



Guidance note - "*rolling stock*" and the terrorism insurance scheme

This note outlines the Australian Reinsurance Pool Corporation's (**ARPC**) position as to whether the *Terrorism Insurance Act 2003* (Cth) (**TIA**) provides cover in respect of trains, trams and other railway vehicles in the course of manufacture, testing and commissioning.

ARPC considers that the scheme under the TIA will, subject to its terms, operate to cover an "*eligible insurance contract*" to the extent to which it covers a train, tram or other railway vehicle in the course of manufacture. For the cover to apply, the partly manufactured train, tram or other railway vehicle must still meet the definition of "*eligible property*" within the meaning of the TIA.

There is no cover in respect of terrorism for rolling stock during the course of testing and commissioning on a railway. The exclusion in the Regulations starts to apply as soon as the train, tram or other railway vehicle is operated or used on a railway.

The statutory exclusion for "*rolling stock*"

Section 7 of the TIA defines an "*eligible insurance contract*" to mean a contract of insurance the extent that it provides insurance cover for certain prescribed matters listed in that section. However, subsection 7(2) of the TIA states that a contract is not an "*eligible insurance contract*" to the extent to which it is a contract prescribed by the *Terrorism Insurance Regulations 2003* (Cth) (**Regulations**) as being excluded for the purposes of that subsection.

Item 26 of Schedule 1 to the Regulations excludes, for the purposes of subsection 7(2) of the TIA:

"A contract of insurance (whether or not the cover is limited or restricted) for loss of, damage to or liability arising in connection with ...

(c) rail and tram rolling stock."

The meaning of "*rolling stock*"

ARPC considers that "*rail and tram rolling stock*" means a vehicle that operates on or uses a railway. This meaning includes a locomotive, carriage, rail car, rail motor, light rail vehicle, train, tram, light inspection vehicle, self-propelled infrastructure maintenance vehicle, trolley, wagon or monorail vehicle, but does not include a vehicle designed to operate both on and off a railway when the vehicle is not operating on a railway.



ARPC's guidance on "rolling stock"

ARPC considers that:

- a partly manufactured train, tram or other railway vehicle could not be "rolling stock" for the purposes of item 26 in Schedule 1 of the Regulations because it is not capable of being operated or used on a railway;
- a train, tram or other railway vehicle being tested on a railway constitutes "rolling stock" for the purposes of item 26 in Schedule 1 of the Regulations. At the testing stage, the rolling stock is being used or operated on a railway. The purpose for which it is used - namely, testing or commissioning - is irrelevant. The meaning of "rolling stock" requires only that the rolling stock be used or operating on a railway. It does not require that it be used for commercial, operational or any other specific purpose; and
- this interpretation applies in respect of a train, tram or other railway vehicle which is 'rolling stock' even if not described as such in express terms.

Note: A vehicle designed to operate both on and off a railway may, when the vehicle is not operating on a railway, still be excluded from the operation of the scheme by reason of item 18 in Schedule 1 of the Regulations or otherwise.