

# Chapter 1

## Introduction

### Background

1.1 In late December 2010 and early January 2011, significant flooding occurred in many areas of Queensland leaving three-quarters of the state declared a disaster zone.<sup>1</sup> National Accounts data released six months later partly attributed the 1.2 per cent fall in Australia's Gross Domestic Product to the impact of the Queensland floods.

1.2 In late January 2011, the Commonwealth Government estimated it will need to invest \$5.6 billion in rebuilding flood-affected regions, with the vast majority to be spent on rebuilding essential infrastructure.<sup>2</sup> The Prime Minister, the Hon. Julia Gillard MP, noted that the Commonwealth had had discussions with the Queensland Government, adding:

...preliminary estimates of the infrastructure repair costs under existing arrangements for the Natural Disaster Relief and Recovery Arrangements (NDRRA) are around \$5 billion, of which the Australian Government will provide close to three quarters (around \$3.9 billion).<sup>3</sup>

### *The flood levy*

1.3 To assist in covering these costs, the Prime Minister announced that a progressive flood levy for the 2011–12 income year will be introduced 'to assist affected communities recover from the recent floods and rebuild essential infrastructure'.<sup>4</sup> The Commonwealth Government anticipates that budget spending cuts and reprioritisation will deliver two-thirds of the \$5.6 billion cost to the Commonwealth purse, with the remaining cost financed by the temporary levy.<sup>5</sup>

1.4 The flood levy will apply to all taxpayers whose taxable income is more than \$50 000 in the financial year from 1 July 2011 to 30 June 2012. Taxpayers earning

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1 Queensland Government, *Queensland floods*, <http://www.qld.gov.au/floods/> (accessed 20 May 2011).

2 The Hon. Julia Gillard MP, Prime Minister, *Media Release*, 27 January 2011, <http://www.pm.gov.au/press-office/rebuilding-after-floods> (accessed 20 May 2011).

3 The Hon. Julia Gillard MP, Prime Minister, *Media Release*, 27 January 2011.

4 Treasury, *Flood levy*, <http://www.treasury.gov.au/contentitem.asp?NavId=022&ContentID=1949> (accessed 20 May 2011).

5 The Hon. Julia Gillard, Prime Minister, *Media Release*, 27 January 2011.

between \$50 000 and \$100 000 will pay a levy equal to 0.5 per cent of their taxable income in excess of \$50 000, while those earning over \$100 000 will pay 0.5 per cent of taxable income in excess of \$50 000 and one per cent of taxable income in excess of \$100 000.<sup>6</sup> The Parliament passed the flood levy legislation on 22 March 2011; Royal Assent was given on 12 April 2011.

1.5 In the months after the floods, there has been some questioning of the Queensland Government's decision not to seek a reinsurance policy for its assets on the international market. Some have argued that had the Queensland Government sought adequate reinsurance, the costs now borne largely by the Commonwealth Government would have been significantly less. In this context, there has been some criticism that Queensland's under-insurance was deliberate, safe in the knowledge that the Commonwealth would fund a significant proportion of recovery costs under the Natural Disaster Relief and Recovery Arrangements (NDRRA).

1.6 In February 2011, the House of Representatives Standing Committee on Economics held an inquiry into the provisions of the flood levy bills. During the committee's public hearing on 16 February, the Queensland Under Treasurer Mr Gerard Bradley, indicated to the committee that the Queensland Government did not seek reinsurance because of the cost sharing arrangements between the Commonwealth and the States.<sup>7</sup>

1.7 In March 2011, the Senate Economics Legislation Committee reported on the provisions of the flood levy bills. The committee described the levy as 'an equitable and reasonable response for the government to have taken to fund the reconstruction effort that will be required as a result of the summer of natural disasters'.<sup>8</sup> A dissenting report from Coalition Senators rejected the passage of the bills, arguing that instead of adding to the list of new taxes, 'significant budget savings remain available to the government to assist in the cost of rebuilding'.<sup>9</sup> The majority report did note that:

In light of the many natural disasters that have occurred in a relatively short space of time in both Australia and the Asia-Pacific region the committee believes it would be prudent to examine the adequacy of its preparedness for future reconstruction efforts following a natural disaster, and its impact on the economy.<sup>10</sup>

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6 Treasury, 'Rebuilding after the floods', <http://www.treasury.gov.au/floodrebuild/content/faq.asp> (accessed 20 May 2011).

