergency service for both urban & rural areas.
Interpretative Material	Commissioner's Practice Note, CPN015, 15 April 2020 ("Practice Note")	Government Review of the Fire Service Act 1979: Issues Paper, June 18	Fire Emergency Levy: Guide for Levy Payers, Fire and Emergency NZ, 1 July 2017 (the "Guide").	
Definition of Premium	Premiums for a policy in s11	s74 refers to prescribed & exempt insurance. Prescribed amount is the total premium rate payable in respect of prescribed insurance: s77C(2)	Levy: s85 Not on premium but <i>prima facie</i> payable by insurer on amount insured/declared value. "Amount insured" defined in s82 & "declared value" in s83	<u>NSW</u> : excludes GST <u>TAS</u> : excludes GST <u>NZ</u> : GST excluded from 'amount insured'/'declared value' but Guide adds GST to the levy.
Premium Includes	Brokerage; commission paid/due on premium, bonus or return; reinsurance paid/due by insurer in another state: s4 So, brokerage, commission, discounts and reinsurance expressly included.	"Prescribed amount" per s77C Prescribed: fire insurance	ss 82(a) & 83 Excess cover – s 48 should be interpreted to enhance the universality of the levy: <i>NZ FSC v Insurance Brokers Association of NZ Incorp. & Anor</i> (2015) 18 ANZ Insurance Cases.	<u>NSW & TAS</u> : no mention of fees <u>TAS</u> : reinsurance not mentioned <u>NZ</u> : uses the amount insured or declared value in place of premium & excludes GST from amount insured and declared value. Fees not relevant as not payable on premium.
Premium Excludes	GST: s4(2) Duties per the Duties Act 1997 [NSW]: s4(2)	GST: s77C(2) Premium payable to insurance companies in respect of prescribed classes of property of a prescribed person or body: s77C(3) & s 4(c)FSR	Various exempt items in FSA, Sch.3: retaining wall, fence wall, drain or channel, path, water tank etc. Reinsurance: s81(1)(b)(i). Reinsurance is defined in s 6(1) Insurance (Prudential Supervision) Act 2000 [NZ]. Fees: FSA, Sch.3	<u>NSW</u> : GST; no mention of fees <u>TAS</u> : GST; no mention of fees or reinsurance. Not clear whether there are any other prescribed persons or bodies. If there are, such premiums are seemingly excluded under s77C(3) FSA <u>NZ</u> : excludes fees; definition of insurance for purposes of levy excludes reinsurance: s81(1)(b)(i) FENZA

	NSW	TAS	NZ	COMMENTS
		Prescribed Body = Comm. for Conservation of Antarctic Marine Living Resources: s5 FSR		
Other Peculiarities Regarding Premium	Relevant portion: Property (mop up) 80% & household/homeowners 50%: Sch.1, Part A ESLA Multiple classes – calculate total premium & allocate to (i) max. sum insured per class if specified or (ii) amount of the premium attributed to each class if specified. Practice Note.	Any commercial insurance/ fire insurance having a fire insurance content other than exempted (i.e. not residential) s74(1) “prescribed classes of insurance”	Residential (capped) – 10.6% for every \$100 up to a maximum levy of \$106. Non-Residential (unlimited) – 10.6% per \$100 insured without an upper limit: Sch.3, FSA	<u>NSW & NZ</u> : residential & commercial insurance but different methods of calculating the amount upon which a contribution on a premium is determined; a lower levy for residential property. <u>TAS</u> : only applies to commercial property insurance with fire insurance content. <u>NZ</u> : cap for residential but not for non-residential. No mention of whether owner occupation is necessary.
Definition of Residential vs Commercial	See Sch.1, Part A ESLA – as above.	Exempted class of general insurance includes: householders' and homeowners': s74(1)	<i>Residential property</i> is a household unit or any residential land: s82. Defined in s2 ECA See also, definition of <i>dwelling</i> in s2(1) ECA (“subject to any regulations made under this Act, any self-contained premises which are the home or holiday home, or are capable of being and are intended by the owner of the premises to be the home or holiday home, of 1 or more persons”).	
Rate or Amount of Contribution	Final contribution amount for a financial year (FY). Each year contribution published in Gazette by 15 April. An initial amount is paid in advance: s10 <i>Initial Contribution Formula</i> $It = Ct \times P(t-2)/T(t-2)$ s13(1) <i>It</i> = initial contribution amount payable by an insurer for the FY <i>Ct</i> = contribution target for the FY <i>P(t-2)</i> = total premiums of the insurer subject to contribution in FY that commenced two years before the period (period: represented by t-2) <i>T(t-2)</i> = total premiums of all insurers subject to contribution in the FY that commenced two years before the period “t” (represented by t-2) <i>Final Contribution Formula</i> $Ft = Ct \times Pt/Tt$ s17 <i>Ft</i> = final contribution amount payable by an insurer for the FY (represented by t) <i>Ct</i> = contribution target for FY (represented by t) <i>Pt</i> = total amount of premiums of the insurer subject to contribution in FY (represented by t)	28% of total premiums: s77C(2); s4(c) FSR	Property other than motor vehicles: 10.6 cents for every \$100 of insured amount under contract of fire insurance: s4(b) FESR See also for residential buildings, s48(6)(a) FSA and s 2(1) ECA; amount insured under s18 ECA For non-residential/non-personal property, indemnity value (where no sum insured or contract provides for > indemnity value): s48(6)(c)&(d) Regulation applies to levies over certain minimum amount: \$1000/365 x d, where d = number of whole days in contract period: s5 FESR Levy amount determined according to following (see Guide, 5-6) $A - Ex = P$ $P + R = L$ $L + E = ALL$ $ALL \times T = LP$ $LP + GST = \text{total payable to FENZ}$ where <i>A</i> = Amount insured / indemnity value <i>Ex</i> = Exempt items <i>P</i> – Primary levy liability <i>R</i> – Residential Buildings <i>L</i> = Levy on assets <i>E</i> = Extensions due to capital works <i>T</i> = Period of cover <i>ALL</i> = Annual Levy Liability	<u>NSW</u> : note varied proportion of premium included dependent on type of insurance (residential and commercial). Also note the contribution formulae used. <u>TAS</u> : 28% but only applies on commercial. <u>NZ</u> : note the initial/final contribution calculations. Seems to be that amount insured is relevant amount for residential property, but indemnity value can be used for non-residential property: s48(6)(c) FSA. Appears to operate a <i>de minimis</i> amount and a capped amount for residential property.

