



## Tax Laws Amendment (Temporary Flood Reconstruction Levy) Bill 2011

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Law and Bills Digest Section

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# Tax Laws Amendment (Temporary Flood Reconstruction Levy) Bill 2011

**Date introduced:** 10 February 2011

**House:** House of Representatives

**Portfolio:** Treasury

**Commencement:** The formal provisions commence on Royal Assent. **Schedule 1** commences on the later of the day of Royal Assent or the day the (proposed) *Income Tax Rates Amendment (Temporary Flood Levy) Act 2011* receives Royal Assent. However, it does not commence at all if that Act does not receive Royal Assent. **Schedule 2** commences on the later of 1 July 2016 or the day the (proposed) *Income Tax Rates Amendment (Temporary Flood Levy) Act 2011* receives Royal Assent. However, it does not commence at all if that Act does not receive Royal Assent.

**Links:** The links to [the Bill, its Explanatory Memorandum and second reading speech](#) can be found on the Bills home page, or through <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at the ComLaw website, which is at <http://www.comlaw.gov.au/>.

## Purpose

The Bill amends the *Income Tax (Transitional Provisions) Act 1997* (the Transitional Provisions Act) to require a taxpayer to pay extra income tax for the 2011–12 financial year if:

- the taxpayer is an individual, and
- his or her taxable income for the 2011–12 income year exceeds \$50 000.

The extra income tax is known more commonly as the ‘temporary flood reconstruction levy’ (the terms ‘tax’ and ‘levy’ are essentially interchangeable).<sup>1</sup> Taxpayers who are part of a class of individuals that is affected by a natural disaster that happens in Australia between 1 July 2010 and 30 June 2012 will not have to pay the tax (see below for details).

The Bill was introduced at the same time as the Income Tax Rates Amendment (Temporary Flood Reconstruction Levy) Bill 2011 (which is the subject of another Digest).<sup>2</sup> Together, the two Bills are referred to as the ‘flood levy Bills’.

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1. A levy is often a temporary measure for a specific purpose, whereas a tax is usually a permanent measure to raise general revenue.
  2. The Income Tax Rates Amendment (Temporary Flood Reconstruction Levy) Bill 2011 amends the *Income Tax Rates Act 1986* (the Income Tax Rates Act) to set the rate of extra income tax payable for the 2011–12 financial year at

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

## Background

Australia has witnessed a number of catastrophic weather events in recent months, particularly floods and bushfires. For example, in December 2010, parts of New South Wales and Western Australia received record-breaking rainfall.<sup>3</sup> In late December 2010 and early January 2011, an unprecedented level of flooding occurred in Queensland, with the result that three-quarters of the state was declared to be a disaster zone.<sup>4</sup> Then in January 2011, Victoria experienced heavy rainfall and flash flooding.<sup>5</sup>

Sadly, these disasters have resulted in death and injury, and in substantial damage to both private property and public infrastructure. After much media speculation, the Prime Minister, Julia Gillard, announced on 27 January 2011 that the Australian Government would invest about \$5.6 billion to rebuild flood-affected communities, with most of that amount being directed to rebuilding infrastructure.<sup>6</sup>

The \$5.6 billion investment has three components:

- \$1.8 billion through a progressive flood levy on people earning over \$50 000
- \$2.8 billion in spending cuts ('including removing industry assistance and cutting back other green programs by abolishing the Green Car Innovation Fund and the Cleaner Car Rebate Scheme and making other cuts'), and
- \$1 billion in delaying some infrastructure projects ('which will free up funds and skilled workers at a time of skilled labour shortages around the country').<sup>7</sup>

However, despite the widespread destruction caused by the weather across Australia in recent months, most of this aid will be directed to the recovery and reconstruction efforts in Queensland.<sup>8</sup>

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either 0.5 per cent (for the part of a taxpayer's taxable income that exceeds \$50 000 but does not exceed \$100 000) or 1 per cent (for the part of the taxpayer's taxable income that exceeds \$100 000).

3. See, for example, J Rajca and D Corvini, 'Flood damage in billions: Natural disaster declared', *Sun Herald*, 5 December 2010, p. 4, viewed 16 February 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2F408130%22> and N Perpetch, 'Rescue in the west as flood records rewritten', *The Australian*, 20 December 2010, p. 3, viewed 16 February 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2F442835%22>
4. For information about the Queensland floods, see Queensland Government, 'Queensland floods', website, 10 February 2011, viewed 16 February 2011, <http://www.qld.gov.au/floods/>. See also the many speeches and condolence motions made in the House of Representatives on 8 February 2011 at <http://www.aph.gov.au/hansard/reps/dailys/dr080211.pdf>, on 9 February 2011 at <http://www.aph.gov.au/hansard/reps/dailys/dr090211.pdf> and on 10 February 2011 at <http://www.aph.gov.au/hansard/reps/dailys/dr100211.pdf> (viewed 16 February 2011).
5. For information about the Victorian floods and recovery efforts, see State Government Victoria, 'Victorian floods', website, 16 February 2011, viewed 16 February 2011, <http://www.vic.gov.au/news-detail/victorian-floods.html>
6. J Gillard (Prime Minister), *Rebuilding after the floods*, media release, 27 January 2011, viewed 16 February 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F560489%22>
7. Ibid.

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## Committee consideration

On 10 February 2011, the House of Representatives' Selection Committee referred the flood levy Bills to its Standing Committee on Economics (the Economics Committee).<sup>9</sup> The committee invited submissions from the public and also held a public hearing in Canberra on 16 February 2011. It reported to the House of Representatives on 21 February 2011.<sup>10</sup> While the Coalition members of the Committee dissented from the report, the Committee recommended that the House of Representatives should pass the Bills. This Digest has been prepared in advance of the report.

## Main issues

While the actual content of the Bill is relatively straightforward, the political, economic and social issues involved in the passage of the Bill are not. Many of these issues have been aired in the media since early 2011, and it is unnecessary to canvass them again here. Instead this Digest will focus on some of the issues that were discussed in detail at the Economics Committee's hearing on 16 February 2011, including the appropriateness of the levy in the current economic situation, the issue of (re)insurance, and whether the operation of the proposed legislation may in some circumstances have unintended consequences for some taxpayers. The Digest will then raise some other issues that relate to the drafting of the Bill and the scope of the legislation.

