



Australian Government
Attorney-General's Department

NATURAL DISASTER RELIEF AND RECOVERY ARRANGEMENTS

Determination | 2012
VERSION 2.0

2012

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Natural disaster relief and recovery arrangements

Determination of terms and conditions

by the Hon. Michael Keenan MP, Minister for Justice

Preliminary

I, The Hon Michael Keenan MP, Minister for Justice and Minister Assisting the Prime Minister for Counter-Terrorism, determine the terms and conditions applicable to payments of financial assistance by the Commonwealth to any State, the Australian Capital Territory or the Northern Territory, for the purposes of natural disaster relief and recovery, to be the terms and conditions recorded in this document.

The determination applies from the date of signature, in respect of natural disasters that occur on or after that date. It amends, by replacement, the *Natural Disaster Relief and Recovery Arrangements Determination 2012: Version 1*. The 2012 determination version 2 applies to all existing claims with effect from 18 December 2012 (the date the 2012 determination Version 1 commenced).

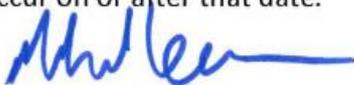
The determination has effect in relation to:

- a) national partnership payments made for the above purposes—as part of the Inter-Governmental Agreement on Federal Financial Relations, entered into between the Commonwealth, the States, the Australian Capital Territory and the Northern Territory (as amended), and
- b) payments made out of the amount appropriated by the *Appropriation Act (No. 2) 2011-2012* to the Commonwealth Attorney-General's Department for the outcome, 'A just and secure society through maintenance and improvement of Australia's law and justice framework and its national security and emergency management system'.

Note: The determination has effect as part of the Inter-Governmental Agreement on Federal Financial Relations by virtue of clauses D42 and D43 of Schedule D to that agreement. The determination has effect under the *Appropriation Act (No. 2) 2014–2015* by virtue of section 14 of that Act.

The determination is also intended to have effect in relation to any later Appropriation Act that appropriates an amount for the same outcome, or for a different outcome that includes the purposes of natural disaster relief and recovery, and authorises the terms and conditions applicable to payments to be determined.

This document incorporates a statement of the Natural Disaster Relief and Recovery Arrangements, and of the related administrative procedures and guidelines, which will operate from the date of signature, in respect of natural disasters or terrorist events that occur on or after that date.



Michael Keenan

Minister for Justice

29 / 10 / 2015

1. DEFINITIONS AND INTERPRETATION

1.1 DEFINITIONS

1.1.1 All definitions relevant for this determination are contained in the table below.

TERM	DEFINITION
Allowable time limit	<p>For expenditure on restoration or replacement of an <i>essential public asset</i>:</p> <ul style="list-style-type: none"> • the period of 24 months after the end of the <i>financial year</i> in which the relevant <i>disaster</i> occurred; or • if there are exceptional circumstances presented by a <i>state</i> and accepted by the <i>Department</i>—such longer period as the <i>Department</i> specifies. <p>For expenditure on any other <i>eligible measure</i>—the period of 24 months after the end of the <i>financial year</i> in which the relevant <i>disaster</i> occurred.</p>
Betterment	The restoration or replacement of an <i>essential public asset</i> to a more <i>disaster-resilient</i> standard than its pre- <i>disaster</i> standard.
Category A	See clause 5.2
Category B	See clause 5.3
Category C	See clause 5.4
Category D	See clause 5.5
Department	The Commonwealth Attorney-General’s <i>Department</i> . A reference to the <i>Department</i> includes a reference to the Secretary and appropriate Senior Executive Service officials of the <i>Department</i> .
Determination	This document.
Disaster	<i>A natural disaster</i> or terrorist event.
Eligible disaster	<i>A disaster</i> for which <i>state expenditure</i> exceeds the <i>small disaster criterion</i> .
Eligible measure	An act of relief or recovery described as a <i>Category A</i> , <i>Category B</i> , <i>Category C</i> or <i>Category D</i> measure.
Eligible undertaking	<p>A body that:</p> <ul style="list-style-type: none"> • is one of the following: <ul style="list-style-type: none"> ○ a <i>Department</i> or other agency of a <i>state</i> government; or ○ established by or under a law of a <i>state</i> for public purposes (for example, a local government body); and • provides community, social or economic services free of charge or at a nominal charge well below the costs of production. <p>A body that does not meet these requirements is nevertheless taken to be an <i>eligible undertaking</i> if the <i>Minister</i> has agreed in writing, in the light of special circumstances presented by a <i>state</i>, that the body should be treated as an <i>eligible undertaking</i> for the purposes of this <i>determination</i>.</p>
Employee	<i>A person</i> , including family members, who the business directly engages, controls and pays a wage for their labour.

Essential public asset	<p>An asset of an <i>eligible undertaking</i> that the <i>state</i> considers and the <i>Department</i> agrees:</p> <ul style="list-style-type: none"> • is an integral and necessary part of the <i>state's</i> infrastructure that is associated with health, education, transport, justice or welfare; and • would, if lost or damaged, severely disrupt the normal functioning of a community; and • would, if lost or damaged, be restored or replaced as a matter of urgency.
Extraordinary costs	Costs that could normally not be absorbed by, or reasonably managed within, the <i>state's</i> financial, human and other resource capacity.
Farm enterprise	An activity listed in Division A of the Australian and New Zealand Industrial Classification published by the Australian Bureau of Statistics.
Financial Year	A period of 12 months commencing on 1 July.
Individual	A natural <i>person</i> .
Minister	The Commonwealth <i>Minister</i> responsible for <i>natural disaster</i> relief, recovery and mitigation policy and financial assistance.
Must	Indicates a mandatory requirement.
Natural disaster	<p>A serious disruption to a community or region caused by the impact of a naturally occurring rapid onset event that threatens or causes death, injury or damage to property or the environment and that requires significant and coordinated multi-agency and community response, and is one, or a combination of, the following:</p> <ol style="list-style-type: none"> a) bushfire b) earthquake c) flood d) storm e) cyclone f) storm surge g) landslide h) tsunami i) meteorite strike j) tornado. <p>Events where human activity is a significant contributing cause (for example, poor environmental planning, commercial development, personal intervention (other than arson), or accident) are not <i>natural disasters</i> for the purposes of this <i>determination</i>.</p>
Natural disaster mitigation	Measures taken in advance of, or after, a <i>natural disaster</i> aimed at decreasing or eliminating the impact of a natural <i>disaster</i> on society and the environment.