7 House of Representatives Standing Committee on Economics, *Proof Committee Hansard*, 16 February 2011, p. 24.

8 Senate Economics Legislation Committee, *Tax Law Amendment (Temporary Flood and Cyclone Reconstruction Levy) Bill 2011*, March 2011, p. 19.

9 Senate Economics Legislation Committee, *Tax Law Amendment (Temporary Flood and Cyclone Reconstruction Levy) Bill 2011*, March 2011, p. 23.

10 Senate Economics Legislation Committee, *Tax Law Amendment (Temporary Flood and Cyclone Reconstruction Levy) Bill 2011*, March 2011, p. 20.

## **The referral**

1.8 On 3 March 2011, the Senate referred for inquiry issues relating to the insurance of state government assets to the Senate Economics References Committee for report by 2 May 2011.

1.9 The referral is based on a Notice of Motion from independent Senator Nick Xenophon. The Notice directs the committee to examine:

- the provisions of the Tax Laws Amendment (Temporary Flood and Cyclone Reconstruction Levy) Bill 2011 and the Income Tax Rates Amendment (Temporary Flood and Cyclone Reconstruction Levy) Bill 2011;
- current insurance and reinsurance arrangements of the States and Territories of their assets and infrastructure; and
- the appropriateness of fiscal arrangements for natural disaster reconstruction efforts.

1.10 In terms of the current insurance and reinsurance arrangements of the states and territories, the inquiry established that the Senate call on the Queensland Government to provide to the committee:

...any correspondence, and any related documents, between the Queensland Government and any insurance advisers, insurance brokers, reinsurance brokers, insurers and reinsurers in relation to providing services or insurance products, or offers or proposals of insurance or reinsurance of Queensland Government assets, from 1 January 2000.

1.11 The referral also directed the committee to seek correspondence and any related documents from any relevant individual, corporation or other private entity in relation to these matters.

## **Conduct of the inquiry**

1.12 This inquiry has involved requests for correspondence and the explanation of procedural issues relating to the powers of the Senate to compel the production of documents.

1.13 On 12 April 2011, the committee wrote to the Chief Executive Officer of AON Benfield Asia Pacific, Mr Robert D'Souza, and the Chairman of AON Corporation, Mr Steven Nevett, to request correspondence relating to Queensland's natural disaster insurance arrangements. These letters noted that while the committee's preference was for this information to be made public, it would accept a request for confidentiality.

1.14 On 18 April 2011, AON Benfield's Corporate Counsel, Ms Natasha Saltirova, contacted the committee by telephone inquiring into the Senate's powers to compel the production of documents from a corporation, in light of commercial-in-confidence

considerations that a corporation may have in disclosing this information. The committee replied to Ms Saltirova by e-mail, making the following points:

- the terms of reference for this inquiry state that the committee 'seeks' from any relevant corporation correspondence between the Queensland Government and any insurance advisers. In other words, the committee is requesting this information;
- committees have the option of receiving documents confidentially and taking evidence from witnesses 'in camera'. This option enables a committee to inform itself fully on an issue in a way which it would not be able to do in public, and at the same time minimise any risk arising from publication;
- Senate standing committees do have the power to order the production of documents. A person failing to comply with a lawful order of a committee to this effect may be found in contempt of the Senate. In accordance with section 7 of the *Parliamentary Privileges Act 1987*, there is a penalty of up to six months' imprisonment or a fine not exceeding \$25,000 for a corporation. The Senate has the power to deal with the consequences of a failure to comply with an order for the production of documents, rather than the committee. That noted, this power is seldom used. Privilege Resolution 1 requires committees to proceed by way of invitation in the first instance, unless the committee has specifically determined that particular circumstances warrant otherwise, and committees almost invariably invite witnesses to give evidence voluntarily; and
- a refusal to provide information on the basis of it being 'commercial-in-confidence' is sustainable only if it is clearly established that the public disclosure of the information would damage the commercial interests of the party concerned. In other words, a claim of commercial confidentiality from a corporation should be supported by evidence of the commercial harm which may result from disclosure.