## Is a levy the best solution?

A number of officials from the Commonwealth Treasury appeared before the Economics Committee on 16 February 2011. Acting Secretary, Nigel Ray, gave evidence that the figure of \$5.8 billion was strictly a 'particularly preliminary' estimate, saying it was still 'early days' and that realistically it could be a number of years before the Treasury had final estimates about the extent of the damage.<sup>11</sup> Mr Ray said that in terms of the damage from the Queensland floods, 'the estimates

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8. Apparently \$500 million is to go to Victoria—though it is unclear how this sum is to be funded. See P Hudson, 'Exclusive: PM's cash for Victorian flood victims: \$500m levy deal', *Herald Sun*, 14 February 2011, p. 1, viewed 16 February 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2F553278%22>
  9. Selection of Bills Committee, *Selection Committee Report No. 13*, 10 February 2011, p. 3, viewed 15 February 2011, [http://www.aph.gov.au/house/committee/selc/reports/43rd\\_parliament/report\\_13.pdf](http://www.aph.gov.au/house/committee/selc/reports/43rd_parliament/report_13.pdf) Details of the inquiry are at <http://www.aph.gov.au/house/committee/economics/Floodlevy/index.htm>
  10. House Standing Committee on Economics, 'Inquiry into the Income Tax Rates Amendment (Temporary Flood Reconstruction Levy) Bill 2011; and the Tax Laws Amendment (Temporary Flood Reconstruction Levy) Bill', report, 21 February 2011, viewed 23 January 2011, <http://www.aph.gov.au/house/committee/economics/Floodlevy/report.htm>
  11. N Ray (Acting Secretary, Commonwealth Treasury), Evidence to the inquiry by the House of Representatives' Standing Committee on Economics into the Income Tax Rates Amendment (Temporary Flood Reconstruction Levy) Bill 2011 and the Tax Laws Amendment (Temporary Flood Reconstruction Levy) Bill 2011, *Hansard*, 16 February 2011, p. 2, viewed 17 February 2011, <http://www.aph.gov.au/hansard/reprs/commtee/R13628.pdf>

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could go either way’—which raises the question: is a levy that is designed to raise \$1.8 billion appropriate when the estimate of damage is so ill-defined at this point in time?

Maryanne Mrakovic (General Manager of the Tax Analysis Division of the Commonwealth Treasury) explained that the total number of taxpayers earning over \$50 000 (being the threshold at which a taxpayer becomes liable to pay the flood levy) is about 4.84 million. Of that number, Treasury expects that about 185 000 taxpayers will be exempt from paying the levy because they are in receipt of an Australian Government Disaster Relief Payment (AGDRP) or are expected to assess themselves as being from a Natural Disaster Relief and Recovery Arrangements (NDRRA) area. Taxpayers who will have to pay the levy make up just under half of all taxpayers.<sup>12</sup>

While the amount that each taxpayer will have to pay is only a small percentage of his or her taxable income, it may not be fair that the burden of the tax is shared among such a low proportion of taxpayers—particularly when companies are not required to pay the levy. The policy rationale for not including companies has not been explained, but at first blush it could be because previous levies (such as the gun buyback scheme in 1996–1997) did not apply to companies. However, past examples do not of themselves disqualify companies from paying the flood levy. The gun levy was imposed and collected via an increase in the Medicare levy—a levy which is only payable by individuals and not companies—whereas the flood levy is not being imposed or collected via an increase in the Medicare levy but through an increase in the rate of income tax paid by certain individual taxpayers.<sup>13</sup>

At the committee hearing on 16 February 2011, Mr Ray went on to suggest that the Government’s fiscal credibility was a consideration in the decision to implement a levy rather than increasing government debt to fund the reconstruction work.<sup>14</sup> However, he also admitted that but for the natural disasters, ‘the economy is very strong and is going to be approaching full employment’ and that the level of Commonwealth public debt was very low by world standards.<sup>15</sup> Factors such as these tend to indicate that the Commonwealth Government is in a good financial position to borrow (and repay) money and may mitigate against the need to impose a levy.

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12. Maryanne Mrakovic (General Manager of the Tax Analysis Division of the Commonwealth Treasury), Evidence to the inquiry by the House of Representatives’ Standing Committee on Economics into the Income Tax Rates Amendment (Temporary Flood Reconstruction Levy) Bill 2011 and the Tax Laws Amendment (Temporary Flood Reconstruction Levy) Bill 2011, op. cit., pp. 3–4. For further details about the NDRRA, see Emergency Management Australia, ‘Natural Disaster Relief and Recovery Arrangements’, website, 9 June 2010, viewed 17 February 2011, [http://www.ema.gov.au/www/emaweb/emaweb.nsf/page/emergencymanagement\\_recoveringfromemergencies\\_naturaldisasterreliefandrecoveryarrangements\\_naturaldisasterreliefandrecoveryarrangements](http://www.ema.gov.au/www/emaweb/emaweb.nsf/page/emergencymanagement_recoveringfromemergencies_naturaldisasterreliefandrecoveryarrangements_naturaldisasterreliefandrecoveryarrangements)
  13. See the *Medicare Levy Amendment Act 1996*, which is available electronically at <http://www.comlaw.gov.au/Details/C2004A05036/Download> (viewed 23 February 2011).
  14. N Ray (Acting Secretary, Commonwealth Treasury), Evidence to the inquiry by the House of Representatives’ Standing Committee on Economics into the Income Tax Amendment (Temporary Flood Reconstruction Levy) Bill 2011 and the Tax Laws Amendment (Temporary Flood Reconstruction Levy) Bill 2011, op. cit., pp.5–8.
  15. Ibid. Mr Ray said (at p. 6) that the latest estimates for 2010–11 showed net debt at 5.7 per cent of GDP (or \$79.6 billion in dollar terms).

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Saul Eslake, program director with the Grattan Institute in Melbourne but who appeared before the Economics Committee in a private capacity, began his evidence by explaining that he was 'not opposed in principle to the concept of either temporary or permanent levies on income tax or other forms of taxation payments for certain public purposes'.<sup>16</sup> However, he was of the view that the decision to impose the flood reconstruction levy was a political choice rather than an economic imperative, and went on to say:

In saying that they are political choices, I am not trying to say that they are wrong or will be damaging to the economy. Rather, what I am saying is that they are political choices as distinct from things that had to be done in order that the government be regarded as economically responsible or that unwarranted or regrettable implications might flow to the Australian economy if other choices had been made.<sup>17</sup>

In Mr Eslake's opinion, there were at least two other alternatives that the Gillard Government could have pursued without 'damaging consequences for the Australian economy':

- the Government could have funded part or all of the \$5.6 billion that it estimates will be its share of the reconstruction and rebuilding effort through additional borrowings (thus allowing the deficit for the years between now and 2011–12 to be higher and the surplus for 2012–13 to be lower than presently forecast), and
- the Government could have made further reductions in expenditure rather than imposing a levy.<sup>18</sup>

Mr Eslake said that given the estimate of \$5.6 billion is relatively low compared to other figures, none of these options would have had implications for the economy or interest rates. However, he also said that that the situation (and the options available to the Government) would have been different if the scale of damage wrought by the floods and cyclones in Queensland had been 'say, 10 times bigger in terms of the cost to government than they actually are'.<sup>19</sup>

Mr Eslake concluded his evidence by saying that given the extent of the damage, and notwithstanding the absence of any history of levies to fund natural disaster relief, it may be that 'this is a precedent which, in the government's view, is worth setting'.<sup>20</sup> However, he also went on to say:

I would be concerned if every time a significant or expensive natural disaster or indeed other exigency fell to the Australian government the response was to slug 40 per cent of the population who are considered rich enough to bear an additional tax burden. I think that would

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16. S Eslake (Private capacity), Evidence to the inquiry by the House of Representatives' Standing Committee on Economics into the Income Tax Rates Amendment (Temporary Flood Reconstruction Levy) Bill 2011 and the Tax Laws Amendment (Temporary Flood Reconstruction Levy) Bill 2011, op. cit., p. 29.