Non-Profit Organisation	<p>An incorporated charity or non-profit entity that is registered with the Australian Charities and Non-Profits Commission (ACNC) or an equivalent <i>state</i> regulatory body. This may include:</p> <ul style="list-style-type: none"> • non-profit schools (i.e. those run by a church); • religious institutions; • homeless hostels; • aged <i>persons</i> homes; • organisations relieving the special needs of people with disabilities; • community child care centres; • cultural societies; • environmental protection societies; • neighbourhood associations; • public museums and libraries; • scouts; • sports clubs; • surf lifesaving clubs; and • traditional service clubs
Person	<p>An <i>individual</i>, a body politic, or a body corporate.</p>
Primary producer	<p>An <i>individual</i>, partnership, trust or company that:</p> <ul style="list-style-type: none"> • has a right or interest in a <i>farm enterprise</i>; and • contributes a significant part of his, her or its labour and capital to the enterprise; and • derives at least 50 per cent of his, her or its income from the enterprise. <p><i>Primary producers</i> are defined as those that are listed under Australian New Zealand Standard Industrial Classification 2006 (ANZSIC) 1292.0 (Revision 2.0) Codes 01 (Agriculture), 02 (Aquaculture), 03 (Forestry and Logging), 04 (Fishing, Hunting and Trapping) and 05 (Agriculture, Forestry and Fishing Support Services). These are:</p> <ol style="list-style-type: none"> a) agriculture <ol style="list-style-type: none"> i. nursery and floriculture production ii. mushroom and vegetable growing iii. fruit and tree nut growing iv. sheep, beef cattle and grain farming v. other crop growing vi. dairy cattle farming vii. poultry farming viii. deer farming ix. intensive horticulture x. other livestock farming xi. hydroponics xii. beekeeping a) aquaculture b) forestry and logging c) fishing, hunting and trapping d) forestry, agriculture and fishing support services

Small business	<p>A business, other than a <i>farm enterprise</i>, that employs fewer than 20 full-time equivalent staff. That is, the sum total of all standard hours worked by all <i>employees</i> (whether full-time or part-time) is less than the number of standard hours that would be worked by 20 full-time <i>employees</i>, as defined by the Australian Bureau of Statistics.</p> <p>A <i>small business</i> does not include a sole trader <i>small business</i> where 50 per cent or less of the sole trader's income comes from that business.</p>
Small disaster criterion	<p>The amount published by the <i>Department</i> from time to time for the purposes of this <i>determination</i>, being the amount of \$240,000 as affected by movements in the Consumer Price Index.</p>
State	<p>All Australian <i>states</i>, including the Australian Capital Territory and the Northern Territory.</p>
State expenditure	<p>The amount actually spent or the cost incurred by the <i>state</i> within the <i>allowable time limit</i>, on an <i>eligible measure</i> and with respect to an <i>eligible disaster</i>.</p> <p>The amount includes:</p> <ul style="list-style-type: none"> • the cost to the <i>state</i> of <i>eligible measures</i> in the form of non-monetary assistance (for example, goods, waived revenue, free or subsidised services) • the cost to the <i>state</i> of <i>eligible measures</i> in the form of concessional interest rate loans • no more than two-thirds of the <i>betterment</i> of a local government owned asset, except where the asset is an asset of a remote indigenous community or, if the <i>Department</i> agrees there are exceptional circumstances, is an asset of a low financial capacity local government. <p>Note: If any part of <i>state expenditure</i> is in the form of concessional interest rate loans, a component of the Commonwealth assistance will also be in the form of a concessional interest rate loan to the <i>state</i>—see clause 6.3</p> <p>The amount does not include any of the following:</p> <ul style="list-style-type: none"> • amounts that the <i>state</i> has recovered or may recover from any source; • amounts that a <i>person</i> is liable to reimburse to the <i>state</i> (including amounts attributable to GST); • amounts directly or indirectly receivable from the Commonwealth under a joint Commonwealth/<i>state</i> financial arrangement or some other form of specific purpose financial assistance to a <i>state</i>; • amounts attributable to internal rate hire or salaries or wages or other ongoing administrative expenditure for which the <i>state</i> would have been liable even though the <i>eligible measure</i> had not been carried out; • amounts that have been transferred from a <i>state</i> to a <i>Department</i> or other agency of the <i>state</i> government for possible expenditure on an <i>eligible measure</i>, but have not yet been spent by that agency; • the local government's contribution to <i>betterment</i>; or • profit margins.

Thresholds	<p>The first <i>threshold</i> is 0.225 per cent of the <i>state's</i> total general government sector revenue and grants in the <i>financial year</i> two years prior to the relevant <i>financial year</i>; and</p> <p>The second <i>threshold</i> is 1.75 times the <i>state's</i> first <i>threshold</i>.</p>
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1.2 INTERPRETATION

1.2.1 In this *determination*:

- b) The singular includes the plural and vice versa, and a gender includes other genders.
- c) Clause and subclause headings are inserted for convenience only and have no effect in limiting or extending the language of the provisions of this *determination*.
- d) Notes and examples to provisions of this *determination* form part of the *determination* but if there is any inconsistency between a provision of this *determination* and a note or guideline for example, the provision prevails.
- e) Another grammatical form of a defined word or expression has a corresponding meaning.
- f) If a day on or by which an obligation *must* be performed or an event *must* occur is not a business day, the obligation *must* be performed or the event *must* occur on or by the next business day.