	NSW	TAS	NZ	COMMENTS
	<p>Tt = total amount of premiums of all insurers subject to contribution in FY (represented by t)</p> <p>Insurer can choose accruals/cash basis: s32(4)-(7). The Treasurer sets the target: s22. Chief Commissioner can estimate initial contrib.: s13(2)&(3).</p> <p>Chubb has reported following rates for: homeowners (20% from 1/1/21, previously 17%); commercial (32% from 1/8/19, previously 28%).</p>		<p>LP = Levy Payable</p> <p>GST = LP x 15%</p>	
Liability of Insurer	<p>Payable by insurer who receives (or is entitled to receive) premiums: s7</p> <p>Initial contribution + balancing contribution (i.e. refund/further payment) through final contribution. Recovery from foreign insurer by insured person: ss21(6) & 14</p>	<p>Insurance companies must both lodge returns and pay the Commission: ss 77B, 77C & s77E. The liability to pay takes the form of a debt due: s77J</p>	<p>Insurer liable & debt due to FENZ: s86. However, per s89(1) policyholder is liable to pay insurer under s86. Amount payable is a policyholder debt and is recoverable by insurer: s89(2)</p>	<p><u>NSW</u>: prima facie insurer; but broker / agent & insured person may be liable.</p> <p><u>TAS</u>: does not appear that anyone other than insurance company is liable.</p> <p><u>NZ</u>: insurer liable to pay levy to FENZ per s86(1) (subject to s87) but policyholder is liable to pay levy to the insurer per s89</p>
Liability of Agent/Broker	<p>Where agent/broker places relevant insurance with insurers outside NSW or with a foreign insurer (see definition of insurer: s4(1); Practice Note)</p>		<p>Where an insurance intermediary carries on business in NZ & (in)directly negotiates a COI for purposes of s87, the intermediary is liable to pay the levy to FENZ & ss 89-91 apply to the intermediary: s87(3). Levy payer includes intermediary: s81(1)(a)</p>	
Liability of Insured/Policy Holder	<p>Where foreign insurer, insured person may be liable: ss 21 & 33; Practice Note</p> <p>Based on lack of licence.</p>	<p>Appears to be just "insurance companies".</p>	<p>s87(1)&(2): insured person liable where insurer liable but does not carry on business in NZ or hold a licence: Insurance (Prudential Supervision) Act 2000 ("IPSA"), s6(1). Levy payer includes policyholder: s81(1)(b)</p>	<p><u>NSW</u>: shifting liability from insurer to policyholder/insured intermediary is based on insurer's nature (foreign insurer)</p> <p><u>NZ</u>: focus is on insurer not carrying on business in or holding a licence.</p>
Definition of Insurer	<p>Person/partnership/association/underwriter (PPAU) who: issues or undertakes liability under ins. policies vs loss/damage to property situated in the State ("in State"); or receives premiums in respect of insurance policies vs loss/damage to property in State on behalf of or for transmission to an out-of-State PPAU: s3(1)</p>	<p>FSA uses "insured company": s74(1). Body corporate (BC)/partnership/association/underwriter/other person (whether in TAS or not) issues/undertakes liability under policies of risk ins. vs the loss of/damage to TAS property; or agent of any such entity: s74(1)</p>	<p>A person that carries on business in NZ and is liable as insurer under a contract of insurance in respect of property: s81</p>	<p><u>NSW</u>: focus is on location of property insured (but appears to include intermediaries).</p> <p><u>TAS</u>: refers to insurance company.</p> <p><u>NZ</u>: focus is on carrying on business in NZ. Insurance intermediary is separately defined: s2(1) Intermediaries Act 1994</p>
Definition of Foreign Insurer	<p>An insurer not authorised under Commonwealth/State/Territory law to carry on ins. business: Practice Note. Includes insurers not regulated by APRA & not registered in AUS: s3(1)</p>		<p>No definition as such. However, varied definition for insurer whose status requires policyholder to be liable for the levy.</p>	
Definition of Levy Payer	<p>Insured person.</p>		<p>An insurer who is liable to pay a levy to FENZ under s86 or, if s87 applies, a policyholder or insurance intermediary who is liable to pay a levy to FENZ: s81(1)</p>	