17. Ibid.

18. Ibid., pp. 29–30.

19. Ibid., pp. 31–32.

20. Ibid., p. 36.

be problematic, although there is an element of political judgment in that as well as economic. But, obviously, if you continue to increase marginal rates of tax on a segment of the population by large amounts or with high regularity over time then there could well be some adverse consequences for incentives to work, save, invest and the like, which have been well documented in the economics literature.<sup>21</sup>

In large part, Mr Eslake's remarks were echoed by Warwick McKibbin (who gave evidence in a private capacity as Professor of Economics at the Australian National University and an expert on the theory and practice of economic policy, rather than as a board member of the Reserve Bank of Australia). Professor McKibbin said that the flood levy is a reasonable option—given that it is a relatively small amount—but stressed that it is more costly than other options.<sup>22</sup>

Professor McKibbin explained that most economists who study public finance 'would support the view that taxation is not the optimum way to finance the reconstruction of infrastructure after a natural disaster'.<sup>23</sup> He explained that there are at least three main ways to finance rebuilding:

- raise taxes (which, he explained, 'further reduces private demand and therefore reduces economic activity even further')
- cut government spending (which 'also reduces economic activity even further'), and
- increase the fiscal deficit temporarily.<sup>24</sup>

Professor McKibbin favours the third of these options, pointing out that the advantage of borrowing (as opposed to the other two options) 'is that this does not directly reduce economic activity today, but spreads the cost of rebuilding over many decades into the future'.<sup>25</sup> He acknowledged that this option may not be available in all cases, particularly if a government has no economic credibility. However, Professor McKibbin is of the view that Australia is well positioned to borrow the money required for the reconstruction without affecting the nation's economic credibility:

With Australian government debt to GDP at around 20 per cent, and the lowest of industrialised economies, it is unlikely that the additional borrowing of the scale envisaged could impact on risk premium in a negative way. Indeed, I believe that if it were explained to financial markets that the reconstruction was designed based on the optimal income-smoothing policy then this could very well enhance the economic credibility of the policy framework perceived to apply in Australia. Also, borrowing to finance something with a large and already known financial pay-off, such as rebuilding infrastructure assets, should not result in a change in risk. Borrowing for wasteful purposes is when financial markets get nervous about government debt.<sup>26</sup>

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21. Ibid.

22. W McKibbin, Evidence to the inquiry by the House of Representatives' Standing Committee on Economics into the Income Tax Rates Amendment (Temporary Flood Reconstruction Levy) Bill 2011 and the Tax Laws Amendment (Temporary Flood Reconstruction Levy) Bill 2011, op. cit., p. 39.

23. Ibid., p. 37. See also p. 39.

24. Ibid.

25. Ibid.

26. Ibid., p. 38.

Professor McKibbin said that with a ratio of debt to GDP of a low 20 per cent, the question of whether the Australian Government's budget is in surplus or deficit is irrelevant to the issue of whether the new tax is appropriate.<sup>27</sup> In his view, the flood levy is a decision of a 'political nature, not of an economic nature, because the simple economic argument is to borrow under current circumstances that we face'.<sup>28</sup> He also explained that because the flood levy is a new tax, 'we lose a fair bit of the revenue—perhaps up to 10 per cent—in churning and in collection costs, whereas if we use government debt we can actually collect the revenue gradually over time in the normal way through the taxation system without any additional cost'.<sup>29</sup>

Professor McKibbin went on, in response to questioning from the committee, to say that deficit budgets are not necessarily bad—it depends on the 'quality of the spending, the nature of the spending and the rate of return to society over time when they incur spending'.<sup>30</sup> He recommended that instead of focussing on deficits and debts, both sides of politics should focus on 'the quality of government spending and the distortionary nature of taxation that services that government spending'.<sup>31</sup>

Finally, Professor McKibbin said that raising taxes or issuing government debt 'is not going to dramatically change the supply of labour [in the construction industry]. Taking people off school building projects that are part of the Building the Education Revolution has a much bigger positive impact on supplying workers to rebuild Queensland infrastructure'.<sup>32</sup>

By comparison, Adrian Pikarski, Deputy President of the Australian Council of Social Security (ACOSS), supports the levy:

We like the progressive nature of the levy. It actually has a much greater impact on high-income earners than it has on low-income earners. In fact, low-income earners are exempt, which is a good thing. Secondly, we believe the levy deserves to be supported because it keeps pressure off other cuts that might need to be made if the levy were not available to provide money for flood recovery.<sup>33</sup>

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27. Ibid., p. 39. This comment is supported by business editor, Terry McCrann, who (citing the fact that Australia has a \$360 billion budget and will have a deficit of \$40 billion this year) said: 'It makes not the slightest difference whether the actual budget outcome in 2012–13 is a \$3 billion surplus or a \$3 billion deficit, or indeed a perfect balance'. See T McCrann, 'Julia's flood levy is not so much a bad idea as a non-idea', *Herald Sun*, 27 January 2011, p. 61, viewed 16 February 2011,

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2F512053%22>

28. Ibid., p. 40.

29. Ibid., p. 39.

30. Ibid., p. 41.

31. Ibid.

32. Ibid., p. 46.

33. A Pisarski (Deputy President, Australian Council of Social Services), Evidence to the inquiry by the House of Representatives' Standing Committee on Economics into the Income Tax Rates Amendment (Temporary Flood Reconstruction Levy) Bill 2011 and the Tax Laws Amendment (Temporary Flood Reconstruction Levy) Bill 2011, op. cit., p. 59.



Mr Pisarski said that if the levy is not introduced, ACOSS would be particularly concerned about ‘any cuts to income support payments or other welfare programs that support low-income households’. In this regard, he also noted ACOSS’s concerns (in relation to the whole flood recovery package) that the National Rental Affordability Scheme is to be the subject of capping under the proposed spending cuts, saying: ‘We think that those cuts were unnecessary, short-sighted and have undermined confidence in a scheme which is just at this time gaining considerable momentum with the investment community in terms of developing affordable housing options for low-income Australians’.<sup>34</sup>

The President of the Australian Council of Trade Unions (ACTU), Geraldine (Ged) Kearney, also appeared before the Economics Committee. Ms Kearney said that ACTU supports the Government’s plan for a progressive one-off levy, saying:

... it would be detrimental to Australia’s long-term prosperity for the extra cost of the floods to result in a substantial reprioritising of important government spending initiatives, including investment in infrastructure or cutbacks to recurrent expenditure on health, education and community services ... As a nation, the ACTU believes that we need to take collective responsibility for each other’s welfare. Times of natural disaster highlight this principle even more.<sup>35</sup>

Ms Kearney gave three reasons why the ACTU supports the levy:

- it is temporary and one-off
- it is fair—recipients of flood-related payment are exempt, as are low-income earners; even high-income earners will pay less than one per cent of their taxable income, and
- it will raise funds for important infrastructure programs ‘such as the replacement of roads and rail line that must be built in any case, but will also drive future economic and productivity growth in affected regions’.