1.2.2 The definitions and interpretation clauses also apply to the interpretation of any guideline or other instrument issued under this *determination*.

2. INTRODUCTION

2.1 AIM AND OVERVIEW OF THE NATURAL DISASTER RELIEF AND RECOVERY ARRANGEMENTS

2.1.1 *Natural disasters* or terrorist events may result in large-scale expenditure by *state* governments in the form of *disaster* relief and recovery payments and infrastructure restoration. To assist with this burden, the Commonwealth has made arrangements to provide financial assistance to the *states* in certain circumstances. Usually the assistance is in the form of partial reimbursement of actual *state expenditure*.

2.1.2 The *determination* is administered by the *Department*. The *determination* identifies the relief and recovery assistance to which the Commonwealth will financially contribute.

2.1.3 Commonwealth assistance under the *determination* is not intended to fund every possible relief and recovery measure delivered by a *state*.

2.1.4 This *determination* should be read in conjunction with any relevant guidelines.

3. BASIC PRINCIPLES FOR ASSISTANCE

3.1 PRINCIPLES FOR ASSISTANCE TO STATES

- 3.1.1 *States* are best placed to identify the type and level of assistance to make available following a *disaster*, in accordance with their responsibility for *disaster* management. *States* are not bound, or limited, by the measures identified in, or funding available under, the *determination* and should make available whatever assistance they deem necessary regardless of whether it is eligible for reimbursement.
- 3.1.2 In carrying out, or contributing to the cost of, *eligible measures*, the *state must* act consistently with the principles that:
- a) recovery is a shared responsibility for *individuals*, households, businesses and communities, as well as for governments where access to capital or appropriate strategies of *natural disaster mitigation* are considered; and
 - b) its assistance is not to supplant, or operate as a disincentive for, self-help by way of either access to capital or appropriate strategies of *natural disaster mitigation*; and
 - c) the assistance is designed to achieve an efficient allocation of resources.
- 3.1.3 The Commonwealth's assistance is intended to support relief and recovery measures delivered by the *states* in relation to *eligible disasters* that complement other *state*-based strategies, such as insurance and *natural disaster mitigation* planning and implementation.
- 3.1.4 The Commonwealth considers that *natural disaster mitigation*, in partnership with the *states*, is a necessary principle to be advanced under the *determination*. This principle is consistent with good accountability, and provides assurance to communities and the general public of the ongoing commitment of all Australian governments to safeguarding the well-being of their communities through providing effective levels of *disaster* prevention and protection.
- 3.1.5 *States* have a responsibility to put in place insurance arrangements that are cost effective for both the *state* and the Commonwealth.
- 3.1.6 The financial exposure borne to taxpayers (at all levels of government) under the *determination* should be minimised.

4. CONDITIONS FOR COMMONWEALTH ASSISTANCE

4.1 GENERAL REQUIREMENT

4.1.1 *States must* comply with the following conditions to be eligible for Commonwealth assistance. The outcomes of non-compliance with any condition are to be determined by the *Department* and may include, but are not limited to:

- all *state expenditure* in the relevant *financial year* being declared ineligible,
- the specific *state expenditure* in question being declared ineligible,
- a claim being withheld until the *state* has rectified the issue of non-compliance.

4.1.2 If a *state* is or was unable to comply with any condition, or is eligible for an exemption, the *state must* write to the *Department* requesting dispensation from that condition. The request *must* include the specific circumstances giving rise to the non-compliance or exemption.

4.2 NOTIFICATION

4.2.1 When a *disaster* occurs and the relevant *state* knows, or expects, the *disaster* to be an *eligible disaster* the *state must* notify the *Department* of that fact within three (3) months.

4.2.2 The notification *must* be in the form set out in Attachment A: Notification Form.

4.3 PUBLIC ACKNOWLEDGEMENT OF COMMONWEALTH ASSISTANCE

4.3.1 The announcement of an *eligible measure* or *eligible measures must* be through a joint media release, or other joint announcement, unless otherwise agreed by the Commonwealth.

4.3.2 The Commonwealth and the *state must* work together on the details of a joint media release or other joint announcement.

4.3.3 When referring to a measure under the *determination*, it *must* be described as “jointly funded by the Commonwealth and ^{^insert name of state^} under the Natural Disaster Relief and Recovery Arrangements”.

4.3.4 The *state must* notify the Federal Member of the House of Representatives in writing where there is an intention to undertake an *essential public asset* restoration or replacement project (including for assets owned by local governments) in their electorate.

4.3.5 *States must* reach prior agreement with the Commonwealth on the nature and content of any subsequent events, announcements, promotional material or publicity relating to any assistance measure under the *determination*. This includes but is not limited to:

- a) any *state* media releases regarding assistance measures under the *determination*;
- b) *essential public asset* ceremonies;
- c) media events that include reference to funding or measures under the *determination*;
- d) plaques and signage at any asset restoration or replacement project sites funded under the *determination*.

- 4.3.6 Evidence of compliance with subclauses under clause 4.3 *must* be provided to the Commonwealth in reasonable time after compliance has been achieved. If evidence is not provided, the *Department* may withhold or reduce the reimbursement amount payable on a *state* claim in respect of *eligible measure(s)* or *eligible disaster*.
- 4.3.7 *States* may seek a written exemption from clause 4.3 where it is clear that a *state* is not likely to reach its first *threshold* for a *financial year*, which would preclude a *state* from receiving partial reimbursement for *Category B*. The request *must* be made in the form of Attachment A: Notification Form.