	NSW	TAS	NZ	COMMENTS
Contract of Insurance (COI)			Contract of FIRE insurance. Where property (not motor vehicles) is insured vs physical loss/damage (whatever the cause) including temporary & consequential loss/damage per s7 IPSA: s81(1) FENZA.	<u>NZ</u> : A contract of fire insurance <i>excludes</i> reinsurance (s6(1) IPSA). COI modified for purposes of liability of insured person/intermediary per s87.
Recovery	Chief Commissioner may require insured person to pay an amount that a foreign insurer is required to pay as if the insured person were liable for the payment. Thereafter the insured can recover the amount paid from the foreign insurer: s21	Commission may recover unpaid contributions from insurance company qua a debt due to them: s77J		
Calculation	See "Rate or Amount of Contribution" above	28% of commercial insurance premium (excl. GST). It <i>possibly</i> also includes fees.	See "Rate or Amount of Contribution" above	<u>NSW</u> : variable contribution due to (i) need for certain amount of funds to be raised and (ii) whether the insurance relates to residential/commercial property <u>NZ</u> : amount insured/indemnity value
Payment Dates	Initial contribution payable in 4 equal instalments: 01/09, 01/12, 01/03, 01/06 in relevant FY. s15 Final contribution – final assessment notice provided to insurer by Chief Commissioner as soon as possible after return date. s18.	No later than 14 days after the end of each month in respect of the prescribed classes of insurance during that month (monthly instalments). s77E(2)	Levy payer liable not later than the 15 th day of the 3 rd month after the end of the month in which the COI was entered into: s88 (note that Guide, 3 refers to the second month after the policy begins).	<u>NSW</u> : 4 payment dates for initial contributions (based on formula) and then final contribution amount issued by Chief Commissioner and following submission of return with auditor's certificate. <u>TAS</u> : monthly instalments <u>NZ</u> : annual. Note difference between latest payment dates in FENZA and Guide.
Returns	Return date is 30 September after the relevant FY and insurers must lodge return by the return date with a certificate from a qualified auditor: ss31 & 32 Where insurer is a foreign insurer then the insured person must lodge: s33	Insurance company must lodge return not later than 14 days after the end of each month. Insurance company must provide a copy/record of details relating to insurance policies within 21 days of any request by the Commission (unless an extension granted): s77GA	Levy payer must provide a return every month in which the levy payer entered into a COI for which levy payable: s93(1). Levy payers & insurance intermediaries must keep records for 7yrs: s94(1)	<u>NSW</u> : insurer to lodge by 30/09 after relevant FY (include auditor's certificate) unless insured is required to lodge. <u>TAS</u> : insurance company must lodge a return (incl. statement by an officer of the company that the return contains a true account of the matters referred to in it) each month within time limit. <u>NZ</u> : submit return for every month in which new ins. contract entered into.