In the context of ACTU’s view that ‘we need to take collective responsibility for each other’s welfare, particularly in times of disaster’, Ms Kearney suggested that the corporate sector should pay the levy too. In this regard, she mentioned that BHP Billiton had just that day announced a super profit of more than \$10 billion for the first half of this financial year.<sup>36</sup>

Finally, in relation to the fast-tracking of Sub-class 457 visa applications for skilled migrants that Prime Minister Gillard announced in connection with the reconstruction package, Ms Kearney cautioned the Government against rushing into importing labour ‘which we too often see drives down wages and working conditions of Australians’.<sup>37</sup> Ms Kearney said that there are 30 000

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34. Ibid.

35. Ibid., p. 69.

36. Ibid.

37. The Sub-class 457 visa is a temporary visa that is available to skilled migrants. For further details see Department of Immigration and Citizenship, ‘Employer Sponsored Workers: Temporary Business (Long Stay)—Standard Business

construction workers already in Australia who will be looking for work 'in the next few months and coming weeks' and that they would be available to help with the reconstruction. She also urged the Government to use the reconstruction program as an opportunity to build skills and encourage employment in areas where there has been long-term unemployment, referring particularly to the high levels of youth unemployment in coastal New South Wales.<sup>38</sup>

## Reinsurance/Commonwealth-State Natural Disaster Relief and Recovery Arrangements (NDRRA)

Another issue raised at the Economics Committee hearing on 16 February 2011 was whether the reconstruction costs payable by the Commonwealth (and thus taxpayers through the proposed flood levy) are higher because Queensland had not insured its infrastructure properly. However, Acting Secretary to the Commonwealth Treasury, Nigel Ray, said that nobody knows the cost of any potential insurance arrangements and therefore the impost on Queensland taxpayers. He said that it was not a 'Commonwealth versus state spending issue' but rather the result of the 'natural disaster arrangements that are designed to spread the burden of natural disasters across the Australian community rather than having them fall particularly on those in disaster affected areas'.<sup>39</sup>

Gerard Bradley (Under Treasurer in the Queensland Treasury) explained that Queensland had considered its insurance arrangements in the context of the NDRRA.<sup>40</sup> He said that some of the Queensland Government's assets are insured through its 'captive insurer', the Queensland Government Insurance Fund, but others are not. Mr Bradley explained that the Queensland Government had considered 'the issue of reinsurance for our captive insurer, but at the time that we considered that, we did not consider that that represented value for money for the state [in terms of the costing of the insurance, the risk provisions, and what major events and exposures the international insurer would cover]'.<sup>41</sup> Mr Bradley said that Queensland did not seek a premium in relation to natural disaster events.<sup>42</sup> He emphasised that Queensland did have insurance for some assets not covered by the NDRRA, but (like most states) did not have insurance for road infrastructure (which makes up 80 per cent of the cost of the damage to south-east Queensland).<sup>43</sup> He reiterated the fact that Queensland did not seek to reinsure its captive insurer 'because of long-

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Sponsorship (Subclass 457)', website, no date, viewed 18 February 2011, <http://www.immi.gov.au/skilled/skilled-workers/sbs/>

38. Ibid., p. 70.

39. N Ray (Acting Secretary, Commonwealth Treasury), Evidence to the inquiry by the House of Representatives' Standing Committee on Economics into the Income Tax Rates Amendment (Temporary Flood Reconstruction Levy) Bill 2011 and the Tax Laws Amendment (Temporary Flood Reconstruction Levy) Bill 2011, op. cit., p. 9.

40. G Bradley (Under Treasurer in the Queensland Treasury), Evidence to the inquiry by the House of Representatives' Standing Committee on Economics into the Income Tax Rates Amendment (Temporary Flood Reconstruction Levy) Bill 2011 and the Tax Laws Amendment (Temporary Flood Reconstruction Levy) Bill 2011, op. cit., p. 19.

41. Ibid., p. 20.

42. Ibid., p. 23.

43. Ibid., pp. 20 and 23.

standing arrangements which are in place for natural disaster at a national level'.<sup>44</sup> Under the NDRRA, the ratio of risk-sharing between the Commonwealth and the states varies from year to year, and is determined by the extent of the event. In some cases the state bears the full cost, whereas in other cases the costs are shared 50:50 between the Commonwealth and the States. In the case of extremely severe events (such as the recent floods) 'it triggers in at 75:25', with the Commonwealth bearing three-quarters of the cost.<sup>45</sup>

## Superannuation

A third key issue raised at the Economics Committee hearing was the situation where a taxpayer aged between 55 and 60 retires and wishes to access his or her superannuation fund. As the flood levy is predicated on a percentage of the taxpayer's taxable income for the 2011–12 income year, any superannuation payments taken during that year would form part of the taxpayer's taxable income and be taxed accordingly, even though the vast majority of the superannuation would have been accumulated in previous income years.

On behalf of the Commonwealth Treasury, Michael Willcock (General Manager, Personal and Retirement Income Division) said that it would depend on the individual's personal circumstances, 'including the nature of the superannuation fund that the person may currently have their retirement income currently held in'.<sup>46</sup> He said that if the person took the whole of his or her superannuation as a lump sum, with the result that he or she had a taxable income of \$725 000 for 2011–12, then he or she would be liable to pay income tax of approximately \$85 000, a Medicare levy of almost \$11 000 and a flood levy of \$6500—leaving a net figure of about \$622 500.<sup>47</sup>

However, the flood levy—and indeed the other taxes and levies just mentioned—would be reduced if the taxpayer did not take the superannuation as a lump sum. Mr Willcock explained: 'It would be possible ... for them to take a smaller amount as a payment for them to live on through the year and roll over the rest of their superannuation, which would therefore mean that it would not be considered taxable income through the year and would not attract the flood levy'.<sup>48</sup>

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44. Ibid., p. 24.

45. Ibid.

46. M Willcock (General Manager, Personal and Retirement Income Division, Commonwealth Treasury), Evidence to the inquiry by the House of Representatives' Standing Committee on Economics into the Income Tax Rates Amendment (Temporary Flood Reconstruction Levy) Bill 2011 and the Tax Laws Amendment (Temporary Flood Reconstruction Levy) Bill 2011, op. cit., p. 14.