4.4 STATE IMPLEMENTATION OF NATURAL DISASTER MITIGATION STRATEGIES

- 4.4.1 A condition of assistance for restoration or replacement of an *essential public asset* is:
- a) the *state* has developed and implemented *natural disaster mitigation* strategies in respect of likely or recurring *natural disasters*, and has also encouraged local government bodies to develop and implement such strategies (these strategies may have been developed by Commonwealth, *state* or local government bodies); and
 - b) if the *state's* assistance is for the restoration or replacement of an *essential public asset* of a local government body, and the local government body has not developed and implemented appropriate *natural disaster mitigation* strategies in respect of likely or recurring *natural disasters*—the assistance the *state* would otherwise have given to the local government body is reduced by 10 per cent.
- 4.4.2 Responsibility for determining an appropriate mitigation strategy is a matter for *states* (and their local governments).
- 4.4.3 *States must* provide evidence of the implementation of appropriate *natural disaster mitigation* strategies at the time of submitting a claim. *States* are also obliged to provide evidence of the implementation of appropriate *natural disaster mitigation* strategies at any other time as the *Department* requests.
- 4.4.4 If the *Department* does not consider that reasonable progress has been made towards the development and implementation of *natural disaster mitigation* strategies in respect of likely or recurring *natural disasters*, the *Department* will raise the concerns with the *state*. The *Department* may seek a commitment by the *state* to rectify any agreed inadequacies.
- 4.4.5 If the *state* refuses to rectify the inadequacies, the *Department* may withhold or reduce the reimbursement amount payable on a *state* claim in respect of a future *natural disaster* of the same type that is an *eligible disaster*.
- 4.4.6 If a *state* wishes to appeal a decision made under subclause 4.4.5, the *state* may write to the *Minister*.

4.5 STATE CAPITAL OR ACCESS TO CAPITAL

- 4.5.1 A *state must* have reasonably adequate capital or access to capital to fund liabilities or infrastructure losses before being granted access to funds under this *determination*, including through, but not limited to, the following mechanisms:
- a) commercial insurance/reinsurance;

- b) any *state*-COAG reinsurance fund or pool; and
- c) state *Department* premium contributions (i.e. internal *state* funds).

4.5.2 *States must* proactively explore a range of insurance options in the market place and assess available options on a cost-benefit basis.

4.5.3 The Commonwealth may undertake activities to assure itself that a *state* has made reasonable effort to meet this condition of assistance.

4.6 ADVICE ON STATE ELIGIBLE MEASURES

4.6.1 By 1 September each year *states must* provide the Commonwealth details of all *eligible measures* that may be made available during that *financial year* in response to a *disaster*.

4.6.2 All *eligible measures must* be categorised according to the relevant measures listed at subclauses 5.2, 5.3, 5.4 and 5.5.

4.7 QUARTERLY STATE EXPENDITURE AND FORECAST REPORTS

4.7.1 Each *state must* provide to the *Department*, for budgetary purposes, reports of the *state's*:

- a) *state expenditure* and estimated *state expenditure* in the current *financial year* to date; and
- b) latest estimates of forecast *state expenditure* for the remainder of the current *financial year* and for the next three *financial years*.

4.7.2 The *state expenditure* and forecast *state expenditure* reports *must* be provided quarterly or, if the *Department* requests, at any other time.

4.7.3 The *state expenditure* and forecast *state expenditure* reports *must* be certified by an officer at the level, and in the format, designated by the *Department*.

4.7.4 The certification *must* be in the form of Attachment B: Estimates Pack.

4.7.5 The estimated expenditure *must* be broken down as follows:

- a) *Category A* measures; and
- b) *Category B* measures (excluding concessional interest rate loan expenditure); and
- c) concessional interest rate loan expenditure; and
- d) *Category C* measures; and
- e) *Category D* measures.

4.7.6 Any *state expenditure* arising from discretionary Commonwealth agreements (for example, *betterment*, *Category C* or *Category D* measures) *must* be itemised separately and be described in accordance with the description of each item as agreed by the Commonwealth.

4.7.7 The *Department* may at any time ask the *state* to provide information, including access to project level information, that the *Department* considers necessary to ensure that *state expenditure* and estimated *state expenditure* is in accordance with the principles, conditions, and eligibility rules of this *determination* and its guidelines.

4.8 STATE RECORD KEEPING

- 4.8.1 *States must* keep an accurate audit trail for seven (7) years, consistent with section 286(2) of the Corporations Act 2001.
- 4.8.2 For assurance purposes the *Department* may, at any time, request documentation from *states* to evidence the *state's* compliance with any aspect of the *determination*.
- 4.8.3 *States must* make available to the Commonwealth in reasonable time all documentation relevant to a request by the Commonwealth.
- 4.8.4 *States must* certify that they will provide access to documentation at each estimates quarter and with each claim. The certification *must* be in the form of Attachment B: Estimates Pack.

5. RELIEF AND RECOVERY ASSISTANCE MEASURES

5.1 GENERAL REQUIREMENT

- 5.1.1 For any of the below relief and recovery assistance measures to be an *eligible measure* they *must* be carried out to alleviate damage or distress arising as a direct result of a *disaster*.

5.2 CATEGORY A MEASURES

- 5.2.1 A *Category A* measure is one of the following forms of emergency assistance to *individuals*:
- a) emergency food, clothing or temporary accommodation;
 - b) repair or replacement of essential items of furniture and personal effects;
 - c) essential repairs to housing, including temporary repairs and repairs necessary to restore housing to a habitable condition;
 - d) demolition or rebuilding to restore housing to a habitable condition;
 - e) removal of debris from residential properties to make them safe and habitable;
 - f) extraordinary counter *disaster* operations;
 - g) personal and financial counselling;
 - h) *extraordinary costs* associated with the delivery of any of the above forms of assistance.