TERRORISM INSURANCE LEVY COLLECTED BY THE AUSTRALIAN FEDERAL GOVERNMENT

	Terrorism Insurance Levy (TIL)	Additional Information	Comments
Overview	<p>TIL is applied to certain building and contents insurance premiums as a form of government reinsurance. Insurers may charge the insured a set percentage of the gross written premium and this is paid on to a statutory scheme (ARPC). In return, insurers may make a claim from the scheme upon a government announcement of a “declared terrorist event”.</p> <p>There is a compulsory aspect: all eligible insurance contracts are prohibited from excluding terrorism cover. Thus, terrorism cover must be included. There is a voluntary aspect: insurers are not required to reinsure terrorism loss in such contracts with the ARPC. In other words, it is open to insurers to seek reinsurance on eligible insurance contracts from a non-ARPC source but these contracts are prohibited from excluding terrorism cover.</p>		<p>The object of TIL is to provide reinsurance for terrorism cover for certain building and contents insurance contracts for insurers in circumstances where those insurers may otherwise seek to exclude damage or loss arising from terrorism from insurance contracts, i.e. to correct a market failure.</p> <p>It is hard to view the voluntary aspect as truly voluntary where no reasonable alternative reinsurance (other than the ARPC) for terrorism cover exists in the market</p>
Definition of Premium Income	<p>Premium income must exhibit certain positive and negative features.ⁱ</p> <p>It must:</p> <ul style="list-style-type: none"> - be attributable to an eligible insurance contract; <u>and</u>ⁱⁱ <p>It must <i>not</i>:</p> <ul style="list-style-type: none"> - include any premiums that have been refunded, adjusted or cancelled - include any emergency levies, GST or stamp duty 	<p>The wording of <i>Terrorism Insurance Act 2003</i> (AU) 2003 details what insurance is <i>not</i> subject to TIL. Thus, there is a need to carve out “ineligible” insurance.</p> <p>Excluded from TIL:ⁱⁱⁱ</p> <ul style="list-style-type: none"> - mainly residential <i>unless</i> it is also a <i>high value multiple building contract</i> (defined in the next column)^{iv} - many farms (unless they have insurance to cover business interruption) - various other exclusions as found in Sch.1, Terrorism Insurance Regulations 2003 (AU). 	<p><u>Mainly residential</u>:^v (i) more than 80% floor space for use wholly or mainly for residential purposes; (ii) insured value less than \$50m; and (iii) <u>not</u> a hotel/motel/boarding house/temporary building structure/demountable or movable structure/caravan. Must satisfy all 3 conditions for exclusion from TIL.</p> <p><u>High Value Multiple Building Contract</u> (HVMBC):^{vi}</p> <ul style="list-style-type: none"> - provides cover (whether or not the cover is restricted) for destruction or damage to 2 or more buildings, if the total sum-insured value of the buildings is \$50m or more. <p>Evidence of a scenario falling within HVMBC can trump the mainly residential exclusion and thus relevant contracts of insurance for HVMBC can fall within the TIL (s 7(2) TIR 2003).</p> <p>The extension of the type of contracts falling within the “eligible insurance” contracts classification in 2017 directly impacts numerous residential strata properties.</p> <p>As noted above (see definition of premium income), emergency levies, GST and stamp duty are <i>not</i> included in the value of the premium for TIL purposes.^{vii}</p>
Calculation of Premium Income	<ol style="list-style-type: none"> 1. Work out the amount of the premium written that is attributable to the eligible insurance contract* (total = step 1). 2. Reduce amount in step 1 by any refunded/cancelled/adjusted amount related to the premium amount (total = step 2). 3. Reduce amount in step 2 by any emergency levies/GST/stamp duty (total premium income = step 3).^{viii} 	Referred to here as the “3 Step Approach”	The total here is the gross written premium excluding any refunded/adjusted/ cancelled amounts and/or emergency levies/GST/stamp duty.

	<p>This 3-step approach may apply in bundled insurance cover in certain situations, namely where:</p> <ul style="list-style-type: none"> the eligible insurance contract covers 2 or more distinct types of cover that are packaged together; and it is possible to precisely quantify the premium attached to each type of cover; and distinct covers if provided individually would qualify as eligible insurance cover on the one hand and ineligible insurance cover on the other. <p>Note that the Steps 1-3 approach above <i>only</i> applies to the readily identifiable eligible insurance contract cover component.^{ix}</p>		
Calculation of TIL payable^x	Take total premium income (amount 3) and multiply it by the relevant rate (currently 0-16%, see below) = TIL payable by the insurer to the ARPC.		
Rate applied to premium income	<p>Amount in Step 3 is subject to TIL at varying rates that are based on location of property and the nature of the cover. Tier rates range from 2.6-16%. A Tier basis that relies on postcodes to determine the location of the property is used.</p> <p>A different rate (0%) applies to liability insurance cover where liability arises as a result of property ownership/occupation and this applies irrespective of the location of the property or its Tier Division.^{xi}</p>	<p>Tier A – 16% Tier B – 5.3% Tier C – 2.6%^{xii}</p> <p>These rates apply to cover for:</p> <p>(i) loss of, or damage to eligible property that is owned by the insured; business interruption and consequential loss arising from loss or damage and/or inability to use eligible property, or part of eligible property, that is owned or occupied by the insured.</p>	<p>Broadly, Tier A includes all metropolitan areas of major Australian cities; Tier B includes all urban areas; and Tier C covers whatever remains.</p> <p>Furthermore, a rate of zero is applied to eligible insurance cover for liability that arises out of the insured being an owner/occupier. Such cover attracts a 0% rate.^{xiii}</p> <p>The Tier rates are directly relevant for the insurers as they determine the amount to be paid by them to the ARPC. However, it is seemingly open to the insurers to charge the insured different rates.^{xiv}</p>
Interaction with other taxes, levies etc.	<p>The TIL is levied on the gross written premium as above and excludes emergency levies, stamp duty and GST. However, TIL appears to be included in the relevant premium amount for other taxes and levies.</p> <p>It would appear that the nature of the TIL is such that it is treated as part of the premium as opposed to a tax.^{xv} Thus, the base premium + TIL is then subjected to emergency levies (where applicable); GST and duties (where applicable).</p> <p>There appears to a general perception at the industry level that TIL is included in the premium amount to which other taxes apply. Such that the premium + TIL is then subject to emergency levies (where applicable), GST and then stamp duty (where applicable).^{xvi} This creates an additional cascading cost to insured</p> <p><u>Calculating emergency levies:</u> unclear whether TIL included.</p> <p><u>Calculating GST:</u> likely to include TIL in the value of the taxable supply unless it can be argued TIL is a tax.</p>	<p>Thus it is clear that the TIL is calculated exclusive of any emergency levies, GST or duties.</p> <p>What is less clear is the inclusion/exclusion of TIL when determining other taxes / levies (i.e. emergency levies, GST and TIL).</p>	<p>The exclusion of emergency levies, GST or duties from calculation is clear as it is explicitly referenced in the legislation.</p> <p>However, the extent to which TIL should be included in the “premium” amount when calculating emergency levies, GST or duties is less clear.</p> <p>TAS: the Tasmanian government considers the TIL falls within the definition of premium for duty purposes and has made its position quite clear,^{xvii} it is presumed that it relies upon the wording in s164(1) Duties Act (TAS), which provides that the premium refers to the “total consideration given to the insurer ... to effect insurance”.</p> <p>The position for other states/territories in relation to duties is less clear as no other explicit reference to the interaction of duties and the TIL has been found. However, it would appear that the prevailing view is that the Tasmanian position applies across the board (state/territory and federal taxation) as premium is defined in a similar way as s 164(1) Duties Act (TAS) in several of the other States / territories.^{xviii} Further indirect support for this view is found in various industry</p>