47. Ibid.

48. Ibid.

## Do the circumstances in which a taxpayer is exempt from paying the levy need to be better particularised?

Another issue that may warrant consideration during the passage of the Bill is the fact that the Bill contains little legislative guidance about the circumstances in which the Minister may exempt a taxpayer from the payment of the levy.

In her second reading speech for the Bill, the Prime Minister stated that the Bill ‘will provide exemptions’ for certain taxpayers—including those affected by Cyclone Yasi; those who received an Australian Government Disaster Relief Payment (AGDRP); those who were affected by a declared disaster and meet at least one of the eligibility criteria for an AGDRP even if they have not received a payment; and those who are New Zealand Special Class visa holders’ who were technically ineligible for the [AGDRP] but have received an ex-gratia natural disaster payment’.<sup>49</sup> Ms Gillard also stated that the Bill ‘also makes provision for other exemptions to be made by legislative instrument should circumstances require’.<sup>50</sup>

However, the Bill does not in fact specify any of these taxpayers and simply states that a taxpayer is exempt from paying the flood levy if he or she is ‘a member of a class of individuals specified in a legislative instrument made by the Minister for the purposes of [proposed subsection 4–10(1)] of the Transitional Provisions Act’.<sup>51</sup>

Under **proposed subsection 4–10(3)** of the Transitional Provisions Act, the Minister may only specify a class of individuals for the purposes of the exemption from the tax in **proposed subsection 4–10(2)** ‘if the Minister is satisfied that the class was affected by a natural disaster’ that happened in Australia between 1 July 2010 and 30 June 2012. It is, however, not clear if this means that the class of persons:

- must have lodged a claim (or be in receipt of) an Australian Government Disaster Relief Payment (AGDRP)
- must have assessed themselves as being from a Natural Disaster Relief and Recovery Arrangements (NDRRA) area, and/or

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49. J Gillard MP (Prime Minister), ‘Second reading speech: Tax Laws Amendment (Temporary Flood Reconstruction Levy) Bill 2011’, House of Representatives, *Debates*, 10 February 2011, p. 2, viewed 18 February 2011, <http://www.aph.gov.au/hansard/rep/dailys/dr100211.pdf>

50. Ibid.

51. Note that if there is any dispute about the meaning of a provision in an Act, regard may be had (in certain circumstances) to extrinsic materials (including a second reading speech made by a Minister in introducing a Bill into a House of Parliament) to clarify or determine the meaning of the provision: see section 15AB of the *Acts Interpretation Act 1901*.

- must have resided in the areas(s) where the flood occurred or if (for example) it can also include persons (such as tradesmen or emergency services personnel) who went to assist other people who live in the flooded areas?<sup>52</sup>

It is also not clear if the exemption can apply to persons:

- who were simply visiting a particular area when the flood occurred but who lost personal property (such as a motor vehicle, caravan, trailer or camping equipment) as a result of the natural disaster
- who have made voluntary contributions to flood relief funds
- who have volunteered their time and skills to assist the flood recovery efforts, and/or
- who continue to assist friends and relatives in flood-affected areas.

In order to avoid the situation where a taxpayer receives a tax bill at the end of the financial year in relation to the levy, the taxpayer's employer will take the extra tax out of the taxpayer's pay 'in the same way as people pay the Medicare levy'.<sup>53</sup> However, if there is a delay in the making of the legislative instrument exempting certain persons from paying the tax (or indeed, another natural disaster occurs after the making of the initial legislative instrument but before 30 June 2012), some taxpayers could find themselves paying the levy even though they should really be exempt from payment.

While the Government intends that the Minister's ability to list a class of individuals via the making of a legislative instrument will provide 'flexibility to act quickly in providing tax relief to individuals who have been adversely affected by the ad hoc and unpredictable natural disasters that occur in Australia',<sup>54</sup> the fact remains that there may be some delay between the disaster and the making of the instrument. Further, the legislative instrument will (according to the current provisions of the Bill) remain subject to the disallowance procedures in Part V of the *Legislative Instruments Act 2003*.

## Policy position of non-government parties/independents

The Coalition is opposed to the flood levy—not in principle, but because it is of the view that sufficient savings can be made in the Government's spending program to fund the recovery and reconstruction efforts.<sup>55</sup>

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52. See (among many instances of the work of volunteers) the example of Gerry Keogh, given by Scott Buchholz MP, 'Flood Levy', House of Representatives, *Debates*, 10 February 2011, p. 49, viewed 16 February 2011, <http://www.aph.gov.au/hansard/reps/dailys/dr100211.pdf>

53. Treasury, 'Flood Levy Fact Sheet', website, 27 January 2011, viewed 15 February 2011, [http://www.treasury.gov.au/documents/1949/PDF/Flood\\_Levy\\_Fact\\_Sheet.pdf](http://www.treasury.gov.au/documents/1949/PDF/Flood_Levy_Fact_Sheet.pdf)

54. Explanatory Memorandum, Tax Laws Amendment (Temporary Flood Reconstruction Levy) Bill 2011, p. 6.

55. See, for example, M Grattan, 'Cuts tied to levy: Gillard', *The Age*, 25 January 2011, p. 4, viewed 16 February 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2F507341%22>  
For details about the spending cuts that the Opposition would like to see made instead of imposing a levy, see

On 27 January 2011, the Greens announced that while they opposed climate program cuts, they remained open to the idea of a flood levy.<sup>56</sup> In place of the proposed spending cuts, the Greens proposed ‘deferring the top-end corporate tax cuts planned for July 1 2013 while keeping cuts for small business’.<sup>57</sup> They estimate that such a deferral would net the Government ‘around \$1.7 billion in the forward estimates, protect low income earners and small businesses and enable the government to reverse its decision to cut critical climate programs’.<sup>58</sup> The Greens also said that the rebuilding presents an opportunity to ‘make sure new infrastructure is built with climate change in mind’—stressing that ‘public funds from this levy or elsewhere should not be spent on more coal infrastructure that will only make the situation worse for all of us’.<sup>59</sup> However, on 17 February 2011, the Greens announced they would support the levy—subject to an agreement with the Government that it will not proceed with its proposed cuts of \$100 million to the Solar Flagship Program and of \$264 million to the national rental affordability scheme.<sup>60</sup>

Independent MP, Rob Oakeshott (NSW), has called on the Prime Minister to delay the vote on the flood levy Bills until after the Budget in May 2011. He believes the levy should be considered in the context of the \$2.8 billion worth of spending cuts that will also be used to fund the \$5.6 billion flood reconstruction package—and also in the context of the Budget as a whole.<sup>61</sup>

Independent MP, Tony Windsor (NSW), has indicated an inclination to vote against the levy, favouring instead an ongoing ‘future fund-style’ scheme to pay for natural disasters.<sup>62</sup> On 28 January 2011, Mr Windsor was reported to say: ‘There should be an opportunity where we actually look at