5.3 CATEGORY B MEASURES

- 5.3.1 A *Category B* assistance measure is one of the following:
- a) restoration or replacement of an *essential public asset*;
 - b) *betterment* of an *essential public asset*;
 - c) concessional interest rate loan to *small businesses* and *primary producers* whose assets have been significantly damaged;
 - d) concessional interest rate loan to a needy *individual* or *non-profit organisation* whose assets have been significantly damaged;
 - e) concessional interest rate loan to a *small business*, *primary producer* or a *non-profit organisation* that has suffered a significant loss of income;

- f) interest rate subsidy to *small businesses* or *primary producers* whose assets have been significantly damaged;
- g) interest rate subsidy to a *small business, primary producer* or a *non-profit organisation* that has suffered a significant loss of income;
- h) freight subsidy to *primary producers* whose assets have been significantly damaged;
- i) grant to a needy *individual* or *non-profit organisation* whose assets have been significantly damaged; or
- j) counter *disaster* operations for the protection of the general public.

RESTORATION OR REPLACEMENT OF ESSENTIAL PUBLIC ASSETS

5.3.2 An *essential public asset* directly damaged by a *disaster* may be restored or replaced to its *pre-disaster* standard, in accordance with current building and engineering standards.

5.3.3 *States* must seek the Commonwealth's agreement that an asset is an *essential public asset* within a reasonable time of commencing any *essential public asset* restoration or replacement activity estimated to cost \$1,000,000 or more.

5.3.4 The request to the Commonwealth *must* be in the form at Attachment C: *Essential Public Assets Approval Form*.

EXTENSIONS TO THE ALLOWABLE TIME LIMIT

5.3.5 *States* may submit a request to the *Department* for an extension to the *allowable time limit* for the restoration of an *essential public asset* where there are exceptional circumstances.

5.3.6 The request *must* be in the form of Attachment D: Request for Extension to the *Allowable Time Limit Form*.

5.3.7 *States* may submit a request at any time but the *Department* will only consider the request after 31 July and 31 December each year, in line with the Federal Budget cycle.

5.3.8 All extensions to the *allowable time limit* that result in a change (positive or negative) in the Commonwealth's financial liability *must* be approved by the Australian Government.

5.3.9 The requesting *state* *must* not cease the restoration of the *essential public asset* pending the outcome of the Australian Government's consideration.

5.3.10 Requests received after the *allowable time limit* has expired will not be considered.

BETTERMENT

5.3.11 *Betterment* of an *essential public asset* may be funded under the *determination* if:

- a) the *state* submits a *betterment* proposal to the *Department*, in the form of Attachment E: *Betterment Proposal*; and
- b) the *Department* is satisfied with the cost effectiveness of the proposal; and
- c) the *Department* is satisfied that the increased *disaster*-resilience of the asset will mitigate the impact of likely or recurring *disasters* of the same type.

5.3.12 A *betterment* proposal that results in a change (positive or negative) in the Commonwealth's financial liability *must* be approved by the Australian Government.

5.3.13 A *betterment* project may be subject to an extension to the *allowable time limit* (see subclauses 5.3.5—5.3.10).

CONCESSIONAL INTEREST RATE LOANS

5.3.14 Eligible applicants of a concessional interest rate loan under this *determination* may receive only one concessional interest rate loan or interest rate subsidy made available in response to a single *disaster*.

5.3.15 A concessional interest rate loan *must* be made directly from the *state* to the eligible applicant.

Concessional interest rate loan to eligible small businesses and primary producers whose assets have been directly damaged

5.3.16 For an applicant to be eligible, the *state must* be satisfied that:

- a) the applicant's assets (including fodder) have been significantly damaged as a direct result of the *disaster*; and
- b) the applicant has no reasonable prospect of obtaining commercial finance but has a reasonable prospect of long-term viability for the business.

5.3.17 The principle loan amount is to be established by the *state*.

Concessional interest rate loan to eligible needy individuals and non-profit organisations whose assets have been directly damaged

5.3.18 For an applicant to be eligible, the *state must* be satisfied that:

- a) the applicant's assets have been significantly damaged as a direct result of the *disaster*; and
- b) the applicant has no reasonable prospect of obtaining commercial finance.

5.3.19 The principle loan amount is up to \$100,000 to any one eligible applicant. The first \$30,000 (or part thereof) by way of a combination of a loan and a grant (see sub-clauses 5.3.36 and 5.3.37) *must* be in the ratio of 5:1.

Concessional interest rate loans for a significant loss of income

5.3.20 For an applicant to be eligible, the *state must* be satisfied that:

- a) the applicant has suffered a significant loss of income as a direct result of the *disaster*; and
- b) the applicant was established and operating in the *disaster* impacted area notified under the *determination*; and
- c) the applicant's business operation was viable prior to the *disaster* and, with interim assistance provided through the emergency assistance loan, will continue to be viable into the future; and

d) the applicant is continuing or is to re-establish the business operations within the same location, or within the same local government area.

5.3.21 The concessional interest rate loan for a significant loss of income may be used for essential working capital, being the amount required to continue business or primary production operations for the next 12 months or until the next major income is received, and may include:

- a) salaries and wages;
- b) paying creditors;
- c) paying rent and rates;
- d) procuring fodder or water for livestock or produce;
- e) procuring alternative transport for livestock and produce; and
- f) fuel and other supplies essential to the business.

5.3.22 The principle loan amount is up to \$100,000 to any one applicant.

5.3.23 The repayment term is up to 10 years with the ability to offer interest only in the first and/or second year.

Calculation for the concessional interest rate

5.3.24 In setting the *state's* interest rate on concessional interest rate loans in a *financial year*, the *state must* have regard to the following factors:

- a) the rate set by the Commonwealth under subclause 6.4.2 for that *financial year*;
- b) the desirability of the *state's* rate not exceeding that rate, except to the extent estimated by the *state* as necessary to cover administration costs and bad debts.

5.3.25 If the *state* charges an interest rate that exceeds the rate estimated to cover administration costs and bad debts, interest set by the Commonwealth at the commencement of a year and equivalent interest set by the *state*, the *state must* pay to the Commonwealth, on or before 15 June in each successive year until maturity of the loan, an amount equal to three-quarters of the Commonwealth loan proportion of the interest receipts associated with the margin.

