

MARKET BULLETIN

REF: Y4615

Title	Australia – Standard Definition of Flood
Purpose	To advise the Market of recent changes introduced by the Insurance Contracts Amendment Regulations 2012 mandating a standard definition of 'Flood' to be used in certain Australian home building, home contents, small business and strata title insurance contracts.
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Related links	Y4540 Y4588

Issue

The Australian government has recently enacted the [Insurance Contracts Amendment Regulation 2012 \(No. 1\)](#). The Regulation introduces a standard definition of 'flood' to be used in certain prescribed contracts, defined as home building, home contents, small business and strata title insurance contracts.

Background

In 2010-11 Queensland, New South Wales and Victoria experienced a number of severe flood events. Since then the government has been working to introduce legislation to standardise flood insurance.

The Regulation aims to reduce consumer confusion regarding what is and is not included in insurance contracts and to ensure that situations where neighbouring properties, affected by the same inundation event, no longer receive different claims assessments because the policies covering them will use the same definition of flood.

Additionally, an insurer is obliged to 'clearly inform' an insured whether such a contract provides flood cover. Insurers are also required to provide the maximum amount of insurance cover for flood related loss, even where the policy itself provides that different coverage limits apply for different flood events.

Definitions

Prescribed Contracts

The standard definition of 'flood' will apply only to certain contracts of insurance, defined in the Regulation as:

- home building insurance;
- home contents insurance;
- contracts that combine home building insurance and home contents insurance;
- contracts that provide insurance cover (whether or not the cover is limited or restricted in any way) in respect of destruction of or damage to a strata title residence;
- contracts that provide insurance cover (whether or not the cover is limited or restricted in any way) in respect of the loss of the equipment, stock, inventory or premises of a small business;

Please note that the new law will not apply where the contract is arranged by an insurance broker, not acting under a binder, in the course of the provision of financial advice by the broker. Stakeholders should be aware that this may be amended by Government at a later date.

Strata Title Residence

In relation to the above, strata residence means a residence to which the following apply:

- The portion of land on which the residence is located exists as the result of the subdivision of the title to a larger portion of land into separate titles for use for residential purposes;
- Property that is common between the residence and one or more other portions of land is managed by a single body corporate, e.g. an 'owners corporation'.
- The title to the portion of land on which the residence is located is regulated under the law of the State or Territory in which the land is located as a 'strata title', a 'community title' or another description that refers to the title being created as described in paragraphs (a) and (b).

Small Business

In relation to the above, a small business is one where:

- The turnover in the last completed financial year was less than AU\$1 000 000;
- ***and***
- The total number of hours worked each week by the employees of the business is no more than 190 hours, whether or not the employees are employed on a full-time, part-time or casual basis. Please note that 190 hours is the equivalent of 5 employees each working a 38 hour week.

If the business either did not operate in the last completed financial year, or the turnover is unknown, the criteria used to assess whether a business is a small business is only the number of hours worked each week by the employees.

Definition of Flood

In prescribed contracts the word 'flood' must mean:

"The covering of normally dry land by water that has escaped or been released from the normal confines of any of the following:

- a) a lake (whether or not it has been altered or modified);*
- b) a river (whether or not it has been altered or modified);*
- c) a creek (whether or not it has been altered or modified);*
- d) another natural watercourse (whether or not it has been altered or modified);*
- e) a reservoir;*
- f) a canal;*
- g) a dam."*

This definition of 'flood' will prevail and still apply in a prescribed contract even if the meaning of the word 'flood' provided by the insurer in the contract, or any other notice or documentation, is different from the meaning set out above.

If an insurer proposes to provide insurance cover to a business and intends to use a definition of 'flood' other than the above the insurer must 'take reasonable steps' to ensure that the contract is not a prescribed contract

Next Steps

Transitional Provisions

These provisions do not apply for a period of 2 years from the date of commencement of the Regulation, i.e. 15 June 2014. However, if before 2014 an insurer decides to rely on these definitions then the Regulations will apply to both the insurer and the contract.

Future Regulations

The Australian government recently consulted on an exposure draft of the Insurance Contracts Amendment Regulation 2012 (No.2). When finalised, this Regulation will require an insurer to provide a consumer with a one page 'key facts sheet' (KFS) disclosure document for home building and home contents insurance policies (combined and individual). Lloyd's will provide further guidance to stakeholders as necessary.

Further Information

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