	<p>Calculating duties: seemingly TIL included. Only Tasmania appears to have made an explicit statement on the inclusion of TIL in the dutiable value of the premium.</p>		<p>statements that appear to be implicitly acknowledged by – or at least note countered by - those involved in drafting the TIA 2003 (AU).^{xix}</p> <p>Notwithstanding the above stated position, it may be possible to further explore the appropriate classification of the TIL as a tax or a form of insurance or reinsurance. Classifying the TIL as one or other of these types of payment may impact its inclusion in the taxable value for GST purposes (Australian taxes are not subject to GST) and potentially dutiable value for duties purposes etc (e.g. SA exempts premiums charged or received for reinsurance from duty but includes levies charged in the premium amount).^{xx} Significant time would be needed to explore these classificatory possibilities.</p>
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EARTHQUAKE COMMISSION PREMIUM (NZ ONLY)

	NZ	COMMENTS
Name	EQCover: Earthquake Commission Insurance Scheme	
Legislation	Earthquake Commission Act 1993 [NZ] ("ECA"); Earthquake Commission Regulations 1993 [NZ] ("ECR")	
General	Takes the form of a premium payable by the insurer to the ECQ: s23(1). Property insured under a contract of fire insurance (in relation to a residential building) in NZ is subject to automatic natural disaster damage cover under the ECA.	Only applies to residential property insurance. Note exceptions in Sch.2 ECA.
Definition of Premium	s3(1) ECR	
Included in Premium	GST included s3(1) ECR.	
Excluded from Premium	Reinsurance per definition of contract of insurance: s2(1) ECA Residential land: s3(3) ECR	
Insurer Liable	The insurance company concerned is liable to pay a premium to the Earthquake Commission (EQC) in respect of that cover: s23 ECA. All money in the fund, which includes proceeds of all premiums, are property of the EQC and recoverable accordingly: s14 ECA. However, note recovery from insured person of amount by insurer.	
Insurer Recovery	Insurer can recover EQC from insured person as although the insurer must pay the EQC, the amount becomes a debt due from insured to insurer: s23(2) ECA	
Insurance Company	"Any person who undertakes liability under any contract of fire insurance or any contract of natural disaster insurance": s2(1) ECA	
Non-NZ Insurer Liability	Insurer who does not carry-on business in NZ, the amount payable becomes qua debt due to the ECQ from the insured & insurer jointly & severally: s23(3) ECA	
Payment	Insurance companies liable to make premium payments to the EQC under s23 are required to make the payments within 2 months after the end of month in which an insurance company becomes liable to pay the premium to the Commission. Each payment must be accompanied by a certificate of accuracy by an officer or agent of the insurance company: s24 ECA	
Rate	(a) Where the period of insurance is 1 year, 20% (plus GST) for every \$100 of the relevant amount (amount insured under s18(1) ECA): s24 ECA (b) Any other period of insurance, a <i>pro rata</i> proportion (on a daily basis) of the amount calculated above in (a) rounded to the nearest by 5 cents: s3(1) ECR Note that there are further calculation rules in that there is a need to select the lower of the amount insured (limit based on square metreage and formula), replacement sum or the sum arrived at by multiplying the number of dwellings by \$150,000.	The EQC deem a residential building to comprise one dwelling unless the existence of a higher number has been disclosed to the insurance company at the time the COI is entered into: s18(3)

