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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.

<table>
<thead>
<tr>
<th>TERM</th>
<th>DEFINITION</th>
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| Allowable time limit        | For expenditure on restoration or replacement of an *essential public asset*:  
   • the period of 24 months after the end of the *financial year* in which the relevant *disaster* occurred; or  
   • if there are exceptional circumstances presented by a *state* and accepted by the *Department*—such longer period as the *Department* specifies.  
   For expenditure on any other *eligible measure*—the period of 24 months after the end of the *financial year* in which the relevant *disaster* occurred. |
| Betterment                  | The restoration or replacement of an *essential public asset* to a more *disaster*-resilient standard than its pre-*disaster* 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 *Department*. A reference to the *Department* includes a reference to the Secretary and appropriate Senior Executive Service officials of the *Department*. |
| Determination                | This document.                                                                                                                                                                                             |
| Disaster                    | A *natural disaster* or terrorist event.                                                                                                                                                                   |
| Eligible disaster           | A *disaster* for which *state expenditure* exceeds the *small disaster criterion*.                                                                                                                     |
| Eligible measure            | An act of relief or recovery described as a *Category A*, *Category B*, *Category C* or *Category D* measure.                                                                                               |
| Eligible undertaking        | A body that:                                                                                                                                     
   • is one of the following:  
     o a *Department* or other agency of a *state* government; or  
     o established by or under a law of a *state* 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.  
   A body that does not meet these requirements is nevertheless taken to be an *eligible undertaking* if the *Minister* has agreed in writing, in the light of special circumstances presented by a *state*, that the body should be treated as an *eligible undertaking* for the purposes of this *determination*. |
| Employee                    | A *person*, including family members, who the business directly engages, controls and pays a wage for their labour.                                                                                         |
| **Essential public asset** | An asset of an *eligible undertaking* that the *state* considers and the *Department* agrees:
- is an integral and necessary part of the *state’s* 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 *state’s* 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 *person*. |
| **Minister** | The Commonwealth *Minister* responsible for *natural disaster* relief, recovery and mitigation policy and financial assistance. |
| **Must** | Indicates a mandatory requirement. |
| **Natural disaster** | 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:
  a) bushfire
  b) earthquake
  c) flood
  d) storm
  e) cyclone
  f) storm surge
  g) landslide
  h) tsunami
  i) meteorite strike
  j) tornado.
  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 *natural disasters* for the purposes of this *determination*. |
| **Natural disaster mitigation** | Measures taken in advance of, or after, a *natural disaster* aimed at decreasing or eliminating the impact of a natural *disaster* on society and the environment. |
| **Non-Profit Organisation** | An incorporated charity or non-profit entity that is registered with the Australian Charities and Non-Profits Commission (ACNC) or an equivalent state regulatory body. This may include:
- non-profit schools (i.e. those run by a church);
- religious institutions;
- homeless hostels;
- aged persons 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** | An individual, a body politic, or a body corporate. |
| **Primary producer** | An individual, partnership, trust or company that:
- has a right or interest in a farm enterprise; 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. Primary producers 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:
- agriculture
  - nursery and floriculture production
  - mushroom and vegetable growing
  - fruit and tree nut growing
  - sheep, beef cattle and grain farming
  - other crop growing
  - dairy cattle farming
  - poultry farming
  - deer farming
  - intensive horticulture
  - other livestock farming
  - hydroponics
  - beekeeping
- aquaculture
- forestry and logging
- fishing, hunting and trapping
- forestry, agriculture and fishing support services |
| **Small business** | A business, other than a *farm enterprise*, that employs fewer than 20 full-time equivalent staff. That is, the sum total of all standard hours worked by all *employees* (whether full-time or part-time) is less than the number of standard hours that would be worked by 20 full-time *employees*, as defined by the Australian Bureau of Statistics.  

A *small business* does not include a sole trader *small business* where 50 per cent or less of the sole trader’s income comes from that business. |
| **Small disaster criterion** | The amount published by the *Department* from time to time for the purposes of this *determination*, being the amount of $240,000 as affected by movements in the Consumer Price Index. |
| **State** | All Australian states, including the Australian Capital Territory and the Northern Territory. |
| **State expenditure** | The amount actually spent or the cost incurred by the *state* within the *allowable time limit*, on an *eligible measure* and with respect to an *eligible disaster*.  
The amount includes:  
- the cost to the *state* of *eligible measures* in the form of non-monetary assistance (for example, goods, waived revenue, free or subsidised services)  
- the cost to the *state* of *eligible measures* in the form of concessional interest rate loans  
- no more than two-thirds of the *betterment* of a local government owned asset, except where the asset is an asset of a remote indigenous community or, if the *Department* agrees there are exceptional circumstances, is an asset of a low financial capacity local government.  

Note: If any part of *state expenditure* 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 *state*—see clause 6.3  
The amount does not include any of the following:  
- amounts that the *state* has recovered or may recover from any source;  
- amounts that a *person* is liable to reimburse to the *state* (including amounts attributable to GST);  
- amounts directly or indirectly receivable from the Commonwealth under a joint Commonwealth/state financial arrangement or some other form of specific purpose financial assistance to a *state*;  
- amounts attributable to internal rate hire or salaries or wages or other ongoing administrative expenditure for which the *state* would have been liable even though the *eligible measure* had not been carried out;  
- amounts that have been transferred from a *state* to a *Department* or other agency of the *state* government for possible expenditure on an *eligible measure*, but have not yet been spent by that agency;  
- the local government’s contribution to *betterment*; or  
- profit margins. |
| **Thresholds** | The first *threshold* is 0.225 per cent of the state’s total general government sector revenue and grants in the *financial year* two years prior to the relevant *financial year*; and The second *threshold* is 1.75 times the state’s first *threshold*. |
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:

\[ CL = (CA - CCATAC) \times (SL / (SE - SCATAC)) \]

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:

a) 50 percent of the ten-year Treasury bond rate averaged over April–May–June for the applicable financial year; or

b) 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.