5.3.26 The *state must* review the interest rate charged to borrowers from time to time, making adjustments where appropriate to accommodate any improvement in the circumstances of the recipient.

5.3.27 The amount of each loan made by the *states* to *individuals* and organisations eligible for Commonwealth assistance may be subject to ceilings determined by the *Minister* to apply from a specified date (normally 1 July) until amended. The ceilings on loans *must* be determined having regard to movements in prices since the ceilings were last amended.

INTEREST RATE SUBSIDIES

5.3.28 Eligible applicants of an interest rate subsidy under this *determination* may receive only one concessional interest rate loan or interest rate subsidy made available in response to a single *disaster*.

5.3.29 Requirements for an interest rate subsidy scheme are:

- a) applicants *must* first apply to *states* who assess eligibility;
- b) eligible applicants are issued with a letter from *states*, which they provide to a participating authorised deposit taking institution (ADTI);
- c) the ADTI assesses the eligible applicant against lending guidelines developed by the *state* under this scheme;
- d) the subsidy is paid by the *state* to an ADTI; and
- e) the subsidy reimburses the ADTI for the concessional interest rate it gives on the loan.

Interest rate subsidies to a small business or primary producer whose assets have been directly damaged

5.3.30 For an applicant to be eligible the *state must* be satisfied that the applicant's assets (including fodder) have been significantly damaged as a direct result of the *disaster*.

5.3.31 The maximum principle loan amount is to be established by the *state*.

Interest rate subsidy to a small business, primary producer or a non-profit organisation that has suffered a significant loss of income

5.3.32 For an applicant to be eligible, the *state must* be satisfied that the applicant:

- a) was established and operating in the *disaster* impacted area notified under the *determination*; and
- b) suffered a significant loss of income as a direct result of the *disaster*.

5.3.33 The maximum principle loan amount is \$100,000.

5.3.34 The repayment term is up to 10 years with the ability to offer interest only in the first and/or second year.

FREIGHT SUBSIDY TO A PRIMARY PRODUCER

5.3.35 The requirements for a freight subsidy scheme to a *primary producer* are:

- a) the grant is made by the *state* to a *primary producer*; and
- b) the grant reimburses the *primary producer* a maximum of 50 per cent of the costs to the producer of transporting any of the following as a direct result of the *disaster*:
 - i. livestock;
 - ii. fodder or water for livestock;
 - iii. building or fencing equipment or machinery.

GRANTS TO A NEEDY INDIVIDUAL OR NON-PROFIT ORGANISATION

5.3.36 For an applicant to be eligible, the *state must* be satisfied that:

- a) the recipient's assets have been significantly damaged as a direct result of the *disaster*; and
- b) the recipient has no reasonable prospect of obtaining commercial finance.

5.3.37 A maximum grant of \$10,000 for *non-profit organisations* and \$5,000 for *individuals* (subject to means testing) is available to any one applicant.

COUNTER DISASTER OPERATIONS FOR THE PROTECTION OF THE GENERAL PUBLIC

5.3.38 The requirements for counter *disaster* operations referred to in subclause 5.3.1(c) are:

- a) the costs are associated with counter *disaster* operations carried out to protect communities from the *disaster* and ensure public health and safety in public areas; and
- b) the costs exceed the costs that a *state* could reasonably have expected to incur for these purposes; and
- c) the operations carried out were intended to result in less *Category A* assistance being required.

5.4 CATEGORY C MEASURES

5.4.1 A *Category C* measure is a community recovery package designed to support a holistic approach to the recovery of regions, communities or sectors severely affected by a *disaster*.

5.4.2 The cost-sharing ratio between the Commonwealth and the *state* for each *Category C* measure of assistance is equal—50/50.

5.4.3 The package may comprise one or more of the following:

- a) **A community recovery fund** in circumstances where a community is severely affected and needs to restore social networks, community functioning and community facilities. Expenditure from the fund is aimed at community recovery, community development and community capacity building, and is administered by the *state* in close collaboration with local government or other community bodies.
- b) **Recovery grants for *small businesses* and *non-profit organisations*** where the business sector is severely affected and the community risks losing essential businesses. Grants are aimed at covering the cost of clean-up and reinstatement, but not at providing compensation for losses.
- c) **Recovery grants for *primary producers*** where the farming sector is severely affected, with threats to viability and disruption of production likely to extend beyond the current season. Grants to *primary producers* are aimed at covering the cost of clean-up and reinstatement, but not at providing compensation for losses.

5.4.4 In order to receive a *Category C* measure in relation to a *disaster*, the recovery assistance *must* meet the following conditions:

- a) it either meets the intent of the community recovery package, or it contains only variations that have been approved by the *Minister* in writing; and
- b) the use of that assistance has been approved by the Prime Minister in writing in relation to the *disaster*; and
- c) it meets any other terms and conditions imposed by the Commonwealth in writing.

5.4.5 A *Category C* request *must* be made in the form of Attachment F: *Category C* Request Form completed by the *state* and submitted with a covering letter to the Prime Minister for consideration.

- 5.4.6 The value of a community recovery fund under subclause 5.4.3(a) will be determined at the time of the assistance being approved by the Prime Minister.
- 5.4.7 Grants made under subclauses 5.4.3(b) and 5.4.3(c) *must* not exceed \$10,000, unless exceptional circumstances are identified, in which case up to \$25,000 may be granted.

5.5 CATEGORY D MEASURE

- 5.5.1 A *Category D* measure is an act of relief or recovery carried out to alleviate distress or damage in circumstances that are in the opinion of the *Minister*, exceptional.
- 5.5.2 In order to receive a *Category D* measure in relation to a *disaster*, the assistance *must*:
- a) be approved by the Prime Minister in writing in relation to the *disaster*, and
 - b) meet any other terms and conditions imposed by the Commonwealth in writing.
- 5.5.3 The cost-sharing ratio between the Commonwealth and the *state* for each *Category D* measure of assistance is at the Commonwealth's discretion but may be guided by the *state*.