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T Abbott MP (Leader of the Opposition), *Transcript of the Hon. Tony Abbott MHR Joint Press Conference with the Hon Joe Hockey MHR, Shadow Treasurer, Parliament House, Canberra*, 8 February 2011, viewed 18 February 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=3DId%3A%22media%2Fpressrel%2F542513%22>

56. Senator C Milne (Australian Greens Acting leader), *Greens remain open to flood levy but climate program cuts make no sense*, media release, 27 January 2011, viewed 16 February 2011,

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F522400%22>

57. Ibid.

58. Ibid.

59. Ibid.

60. M Franklin and L Wilson, ‘Green votes on flood levy cost Labor \$364m’, *The Australian*, 18 February 2011, p. 1, viewed 18 February 2011,

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2F560845%22>

61. S Ryan, ‘Rebel MP stalls on Gillard’s flood levy’, *The Australian*, 16 February 2011, p. 7, viewed 17 February 2011,

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2F556482%22>

62. S Lewis and M Kenny, ‘Levy will plug \$5bn hole’, op. cit., and P Hudson, ‘Exclusive: PM’s cash for Victorian flood victims: \$500m levy deal’, op. cit., and L Wilson, ‘Levy the most expensive option: McKibbin’, *The Australian*, 17 February 2011, p. 7, viewed 17 February 2011,

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2F558636%22>

Note that New Zealand has a natural disaster program that is based on the investment of insurance premiums. It was able to access the fund in the aftermath of the earthquake in Christchurch in 2010. For further details about the New Zealand fund, see Earthquake Commission (EQC), ‘Investment of the Natural Disaster Fund’ website, viewed 22 February 2011, <http://www.eqc.govt.nz/abouteqc/investmennofndf.aspx> and World Forum of Catastrophe Programmes, ‘New Zealand’, website, viewed 22 February 2011,

[http://www.wfcprogrammes.com/c/document\\_library/get\\_file?folderId=14725&name=DLFE-711.pdf](http://www.wfcprogrammes.com/c/document_library/get_file?folderId=14725&name=DLFE-711.pdf)

all disasters and how they can be factored into some sort of sovereign fund arrangement, rather than political responses sometimes which are quite different depending on how much profile the disaster has had'.<sup>63</sup>

Bob Katter MP (Qld) currently appears to support the flood levy—although he is keen to ensure that the moneys raised are available to anyone affected by a natural disaster, not just the people of south-east Queensland.<sup>64</sup> In a statement released on 27 January 2011 following the Government's flood levy announcement, Mr Katter also seems to support the idea of a natural disaster fund:

A one-off flood levy is a quick fix – we need a government brave enough to fund those impacted by natural disasters on an ongoing basis.

This should not be done on a basis of politicians' viciousness or a popularity contest. It can't just be implemented every time a major population centre suffers.

The other element, which is a pre-requisite as far as I'm concerned, is money for replanting and reconstruction in agriculture – particularly grains, sugar and mangoes. In 2010, the wet tropics suffered one of the worst wets in history – some areas received more than seven metres of rain.

Farmers losing stock is just the same as businesses losing stock.<sup>65</sup>

Initially, independent MP, Andrew Wilkie (Tas), was reported to be concerned about the axing of a range of environmental programs to fund part of the flood reconstruction, urging the Government to forego its election promise of returning a Budget surplus in 2012–13 instead of making 'reckless' cuts to environmental spending.<sup>66</sup> However, on 18 February 2011, Mr Wilkie announced that he would be supporting the levy in return for an agreement with the Government on tertiary education funding worth about \$50 million.<sup>67</sup>

On 27 January 2011, Senator Nick Xenophon (SA) was apparently giving no commitments, saying: 'I have an open mind but a levy has to be reasonable, targeted and ... well spent otherwise we could end up with a financial disaster'.<sup>68</sup> On 17 February 2011, Senator Xenophon was reported to be urging the Government to address the issue of mandatory state insurance before he votes on the flood levy.<sup>69</sup> A few days later, Senator Xenophon was reported to be 'hopeful there will be progress

63. D Uren, 'Rough passage for PM's levy', *The Australian*, 28 January 2011, p. 1, viewed 16 February 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2F513186%22>

64. B Katter MP, *Statement from Bob Katter on Flood Levy announcement*, media release, 27 January 2011, viewed 16 February 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F522391%22>

65. *Ibid*,

66. S Ryan, 'Rebel MP stalls on Gillard's flood levy', *op. cit.*

67. M Farr, 'Andrew Wilkie expected to back Julia Gillard's flood tax', *news.com.au*, 18 February 2011 (11.31 am), viewed 18 February 2011, <http://www.news.com.au/national/pm-to-get-much-needed-cross-bench-vote-for-flood-levy/story-e6frfkw9-1226008098628> and 'Wilkie strikes deal on flood levy', *ABC News*, 18 February 2011, viewed 21 February 2011, <http://www.abc.net.au/news/stories/2011/02/18/3142621.htm>

68. S Lewis and M Kenny, 'Levy will plug \$5bn hole', *op. cit.*

69. L Wilson, 'Levy the most expensive option: McKibbin', *op. cit.*

...in the next couple of days', with Federal Treasurer Wayne Swan MP apparently conceding that that Senator Xenophon's concerns were 'perfectly reasonable'.<sup>70</sup> Further, AAP reported:

'I'm very encouraged by the statements of the Treasurer in relation to this,' Senator Xenophon said today, adding there he did not think there was any disagreement about the basic principle.

...

'It's just a question of getting the wording in place and having a structure in place that is robust and transparent and that will work.'<sup>71</sup>

However, on 22 February 2011, Senator Xenophon was reported to be refusing to support the levy because the Federal Government will not support his demand that the states should be *required* to take out insurance in return for his support of the levy:

... Senator Xenophon is not prepared to back the levy on a promise state governments, especially Queensland, will consider taking out disaster insurance.

'A few months ago I may have been happy with that approach,' he told ABC Radio today.

That was before he was 'completely duded' by the government's commitment to a food labelling review. 'It's a case of fool me once, shame on you, fool me twice shame on me.'<sup>72</sup>

Senator Steve Fielding (Vic) has indicated that he will support the levy in return for the \$500 million worth of aid that the Prime Minister will provide to the Victorian Government to repair roads and infrastructure in some of its 94 flood-affected communities.<sup>73</sup>

## Examples of the positions of major interest groups

On 27 January 2011, Heather Ridout (Chief Executive of the Australian Industry Group) said that the Government should not cut spending or impose a flood levy 'merely to ensure the deficit is reduced or that it goes into surplus in 2012–13'.<sup>74</sup> Ms Ridout went on to say: 'Rather, this decision needs to be based on the need to manage the inflationary and interest rate pressures associated with an economy that risks overheating'.<sup>75</sup> Ms Ridout was also reported to say that the industry could 'live

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70. AAP, 'Xenophon hopeful on flood levy talks', *news.com.au*, 21 February 2011, viewed 21 February 2011, <http://www.news.com.au/breaking-news/xenophon-hopeful-on-flood-levy-talks/story-e6frfku0-1226009254126>

71. Ibid.

72. AAP, 'Independent senator refuses to back controversial bill', 22 February 2011 (8.55am), viewed 22 February 2011, <http://www.theaustralian.com.au/national-affairs/independent-senator-refuses-to-back-controversial-bill/story-fn59niix-1226009857588>

73. P Hudson, 'Exclusive: PM's cash for Victorian flood victims: \$500m levy deal', op. cit.

74. L Dodson, 'Budget must lift capacity, business says', *Australian Financial Review*, 27 January 2011, p. 4, viewed 16 February 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2F511260%22>

75. Ibid.



with the package [given] the extraordinary circumstances’ but that there needed to be clear oversight of the spending:

We really need to see more detail from the government about that, about what it’s going to be spent on, what are the criteria for spending ...

