

WILD FIRES – THE LEGAL REGULATORY SYSTEM OF INSURANCE AND EMERGENCY SERVICES FUNDING

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In Australia there is no specific insurance for catastrophic losses. This is particularly problematic due to the propensity for the nation to be subject to severe geographical and climatic events such as extreme bushfires which are becoming increasingly frequent and increasingly severe.¹ Despite this trend in increased catastrophic events and the additional strains upon the system after events such as Black Saturday and to a lesser extent after other smaller wildfires the system has retained its pre-disaster status quo. To compound this problem, the situation is particularly grave for many Australians who remain uninsured or underinsured. It has been suggested that ‘almost 70% of tenants have no contents cover.’² This problem was exposed as a result of the Black Saturday fires in Victoria during February 2009 when approximately one third³ of people in some of the affected areas were inadequately insured. Although there is inconsistency with the precise figures regarding the number of inadequately insured people, it has been suggested to be much higher than the number of those who were uninsured. The consequential property and economic loss resulting from Black Saturday was largely alleviated due to the generosity of the Australian public.⁴ This however raises issues regarding the

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1 Karl Sullivan, ‘Policy Implications of Future Increases in Extreme Weather Events due to Climate Change’ (2008) 23 *The Australian Journal of Emergency Management* 37, 42.

2 As early as 2003 due to the problems within our insurance system and the costs of attaining insurance it was said that as many as 70% of tenants had no insurance cover due to the cost being prohibitively high. It has been suggested one of the reasons may be directly attributable to the fire services levy being imposed with other taxes on the base policy. See: Property Council of Australia (Victorian Division), *Fire Services Funding Review: A Submission Prepared by the Property Council of Australia*, February 2003, 6.

3 Professor Danuta Mendelson, *Catastrophic Damages – Liability and Insurance: Australia* (Springer, forthcoming), Question 9.

4 The Australian public donated a total of \$379 million but at the present due to the interest which has added to the total the sum stands at \$392 million was donated from the Australian public and various organisations in Australia to try to alleviate the financial, proprietary and other losses incurred due to the Black Saturday fires. See: Victorian Bushfire Appeal Fund, *Victoria Bushfire Appeal Fund 12 Month Report* (2010) Department of Human Services <http://www.dhs.vic.gov.au/_data/assets/pdf_file/0006/531375/vbaf_12mnthreport_dec2010.pdf> at 29 March 2011

maintenance of our current system and its ability to cope with the increasing number of catastrophic events.⁵

Although there are some differences amongst insurers as to the specific usage of the term catastrophic there is universal agreement that this refers to a situation where there is large-scale loss of human life, property or devastating implications on the economy. The main commonality in terms of the definition of catastrophic event as defined by the Insurance Council of Australia is one which caused a disproportionately high number of insurance claims. The Insurance Council of Australia specifically highlights the most common type of natural catastrophic events as being bushfire, cyclone, hail, flood, earthquake and severe storms.⁶ When the term catastrophe is used in the context of fire it refers to bushfires whereby a large proportion of land has been destroyed and there has been substantial disruption to certain communities and also huge insurance payouts. A bushfire with the magnitude and ferocity of the fires which occurred on Black Saturday or those which occurred in Perth in February 2011⁷ can clearly be termed a catastrophic fire, although it is not essential that such severity is necessary for a fire to have catastrophic implications.

This paper will focus upon the way the current regulatory regime dealing with emergency services funding can be amended to deal with an increase in wildfire. Arguably despite the paper's focus being upon wildfire the implications from this article can be used for case studies of other catastrophes. In particular the implications of funding fire and emergency services will be examined to discern its social utility particularly due to the way its funding is currently collected. Ultimately the methods of collection must be juxtaposed against the implication which such taxes have upon the levels of adequate insurability and the corresponding flow on effect for fire services. The paper will thus explore whether the current means of collecting fire services funding

5 Edward Mortimer, Anthony Bergin and Rachel Carter, *Sharing the Risk: Financing Australia's Disaster Resilience*, Australasian Strategic Policy Institute (February 2011) 1, 1–24.