6. CLAIMING

6.1 TYPE AND TIMING OF PAYMENTS FROM THE COMMONWEALTH

- 6.1.1 Payments are generally made after the *state* has submitted an audited claim for financial assistance. However, the Commonwealth may provide advance payments if the *Minister* is satisfied that exceptional circumstances exist. The Commonwealth may also pre-pay a claim prior to audit (general claim) or pre-pay a *state* for a specific activity, for example activities agreed under *Category D* of this *determination*.

6.2 DETERMINING THE AMOUNT OF COMMONWEALTH FINANCIAL ASSISTANCE

- 6.2.1 The amount of Commonwealth financial assistance to a *state* in relation to a *financial year* is worked out on the basis of:
- a) *state expenditure* in that year; and
 - b) the extent to which the *state expenditure* has exceeded its first and second *thresholds* in that year; and
 - c) the set rates and maximum values of assistance for all measures, as defined in this *determination* and/or as agreed by the Commonwealth.
- 6.2.2 The *Department* *must* inform the *states*, in writing, of their respective *thresholds* as soon possible following the release of the figures from the Australian Bureau of Statistics.

RATES OF ASSISTANCE BY CATEGORY OR MEASURE

- 6.2.3 The rate of Commonwealth assistance that may be payable in a *financial year* on *Category A* and *Category B state expenditure* (excluding *betterment*) is calculated as:
- a) if *state expenditure* does not exceed the *state's first threshold*, then:
 - i. *Category A*: 50 per cent; and
 - ii. *Category B*: zero; or
 - b) if *state expenditure* exceeds the *state's first threshold*, then:
 - i. *Categories A and B*: 50 per cent between a *state's first and second threshold*; plus 75 per cent of *state expenditure* above the *state's second threshold*; and
 - ii. *Category B betterment*: 50 per cent (for which relevant *state expenditure* may be capped).
- 6.2.4 Commonwealth assistance with respect to *Category B* concessional interest rate loan measures is provided in the form of a concessional interest rate loan from the Commonwealth to the *state*. The rate of Commonwealth assistance is as defined at clause 6.2.3. The formula to determine separately the value of the Commonwealth's loan is at subclause 6.3.1.
- 6.2.5 The amount of Commonwealth assistance in relation to a *financial year* on *Category C state expenditure* is to be calculated at the rate of 50 per cent (for which *state expenditure* on *Category C* measures may be capped).
- 6.2.6 In circumstances where a rate has not been specified by the Commonwealth, the rate of assistance on the relevant *Category C* measures is to be calculated as:
- a) if *state expenditure* does not exceed the *state's first threshold*, 50 per cent; or
 - b) if *state expenditure* exceeds the *state's first threshold*, 50 per cent between a *state's first and second threshold*; plus 75 per cent where total *state expenditure* is above the *state's second threshold*.
- 6.2.7 The amount of Commonwealth assistance during a *financial year* on *Category D* measures is to be calculated at the rate determined by the Commonwealth.
- 6.2.8 If the *state's first threshold* has been exceeded but 50 percent of both *Category A* and *Category C* results in a higher reimbursement to the *state*, the *state* may choose to take the higher reimbursement.

6.3 FORMULA TO DETERMINE THE VALUE OF THE COMMONWEALTH LOAN TO A STATE

- 6.3.1 The value of a Commonwealth loan to a *state* is the same proportion of total Commonwealth assistance as the proportion that the loan principal provided by the *state* is of total *state expenditure* in that year.

6.3.2 The value of the Commonwealth loan to a *state* is calculated under the following formula:

CL = (CA - CCATAC) x (SL / (SE-SCATAC)) where:

- CL = the amount of the loan component of the Commonwealth to that *state* in respect of that *financial year*
- CA = total Commonwealth assistance to the *state*, as calculated under clause 6.2
- CCATAC = Commonwealth assistance in respect of *state expenditure* on *Category A* and *Category C* during that *financial year*, (being equal to 50 per cent of SCATAC)
- SL = total loans made by the *state* during that *financial year* under subclauses 5.3.14—5.3.36
- SE = total *state expenditure* during that *financial year*
- SCATAC = *state expenditure* on *Category A* and *Category C* during that *financial year*.

6.4 CONCESSIONAL INTEREST RATE CHARGED BY THE COMMONWEALTH

- 6.4.1 A loan to a *state* is subject to a concessional interest rate determined by the *Department* at the beginning of each *financial year*, having regard to market interest rates at the time.
- 6.4.2 The concessional interest rate charged by the Commonwealth is to be based on 50 percent of the ten-year Treasury bond rate averaged over April–May–June for the applicable *financial year*.
- 6.4.3 The applicable concessional interest rate applies to all outstanding Commonwealth loans to a *state*.
- 6.4.4 The *Department* *must* inform the *states* of the rate in reasonable time following the release of the data by the Reserve Bank of Australia.
- 6.4.5 A *state's* repayment term is up to 10 years with the first two years being interest only.
- 6.4.6 The principal of a loan to a *state* is repayable to the Commonwealth in eight (8) equal annual instalments. Principal repayments *must* be paid to the Commonwealth on or before 15 June in each *financial year* commencing in the *financial year* after the interest only period.
- 6.4.7 Interest on a loan to a *state* begins to accrue following the end of the *financial year* in which the Commonwealth made the loan. The annual interest payable is calculated on the balance of outstanding loans at the beginning of each *financial year*. Interest *must* be paid to the Commonwealth on or before 15 June in each year the interest is due.