We understand they want to get the money out and it’s important. But if you are giving up other projects and paying a levy, you need to be holier than Caesar’s wife about those issues’.<sup>76</sup>

Greg Evans, Chief Executive of the Australian Chamber of Commerce and Industry, said that taxes should not be increased: ‘Tax increases stifle economic activity and could impact on already anaemic consumer spending’.<sup>77</sup> Similarly, Russell Zimmerman, Executive Director of the Australian Retailers Association, warned that the levy would impose additional cost-of-living pressure on families: ‘The flood levy is a tax and any new tax results in less discretionary spend for consumers. ... Retailers, including those businesses who may have been affected by the floods, will be hit hard by this tax as consumers tighten their purse strings’.<sup>78</sup>

Rob Whelan, Chief Executive of the Insurance Council of Australia, has warned that the flood levy ‘may have unintended consequences —creating a moral hazard and encouraging fewer people to take responsibility for their own risks through purchasing appropriate insurance products’.<sup>79</sup>

## Financial implications

According to the Explanatory Memorandum for the Bill, the levy will raise \$1.56 billion in 2011–12 and \$235 million in 2012–13, making a total of \$1.8 billion.<sup>80</sup>

A taxpayer with a taxable income of \$55 000 will pay a levy of \$0.48/week; a taxpayer with a taxable income of \$75 000 will pay a levy of \$2.40/week; a taxpayer with a taxable income of \$100 000 will pay a levy of \$4.81/week; and a taxpayer with a taxable income of \$150 000 will pay a levy of \$14.42/week.<sup>81</sup>

## Key provisions

**Item 3 of Schedule 1** to the Bill inserts **proposed section 4–10** into the Transitional Provisions Act. This provision deals with the temporary flood reconstruction levy.

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76. J Chessell and A Hepworth, ‘Corporate leaders slam flood levy’, *The Australian*, 28 January 2011, p. 19, viewed 16 February 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2F513311%22>
77. L Dodson, ‘Budget must lift capacity, business says’, op. cit.
78. J Chessell and A Hepworth, ‘Corporate leaders slam flood levy’, op. cit.
79. Ibid.
80. Explanatory Memorandum, op. cit., p. 3.
81. Treasury, ‘Flood Levy Fact Sheet’, op. cit.

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**Proposed subsection 4–10(1)** requires a taxpayer to pay extra income tax (that is, the temporary flood reconstruction levy) for the 2011–12 financial year if:

- the taxpayer is an individual, and
- his or her taxable income for the 2011–12 income year exceeds \$50 000.

A trustee who is taxed as if certain trust income were the income of an individual will also be liable to pay the extra income tax. Small businesses that trade as individuals and not companies will also be liable to pay the tax.

A taxpayer is exempt from paying the extra income tax if he or she is a member of a class of individuals specified in a legislative instrument made by the Minister (that is, the Treasurer) for the purposes of **proposed section 4–10** of the Transitional Provisions Act.<sup>82</sup> The Minister may only specify a class of individuals for the purposes of exempting them from the payment of the extra income tax if he or she is satisfied that the class was affected by a natural disaster that happened in Australia between 1 July 2010 and 30 June 2012.<sup>83</sup>

The taxpayer's levy is calculated according to the rates set out in (proposed) section 12B of the *Income Tax Rates Act 1986* (the Income Tax Rates Act).<sup>84</sup>

The levy is not payable by companies.

The levy cannot be reduced by non-refundable tax offsets because the levy is not included when calculating a taxpayer's basic income tax liability. However, if the taxpayer is required to pay an amount of outstanding levy, but is also entitled to a refund of overpaid tax, the Commissioner of Taxation may apply the credit entitlement against the levy liability under Division 3 of Part IIB of the *Taxation Administration Act 1953*.<sup>85</sup>

The levy is to be disregarded in determining a taxpayer's foreign income tax offset limit for the 2011–12 financial year.<sup>86</sup>

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82. **Proposed subsection 4–10(2)** of the Transitional Provisions Act.

83. **Proposed subsection 4–10(3)** of the Transitional Provisions Act.

84. **Proposed subsection 4–10(4)** of the Transitional Provisions Act. Section 12B of the *Income Tax Rates Act 1986* does not currently exist but is to be inserted by item 1 of Schedule 1 to the Income Tax Rates Amendment (Temporary Flood Reconstruction Levy) Bill 2011. Proposed section 12B of the Income Tax Rates Act sets the rate of extra income payable under proposed section 4–10 of the Transitional Provisions Act for the 2011–12 financial year on the taxpayer's taxable income for the 2011–12 income year as follows: (a) for the part of the taxable income that exceeds \$50 000 but is less than \$100 000: 0.5 per cent, and (b) for the part of the taxable income that exceeds \$100 000: 1 per cent.

85. **Proposed subsection 4–10(6)** of the Transitional Provisions Act. (Part IIB of the *Taxation Administration Act 1953* deals with running balance accounts, application of payments and credits, and related matters.)

86. **Proposed subsection 4–10(7)** of the *Income Tax (Transitional Provisions) Act 1997*, which is to be inserted by **item 3** of **Schedule 1** to the Bill. See also section 770–75 of the *Income Tax Assessment Act 1997* (ITAA 1997).

**Proposed section 4–10** of the Transitional Provisions Act will be repealed on the later of 1 July 2016 or the day the (proposed) *Income Tax Rates Amendment (Temporary Flood Levy) Act 2011* receives Royal Assent.<sup>87</sup> However, it does not commence at all if that Act does not receive Royal Assent.

## Concluding comments

The main issue involved in this Bill is whether the levy is the most appropriate response to the situation, or whether spending cuts or borrowing would be more appropriate—particularly when the quantum of money that is to be raised by the flood levy (\$1.8 billion) or even the flood reconstruction package as a whole (\$5.6 billion) is contrasted with the level of Australia’s debt and GDP.

The unusual weather conditions in Australia have not abated since the Prime Minister’s announcement of the flood levy on 27 January 2011—with estimates of damages for these more recent events also running into millions of dollars.<sup>88</sup> The flood levy is not primarily designed to fund the reconstruction of communities affected by these more recent events—but what measures will the Government take to reconstruct communities when the current fund dries up?