1.15 The committee received a letter dated 19 April 2011 from Ms Saltirova noting that AON Benfield is legally obliged to maintain the confidentiality and privacy of its clients. The letter noted that it is the 'more appropriate avenue' for the Senate to obtain correspondence from the Queensland Government directly. It noted that in the interim, the company will consult with the Queensland Government to get their consent for the corporation to provide correspondence to the committee.

1.16 On 20 April 2011, in the absence of material received from either the Queensland government or Aon Benfield, the committee tabled an interim report requesting an extension of time to report until 30 June 2011. The report noted that 'it is crucial that the committee receives and analyses documentation from the Queensland Government and other parties on the state government's arrangements or offers to insure state assets'.

### ***The Clerk's advice***

1.17 On 20 April 2011, the committee wrote to the Clerk of the Senate, Dr Rosemary Laing, requesting procedural advice on whether there are any restrictions on the Senate requesting information from a state government and from a third party in relation to its dealings with a state government.

1.18 On 28 April, the Clerk responded to the committee's query. She noted that:

There is no question that, in respect of relevant individuals, corporations, or private entities, the committee has the power to call them as witnesses and require them to produce documents. It has the power to question them about their dealings with state governments, an issue which is central to the terms of reference. Any refusal to comply with the order of the committee may be reported to the Senate and dealt with as a potential contempt.<sup>11</sup>

1.19 The Clerk's advice added that:

The terms of reference...include a request to the Queensland Government to provide the...material. This has been framed as a request in recognition of the possible limitations on the Senate's powers in these circumstances and in accordance with long-standing Senate practice in such matters. The committee has been directed to seek the same information from two sources. Although one aspect of the terms of reference (regarding the insurers and reinsurers) is enforceable, the other (regarding the Queensland Government) is not. This suggests that the committee would be justified in having regard to "Melbourne Corporation" considerations in determining whether it should require the insurers and reinsurers to produce the material if the Queensland Government does not respond favourably.<sup>12</sup>

### ***The Queensland government's correspondence***

1.20 In the event, the Queensland Government did provide the committee with nearly 800 pages of confidential correspondence. This was received on 21 April 2011.

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11 Dr Rosemary Laing, *Procedural advice to Senate Economics References Committee*, 28 April 2011.

12 Dr Rosemary Laing, *Procedural advice to Senate Economics References Committee*, 28 April 2011. The Melbourne Corporation doctrine or principle arose from the decision of the High Court in *The Lord Mayor, Councillors and Citizens of the City of Melbourne v The Commonwealth and Another* (1947) 74 CLR 31. In this case, the Court held that section 48 of the *Banking Act 1945* was not a valid exercise of the Commonwealth's legislative power because an implied limitation could be derived from the federal nature of the Constitution (requiring the continued existence of separate governments exercising independent functions). The doctrine was refined in subsequent decisions by the Court to encompass a prohibition of: (1) discrimination which involves placing special burdens or disabilities on the states; and (2) laws of general application which operate to destroy or curtail the continued existence of the states or their capacity to function as governments (although in the Austin case it was reasoned that the doctrine could consist of one 'limb' instead of two—see *Austin v Commonwealth* (2003) 195 ALR 321).

On 10 May 2011, the committee was provided with a confidential précis of this by Mr John Tsouroutis. Mr Tsouroutis, who was employed on contract by Senator Xenophon, was formerly the Head of the Northern Territory Government's Territory Insurance Office (TIO). The committee authorised Mr Tsououtis to examine the documents. It thanks him for his summary and analysis of the correspondence.