- ⁱ s9 Terrorism Insurance (Premiums) Regulations 2019 (TIPR 2019), which provides an overview for the calculation process.
- ⁱⁱ s7(2) Terrorism Insurance Act 2003 (AU); s5 & Sch.1, Terrorism Insurance Regulations 2003 (Reg.5). Sch.1 contains a long list of exclusions. The examples are illustrative only.
- ⁱⁱⁱ Sch.1 Terrorism Insurance Regulations 2003 (Reg.5). Sch.1 contains a long list of exclusions. The examples are illustrative only.
- ^{iv} Ibid. See definition of “mainly residential” in s3 TIR 2003.
- ^v For the definition, see s3 Terrorism Insurance Regulations 2003 (AU) (TIR 2003). For the exclusion, see s2(a)&(b) Sch.1 TIR 2003. The percentage of floor space that can be residential before the TIL applies (and thus inclusion in the ARPC scheme) was increased from 50% to 80% as of 1 July 2017. See Minister for Revenue and Financial Services, Explanatory Statement: Terrorism Insurance Act 2003, Terrorism Insurance Amendment Regulations 2017. Available at: https://treasury.gov.au/sites/default/files/2019-03/C2017-003_TIA-explanatory-statement.pdf. Accessed 3 March 2021.
- ^{vi} s3 TIR 2003.
- ^{vii} s9 TIPR 2019 (see “Step Three”).
- ^{viii} See s9(1) TIPR 2019. s9 TIPR 2019 was amended “to improve clarity and accuracy” (the previous version was in s6 Terrorism Insurance Act 2003 - Premiums Direction 2017. The 2019 Regulations became effective on 1 July 2019. See Explanatory Statement, Issued by Authority of the Assistance Treasurer: Terrorism Insurance Act 2003, Terrorism Insurance (Premiums) Direction 2019. Available at: <https://www.legislation.gov.au/Details/F2019L00069/Explanatory%20Statement/Text>. Accessed: 10 March 2021.
- ^{ix} s9(2) Terrorism Insurance (Premiums) Direction 2019 (TIPD 2019) & s6 Terrorism Insurance Act 2003 – Premiums Direction 2017.
- ^x s9 TIPD 2019.
- ^{xi} s8(1) TIPR 2019. See item number 3 in the Table in s8(2) TIPR 2019.
- ^{xii} For definitions and rates, see ss 7 & 8(1) TIPD 2019. Tier C is a mop-up category including all properties not covered by A & B, see s5 TIPR 2019.
- ^{xiii} s8(1) TIPD 2019. See item number 3.
- ^{xiv} ARPC, Frequently Asked Questions: Premiums” <<https://arpc.gov.au/faqs/faqs-2>>. Accessed 28 February 2021. “Insurers have the option to show terrorism premium as a separate item because the amount paid by the policyholder to the insurer is decided by the insurer, not the ARPC. However, the amount paid by the insurer to the ARPC is to be calculated by multiplying the appropriate tier rate to the gross base premium processed by the insurer each quarter.” For an example of separating out the terrorism insurance component Strat Community Insurance, Changes in Terrorism Act to affect strata building classifications <https://g7x.77a.myftpupload.com/wp-content/uploads/2021/03/160093-SCIA-Terrorism-Levy-Changes-FactSheet_A4_WEB.pdf>. Accessed 12 March 2021.
- ^{xv} “[T]he amounts which are payable to ARPC are no different from ordinary reinsurance premiums.” See JK Morgan, “Terrorism Insurance – the Australian Response”, 29 April 2003, 8 <<https://data.allens.com.au/pubs/pdf/insur/insursem29apr03.pdf>>. Accessed 3 March 2021. See also Recommendation 53: Treat the premium collected by the ARPC in the same manner as a typical reinsurance premium (Actuaries Institute, A Practical Guide to Commercial Insurance Pricing, 12-13 November 2012, 39 <<https://www.actuaries.asn.au/Library/Events/GIS/2012/GIS2012PaperAlinaPettifer.pdf>>. Accessed 2 March 2021).
- ^{xvi} E.g. Allianz, “Mobile Plant and Equipment Insurance”, Policy Document, 5 <[https://www.allianz.com.au/opencurrentpolicydocument/pol520ba/\\$file/pol520ba.pdf](https://www.allianz.com.au/opencurrentpolicydocument/pol520ba/$file/pol520ba.pdf)>. Accessed 2 March 2021. See also: IAG, State Tax Review (Western Australia), 31 August 2005, 3 <https://www.iag.com.au/sites/default/files/Documents/Government%20submissions/G2005_state-taxation-review-WA_200508.pdf>. Accessed 2 March 2021. See also Property Council of Australia, Inquiry into Victorian Government Taxation and Debt: A submission to the Economic Development and Infrastructure Committee of the Victorian Parliament, 30 September 2009, 13 <https://www.parliament.vic.gov.au/images/stories/committees/edic/state_government_taxation_and_debt/submissions/TD_Sub_17_Property_Council_of_Aust_PART_1.pdf>. Accessed 3 March 2021.
- ^{xvii} Tasmanian “Guideline: General Insurance Premiums and the Terrorism Insurance Act 2003”, Available at: [https://www.sro.tas.gov.au/Documents/general-insurance-premiums-terrorism-insurance-act-guideline.pdf?ct=t\(DU-19Nov20_COPY_01\)](https://www.sro.tas.gov.au/Documents/general-insurance-premiums-terrorism-insurance-act-guideline.pdf?ct=t(DU-19Nov20_COPY_01)). Accessed 2 March 2021. “The premiums collected pursuant to (TIL 2003 (AU)) fall under the Duties Act definition of premium and attract duty. Insurers should ensure that the correct duty is returned to the Tasmanian State Revenue Office.”
- ^{xviii} s321(1) Duties Act 1997 (NSW); s4(1) Stamp Duty Act 1978 (NT); s353(1) Duties Act 2001 (QLD); s 32(1) Stamp Duty Act 1923 (SA); s177(1) Duties Act 2000 (VIC); & s211 Duties Act 2008 (WA). Note that NT refers to the “gross amount charged or payable”; QLD refers to an amount paid or payable for insurance including a component that represents GST liability of the insured, as well as levies charged to the insured; as opposed to “total consideration” in the other states/territories.