Will some affected communities simply miss out on financial assistance—or will the rate of the flood levy be increased and/or extended into another income year, or will further spending cuts be introduced? It is, after all, not clear how the Government will fund the shortfall of at least \$414 million in its reconstruction package that occurred after the Government reached agreements with the Greens and Andrew Wilkie to secure their votes in favour of the flood levy—although the Government has made it very clear that it will not put its Budget into greater deficit.<sup>89</sup>

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87. **Item 3 of Schedule 2** to the Bill.

88. For example, Victoria has experienced large amounts of rain and flash-flooding, and the northern half of Australia has been damaged by further bad weather. On 2 and 3 February 2011, the Queensland coast and inland communities were devastated by Cyclone Yasi. The costs of rebuilding in the wake of Cyclone Yasi are yet to be fully quantified but are thought to be in the region of \$800 million, including \$175 million for roads and transport; \$340 million for council assets and \$190 million in grants and loans. See R Barrett, ‘Yasi adds \$800m to the recovery bill’, *The Australian*, 17 February 2011, p. 7, viewed 17 February 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2F558635%22> See, for example, information about Cyclone Yasi at: Queensland Government, ‘Cyclone Yasi’, website, 13 February 2011, viewed 16 February 2011, <http://www.qld.gov.au/cyclone/index.html> Even as this Digest is being written, Cyclone Carlos is wreaking havoc on Darwin and its surrounds. See M Schliebs, ‘Cyclone Carlos pounds Top End’, *The Australian*, 17 February 2011, p. 7, viewed 17 February 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2F558637%22>

89. The \$414 million figure is the sum of \$364 million (under the agreement between the Government and the Greens reached on 17 February 2011) and \$50 million (under the agreement between the Government and Andrew Wilkie MP reached on 18 February 2011). See M Franklin and L Wilson, ‘Green votes on flood levy cost Labor \$364m’, op. cit., and Wilkie strikes deal on flood levy’, *ABC News*, op. cit.

In the context of debate on the Bill, the Parliament may wish to consider proposals for a national disaster fund—a fund apparently supported by a number of independent MPs, including Tony Windsor and Rob Oakeshott.<sup>90</sup> In return for securing his vote on the flood levy, Prime Minister Gillard has reportedly promised Senator Fielding ‘in writing’ to investigate a permanent national disaster fund in addition to the \$500 million worth of aid that the Commonwealth Government is to give to Victoria to assist with its reconstruction efforts.<sup>91</sup>

Two further matters should be mentioned. The first is that the levy does not apply to companies—which may be unfair and unjust to individual taxpayers who are required to pay the levy. Companies are as likely as individual taxpayers to benefit from reconstruction (particularly public infrastructure) funded by the levy, but they may in fact be in a better financial position to contribute to the levy (and/or meet the rising price of supplies due in part to the floods) than individual taxpayers.<sup>92</sup>

Secondly, as part of the broader debate about the ongoing suitability of existing natural disaster planning arrangements, Parliament may wish to consider whether the current Natural Disaster Relief and Recovery Arrangements (NDRRA) are appropriate, and whether for example, reinsurance by state governments should be a condition of Commonwealth financial assistance, particularly given that scientific evidence tends to indicate that natural disasters such as the recent floods are likely to become more common and more significant than they have been in the past.<sup>93</sup>

It may, however, be the case that reinsurance is not possible. On 23 February 2011, Professor John Quiggin of the University of Queensland was quoted as saying that it was unlikely that Queensland would get insurance ‘capable of paying out the billions in damage seen recently’.<sup>94</sup> He said that it would be difficult to get agreed opinion on assessment of damage (after disasters) because there are

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90. S Lewis and M Kenny, ‘Levy will plug \$5bn hole’, *Adelaide Advertiser*, 27 January 2011, p. 11, viewed 16 February 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2F510806%22>
91. P Hudson, ‘Exclusive: PM’s cash for Victorian flood victims: \$500m levy deal’, op. cit.
92. One of the issues raised in the media in opposition to the Bill is rising food prices. See, for example, P Coorey, ‘Huge rise in prices won’t stop flood levy’, *Sydney Morning Herald*, 26 January 2011, p. 1, viewed 16 February 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2F510364%22> where the author cites data that shows a rise of 15.5 per cent in fruit prices and 11.4 per cent in vegetable prices in the three months to the end of December 2010. The price rises were higher still in Sydney, Brisbane and Melbourne: see M Grattan and P Martin, ‘Canberra yes to flood levy: Package to include budget cuts’, *The Age*, 26 January 2011, p. 1, viewed 16 February 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2F509096%22> The price is set to increase again in response to the natural disasters that have occurred since that time.
93. In relation to options for encouraging insurance, see the evidence given by Alex Sanchez and Karl Sullivan (Insurance Council of Australia) to the Economic Committee on 16 February 2011. (Evidence to the inquiry by the House of Representatives’ Standing Committee on Economics into the Income Tax Rates Amendment (Temporary Flood Reconstruction Levy) Bill 2011 and the Tax Laws Amendment (Temporary Flood Reconstruction Levy) Bill 2011, op. cit., pp. 47–58.) Note that section 96 of the *Australian Constitution* states that the Parliament may ‘grant financial assistance to any State on such terms and conditions as the Parliament thinks fit’.
94. AAP, ‘Experts back Bligh on insurance’, *Sydney Morning Herald*, 23 February 2011 (9:14AM), viewed 23 February 2011, <http://news.smh.com.au/breaking-news-national/experts-back-bligh-on-insurance-20110223-1b4h9.html>

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'few companies big enough and expert enough'.<sup>95</sup> Professor Quiggin also suggested that self-insurance was also questionable, 'as the more money governments saved away, the more likely they may draw on any funds for other crises, such as recession or war'.<sup>96</sup> Professor Tim Robinson (head of the School of Economics and Finance at Queensland University of Technology) agreed with this view, saying that he could see 'few good reasons for the government to go to the market for reinsurance'.<sup>97</sup> Professor Robinson identified some of the problems with self-insurance, as follows:

'They have to actually put funds aside and politicians can't necessarily be trusted to keep their grubby hands off them, many people would say,' he said.

'But the risk with insuring in the private sector is ... what's to say an insurer wouldn't go into liquidation and be unable to meet the claims the government was making?

'The industry would say we spread our risk, but if there was a huge disaster here, and then say, an earthquake in California a week later, who is to say they wouldn't?'<sup>98</sup>

Professor Robinson also pointed out that taxpayers would also be lumped with the insurer's administration costs, including the cost of fraud and paperwork, and that reinsurance 'could also act as a disincentive to governments keeping assets in good condition'.<sup>99</sup>

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95. Ibid.

96. Ibid.

97. Ibid.

98. Ibid.

99. Ibid.

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