CALCULATION FOR THE INTEREST RATE SUBSIDY CLAIMABLE FROM THE COMMONWEALTH

- 6.4.8 The interest rate subsidy claimable from the Commonwealth *must* be the lesser of:
- 50 percent of the ten-year Treasury bond rate averaged over April–May–June for the applicable *financial year*; or
 - 50 per cent of the actual (commercial) interest amount.

6.5 AUDITED CLAIMS

- 6.5.1 If a *state* has notified the *Department* of the occurrence of an *eligible disaster* under subclause 4.1, the *state* may submit a claim to the *Department* for financial assistance in respect of *state expenditure* for that *disaster*.
- 6.5.2 *State expenditure* in each *financial year* must be audited. The *state*-appointed auditor is required to attest that the *state's* claim is in accordance with the principles, conditions, and eligibility rules of this *determination* and its guidelines, and any applicable *state* and Commonwealth agreements made in relation to the *determination*.
- 6.5.3 On request from the *Department*, the *state* appointed-auditor *must* be available to the *Department* or its auditor for consultation on the audited claim.
- 6.5.4 The audit and audited claim documentation *must* take account of any advance payments, general claim payments or pre-payments already paid by the Commonwealth to the *state*, as well as any conditions associated with those payments.
- 6.5.5 The audited claim *must* be in the form of Attachment G: Claim Pack and *must* be certified by the Auditor-General of that *state* (or his or her delegate).
- 6.5.6 The audited claim *must* be submitted to the *Department* within nine (9) months after the end of the *financial year* in which the expenditure to which it relates took place.
- 6.5.7 If the *state* is unable to comply with the submission date as specified in subclause 6.5.6 with respect to all or part of the *state expenditure* in the *financial year* due to be claimed from the Commonwealth, it *must* write to the *Department* requesting an extension of time. The *Department* may apply terms and conditions on the *state* with respect to any agreement.
- 6.5.8 If the *state* submits a claim later than the nine (9) months specified in subclause 6.5.6 for which it did not request an extension of time from the *Department*, the *Department* may refuse the claim.

6.6 GENERAL CLAIMS

- 6.6.1 In some circumstances, the *Department* may permit a *state* to submit a general claim for payment prior to the *state* submitting the audited claim.
- 6.6.2 Each general claim *must* be supported by a statement certified by the head of either the *state* Treasury or the *state* agency that has primary financial responsibility for the *determination*.
- 6.6.3 The statement *must* be in the form set out in Attachment G: Claim Pack.
- 6.6.4 The *state* *must* submit an audited claim in support of the general claim in accordance with clause 6.5.

7. CLAIM ACQUITTAL AND PAYMENT

7.1 SUPPORTING INFORMATION

- 7.1.1 The *Department* may at any time ask the *state* to provide information, including access to project level information, that the *Department* considers necessary to ensure that acquittal of a claim is in accordance with the principles, conditions, and eligibility rules of this *determination* and its guidelines.
- 7.1.2 A *state* must provide the information requested by the *Department* within one month of request.
- 7.1.3 If a *state* elects to not provide all or part of the information requested, the *Department* may:
- a) withhold acquittal or payment of all or part of the claim;
 - b) refuse to acquit or pay the whole claim; or
 - c) remove the expenditure in question from the claim and reimburse the *state* based on the residual *state expenditure*.

7.2 INELIGIBLE OR UNSUBSTANTIATED EXPENDITURE

- 7.2.1 If any information provided by a *state*, including by a *state*-appointed auditor, or identified by the *Department* indicates that any part of the *state expenditure* claimed is inconsistent with this *determination* or any other relevant Commonwealth decision, the expenditure in question will be removed from the claim.
- 7.2.2 If the eligibility of any *state expenditure*, in the opinion of the *Department*, is not adequately substantiated by the *state*, the expenditure in question will be removed from the claim.
- 7.2.3 The *Department* may appoint an independent expert to advise on the matter in question.

7.3 DIFFERENCE BETWEEN ADVANCE PAYMENT, PRE-PAYMENT OR GENERAL CLAIM AND AMOUNT DUE TO BE ACQUITTED OR PAID

- 7.3.1 If:
- a) the *Department* has refused to acquit all or part of a *state's* claim that is subject to an advance payment, general claim payment or pre-payment (for example, in the case of *Category D* measures), the difference between the amount paid and the amount acquitted may be recovered from the *state*; or
 - b) an audited financial statement provided by a *state*, with respect to an advance payment, general claim payment or pre-payment, reveals a difference between the amount of assistance provided and the amount of assistance calculated under this *determination*, the amount is due and payable (by the *state*, or by the Commonwealth, as the case requires) within two (2) months after the *Department* notifies the *state* of the difference.
- 7.3.2 The *Department* may choose to offset any amount to be recovered from the *state* against any known liability due to be paid to the *state* over the forward budget estimates. *State* estimates *must* reflect any reduction made in the relevant year.

8. COMMONWEALTH MAY UNDERTAKE ASSURANCE ACTIVITIES

8.1.1 The *Department* may undertake assurance activities at any time if a *state* has notified the Commonwealth of an *eligible disaster*.

8.1.2 These assurance activities may include, but are not limited to:

- audit;
- site inspections;
- obtaining relevant documentary evidence to support value for money assessments;
- verification reviews on measures or projects.

8.1.3 The *Department* may appoint an independent adviser to conduct these activities.

9. APPEALING A DECISION

9.1 APPEAL TO THE DEPARTMENT OR MINISTER

9.1.1 A *state* may write to the *Department* to appeal any decision made by the *Department* under this *determination*.

9.1.2 If no agreement can be reached between officials of the *state* and the *Department*, the matter may be referred for resolution by the *state* to the *Minister*.

10. MISCELLANEOUS

10.1 GUIDELINES

10.1.1 The *Department* may issue guidelines from time to time to:

- a) provide clarification of the interpretation and administration of this *determination*; and
- b) provide assistance and guidance on the forms and procedures to be adopted by the *states* for obtaining payments under this *determination*.