^{xix} Economics Legislation Committee, Provisions of the Terrorism Insurance Bill 2002, May 2003 [3.36] notes that various submissions, including that of Royal and Sun Alliance Insurance Products, highlighted both the multiplier effect and the increased administrative overheads of the introduction of a TIL. Also, the Association of Risk and Insurance Managers of Australia (ARIMA) referred to the magnifying impact on corporate Australia of the introduction of a TIL given that premiums were already subjected to up to 80% “stamp duty, and fire brigade levies in certain states and GST”. See ARIMA’s submission made by K. Mutch, Honorary Life Member, Past President and Member, Association of Risk and Insurance Managers of Australasia, Proof Committee Hansard, 7 as cited in Economics Legislation Committee, Provisions of the Terrorism Insurance Bill 2002, May 2003 [3.36].

^{xx} s36(a) Stamp Duty Act 1923 (SA).

APPENDIX C

ATTACHMENT 1: Scenario A (Where the client places or renews its insurance with an insurer or broker who pays the company a commission)

[illegible]

Attachment 2: Scenario B - where the company does not receive any commission for placing the client's insurance

[illegible]

TABLE 2
<p>"1" = "Insured", meaning under the express terms of the management contract, the particular insurance service category is considered to be funded as part of the agreed services between the manager and the SICG;</p> <p>"1/2" = "Partial Service", meaning under the express terms of the management contract, the particular insurance service category is considered to be excluded from the agreed services fee, and is subject to whether the contract is available for the insured;</p> <p>"0/1/2/3/4/5/6" = the insurance service category is not expressly referred to in the contract as being funded or unfunded;</p> <p>"N/A" = "Not provided", meaning the contract expressly states the particular service will not be provided at all by the manager</p> <p>* further sub-category definition</p> <p>"1/2" = "Only for Self-Insured", meaning that if the manager does not receive an insurance commitment, then under the express terms of the contract, particular insurance services that would otherwise be "funded", become "unfunded" services</p>