### ***Public hearing***

1.21 The committee held a public hearing on 13 May 2011 in Canberra. It took evidence from Commonwealth Treasury officials, the Secretary of the Commonwealth Grants Commission, the Executive Director of the Victorian Managed Insurance Authority, Miss Rachel Carter from the School of Law at La Trobe University and the Queensland Government Insurance Commission and the General Manager of the Queensland Government Insurance Fund. The committee thanks these witnesses for their evidence.

1.22 The Queensland government officials took several questions on notice at the public hearing. These related to the insurance of roads, the details of the state government's approach to the international insurance market in 2003–04 and the various aspects of the documentation provided to the committee on 21 April. In anticipation of the Queensland government's response to these questions, the committee made a decision shortly before the scheduled tabling date of 30 June 2011 that it would seek a further extension of time to report until 29 July 2011. On 30 June, it tabled a second interim report making this request.

### ***The IRMG report***

1.23 On 1 July 2011, the committee received further documentation from the state government in response to these questions. It provided the committee with a commissioned report by the International Risk Management Group (IRMG), dated November 2000. The purpose of the report was to determine the feasibility of establishing a centralised insurance scheme that would provide property and liability insurance coverage to state government Departments. The Queensland government requested that this document be kept confidential.

1.24 On 28 July 2011, the committee wrote to the Queensland Government Insurance Fund requesting its permission to cite from the IRMG report. On 9 August 2011, the committee received a response from the Queensland Minister for Finance and the Arts, the Hon. Rachel Nolan. The letter noted that as the Queensland government is currently out to market seeking a quote to insure its assets against future natural disasters, 'the IRMG report remain commercial-in-confidence'.<sup>13</sup>

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13 The Hon. Rachel Nolan, *Letter to committee*, 9 August 2011.

1.25 On 17 August 2011, the committee again wrote to the Queensland Government requesting further documentation relating to the 2000 IRMG report. Minister Nolan replied that there are 'no further documents relating to this request'.<sup>14</sup>

### ***Requirement to hold hearings in Queensland***

1.26 The Notice of Motion establishing this inquiry instructed the committee to hold at least three days of public hearings in Queensland. However, the committee received only three submissions from Queensland-based submitters. Moreover, it felt it could address the terms of reference—focused as they are on decisions made over a period of time relating to the insurance of state assets—without holding a public hearing in Queensland. The committee felt that of these submitters, only the state government warranted an invitation to appear before the committee to give evidence. Had the terms of reference focussed on issues relating to the physical and social impact of the floods, the committee would have travelled to Queensland.

1.27 The committee sought the advice of the Clerk of the Senate about this matter. The Clerk responded:

Rather than artificially spreading the available evidence over three days, the committee should consider making the best use of its time and resources and providing an explanation to the Senate accordingly.<sup>15</sup>

### ***Answers to questions on notice***

1.28 The committee thanks the Commonwealth Grants Commission and the Victorian Managed Insurance Authority for their prompt responses to questions on notice from the public hearing. The responses from the Commonwealth Treasury and the Queensland Government were received after the committee's revised tabling date of 30 June 2011.

### **Structure of the report**

1.29 This report has five chapters:

- Chapter 2 outlines the committee's understanding of the states' self insurance and external insurance policies. Above all, it notes the absence of a uniform approach to obtaining insurance and the lack of transparency in these arrangements.
- Chapter 3 focuses on the arrangements for the States and Territories to access Commonwealth funding through the Natural Disaster Relief and Recovery Arrangements. Specifically, it provides an overview of how the level of state government assistance is calculated through the 2011 NDRRA Determination

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14 The Hon. Rachel Nolan, *Letter to committee*, 31 August 2011.

15 Dr Rosemary Laing, Clerk of the Senate, *Procedural advice to Mr John Hawkins, Secretary to the Senate Economics References Committee*, 25 March 2011.

and the impact of the States' disaster relief expenses and NDRRA payments on the States' share of revenue from the Goods and Services Tax. The chapter also notes the current review of the NDRRA and a broader inquiry into insurance arrangements.

- Chapter 4 presents the views on the Queensland Government's insurance arrangements.
- Chapter 5 concludes with the committee's view on the Queensland Government's past insurance arrangements and comments on the merit of possible reforms to the NDRRA.