APPENDIX D

Extra Fee For Service payable under each altered remuneration model

Insurance Categories	Automatic Increase Model (the manager increases the agreed services fee by an amount equivalent to the commission it would have received if it had placed the client's insurance) Adopted in NSW, SA, WA			Fee for Service Model (the manager charged EFFT for certain insurance services) Adopted in ACT, NT, Qld, VIC, WA			Select Option Model (the manager and client select at the commencement of the contract whether the manager will receive a commission or not) Adopted in Qld and ACT			Fixed Fee in Lieu Model (the manager charges a fixed fee to the client, plus EFFT for certain services) Adopted in Vic and WA			Silent Model (the contract is silent on whether the manager receives any commission or not) Adopted in ACT, NT, NZ, Vic, Qld, WA		
	Bundled	Fee for Service (FFS)	Extra Fee for Service (EFFT)	Bundled	Fee for Service (FFS)	Extra Fee for Service (EFFT)	Bundled	Fee for Service (FFS)	Extra Fee for Service (EFFT)	Bundled	Fee for Service (FFS)	Extra Fee for Service (EFFT)	Bundled	Fee for Service (FFS)	Extra Fee for Service (EFFT)
Quotation, procurement, placement and renewal services	Obtaining and arranging quotations for insurance from an insurer or broker (limited only to insurers or brokers authorised by the manager) [78% remained bundled] Arranging insurance or renewing an existing policy (generally, but only through an insurer or broker whom the manager is an authorised representative or distributor of) [78% remained bundled] Seeking clients instructions for renewal or placement of insurance [75% remained bundled]		22% changed to charge EFFT for obtaining and arranging quotations for insurance from an insurer or broker (limited only to insurers or brokers authorised by the manager)	Obtaining and arranging quotations for insurance from an insurer or broker (limited only to insurers or brokers authorised by the manager) [50% remain bundled]		50% changed to charge EFFT for obtaining and arranging quotations for insurance from an insurer or broker (limited only to insurers or brokers authorised by the manager) 100% changed to charge EFFT for obtaining quotations from insurers or insurance brokers that the manager has not specified in the contract as being authorised by the manager 93% changed to charge EFFT for arranging insurance (generally)	Arranging insurance (generally) Ensuring that the client's insurance is current Placing a new insurance policy or renewing an existing policy Paying insurance premiums on behalf of the client Obtaining insurance valuations for building reinstatement value			Obtaining and arranging quotations for insurance from an insurer or broker (limited only to insurers or brokers authorised by the manager)		100% changed to charge an EFFT for arranging insurance generally	Obtaining and arranging quotations for insurance from an insurer or broker (generally) [no change]		
Payment of insurance premium service	Paying insurance premiums on behalf of the client [no change]			Paying insurance premiums on behalf of the client [20% remain bundled]		80% changed to charge EFFT for paying insurance premiums on behalf of the client	Paying insurance premiums on behalf of the client						Paying insurance premiums on behalf of the client [no change]		
Insurance valuation services	Obtaining insurance valuations for building reinstatement value [no change]			Obtaining insurance valuations for building reinstatement value [65% remain bundled]		35% changed to charge EFFT for obtaining insurance valuations for building reinstatement value	Obtaining insurance valuations for building reinstatement value			Obtaining insurance valuations for building reinstatement value [50% remain bundled]		50% changed to charge EFFT for obtaining insurance valuations for building reinstatement value	Obtaining insurance valuations for building reinstatement value [no change]		
Insurance claim services	Lodging routine claim [38% remained bundled]	Lodging non-routine or complex claims Engaging in ongoing insurance claim management including activities involved with loss minimisation Other general activities involved with minimisation of loss Liaison with loss adjustors/assessors	62% changed to charge EFFT for lodging routine claim	Lodging routine claim [59% remain bundled]	Lodging non-routine claims, Administration work involved with insurance brokers/agents that are not the manager's preferred broker	41% changed to charge EFFT for lodging routine insurance claims Lodging complex claims 50% change to charge EFFT for engaging in ongoing claim management and liaising with loss adjustors	Lodging routine claim Lodging non-routine claim	Lodging complex claims		Lodging routine claim [50% remain bundled]	Lodging non-routine insurance Engaging in ongoing insurance claim management Liaising with loss adjustors	50% changed to charge EFFT for lodging routine insurance claims		Lodging routine claim Lodging non-routine claim Lodging complex claim Ongoing insurance claim management Liaising with loss adjustors	

Insurance Categories	Automatic Increase Model (the manager increases the agreed services fee by an amount equivalent to the commission it would have received if it had placed the client's insurance) Adopted in NSW, SA, WA			Fee for Service Model (the manager charged EFFS for certain insurance services) Adopted in ACT, NT, QLD, VIC, WA			Select Option Model (the manager and client select at the commencement of the contract whether the manager will receive a commission or not) Adopted in QLD and ACT			Fixed Fee in Lieu Model (the manager charges a fixed fee to the client, plus EFFS for certain services) Adopted in VIC and WA			Silent Model (the contract is silent on whether the manager receives any commission or not) Adopted in ACT, NT, NZ, VIC, QLD, WA		
	Bundled	Fee for Service (FFS)	Extra Fee for Service (EFFF)	Bundled	Fee for Service (FFS)	Extra Fee for Service (EFFF)	Bundled	Fee for Service (FFS)	Extra Fee for Service (EFFF)	Bundled	Fee for Service (FFS)	Extra Fee for Service (EFFF)	Bundled	Fee for Service (FFS)	Extra Fee for Service (EFFF)
Insurance record keeping services	Maintaining the clients' insurance records [no change]														
Insurance advice services		Providing certificates of currency for insurance when requested		Advisory services [84% remain bundled]		16% changed to charge EFFF for insurance advisory services				Advisory services					
Insurer negotiation and liaison services		Engaging in protracted insurance renewal negotiations with the insurer / broker													
Insurance finance service		Arranging insurance premium finance (loan /funding) if required													
Annual insurance commission disclosure service	Providing annual insurance commission disclosure to clients														