6 Insurance Council of Australia, *Catastrophic Events and the Community* (July 2009) Insurance Council of Australia <<http://www.insurancecouncil.com.au/Default.aspx?tabid=1737>>

7 Insurance Council of Australia, 'Perth Brushfires' (Media Release, 7 February 2011) 1. The Insurance Council of Australia has classified the most recent fires occurring near in the Perth suburbs of Kelmstone and Roleystone as being catastrophic due to the property damage. The most recent statistics suggest that the damage bill is exceeding \$35million. Due to the area being deemed as a disaster zone due to the burning and the susceptible topography of the area, it is likely that the costs will continue to claim as the insurance industry continues to process more claims from the fires. See: <<http://www.insurancecouncil.com.au/IndustryStatisticsData/CatastropheDisasterStatistics/tabid/1572/Default.aspx>> at 29 March 2011. The Fire and Emergency Services Authority of WA have suggested that 71 buildings were destroyed with a further 39 properties sustaining substantial damage. See: <<http://internet.fesa.wa.gov.au/mediareleases/Pages/MediaRelease.aspx?ItemId=492>> at 29 March 2011

really acts as a tool to entrench a popular psyche amongst many members of the public that they can continue to rely upon public benevolence and government handouts after a loss resulting event.

This paper will particularly focus upon the interaction between funding of emergency services and the provision of insurance which specifically covers fire damage.⁸ Many individuals do not fully appreciate the risk of a wildfire occurring and the implications that such losses could potentially have upon their economic livelihood. Part of the misunderstanding about the seriousness of the risk may be attributed to the previous examples of public generosity. The further historical trend for the government to set up separate government funded relief money for victims of wildfires has also limited in some people's viewpoint the need for insurance. This is not only a sociological issue relating to personal losses but it also has implications on the amount of funding available to emergency services and fire services. The need for fire services to have sufficient funding is essential not only in the protection of individual properties against wildfire but also in the protection of community facilities and natural resources some of which cannot be easily replaced. Ultimately without such funding in catastrophic fires the losses in terms of fatalities, property and economic implications could increase exponentially. The need for the fire services to have adequate funding mechanisms is a public good; therefore the issue must be confronted.

The way that some states still impose a fire services levy on insurance premiums also breeds inequity as policy holders pay for these services but the non insured individual still receives the benefits of fire fighting and other emergency services. The problems within our current insurance regulatory system must be rectified promptly. This is particularly the case given that despite Black Saturday having more dire consequences than other bushfires; this was not an isolated event but rather a phenomenon of ferocious fires that can be traced back through history. Therefore given this and the increase in weather related disasters⁹ dealing with the issues of insurability and funding of emergency services, should be given priority.

8 In most Australian policies there is coverage for fire danger included within standard household and contents insurance. There may however be an exception to some coverage whereby in some areas of particularly high fire danger separate cover may be needed and thus an additional premium payable to sustain such coverage.

9 Karl Sullivan, 'Policy Implications of Future Increases in Extreme Weather Events due to Climate Change' (2008) 23 *The Australian Journal of Emergency Management* 37, 42.

I ORIGINS OF FUNDING FIRE SERVICES THROUGH INSURANCE POLICIES

In order to contextualise this problem it is necessary to briefly pay homage to the historical link between the provision of insurance and the funding available to fire fighting organisations. The current insurance and funding system for firefighting agencies and emergencies services authorities has been shaped by our imperial past and the transplantation of the British legal system in Australia. The historical relationship between insurance and funding of fire fighting services dates back to the original modern insurance enterprise in Britain in the 17th century.¹⁰ In Australia although other aspects of our legal system have changed, many states have retained the antiquated system of funding fire services through insurance companies rather than recognising that this is no longer a viable way to fund modern fire services. Importantly the increase in the cost of technology and increasingly densely populated cities with a greater urban sprawl has meant that we need to look at the adequacy of our system. An analysis of the inherent problems in the current system can be used to create a system better equipped to deal with Australian wildfires.

Balancing the Rights of Those Not Wishing to Be Insured with the Need for Funding for Emergency Services and Fire Management Organisations

A large proportion of funding for the fire services authorities in some states comes from levies imposed upon property insurance. For example in Victoria 75% of the funding for the MFB¹¹ and 77.5% of the funding for the CFA¹² comes from the levies payable on insurance premiums and in NSW 73.7% of the funding for state emergency services must be provided through levies imposed upon insurance premiums.¹³ The amount that is chargeable as a fire services levy when added to the initial policy cost will increase the cost of the premium substantially.¹⁴ Essentially the insurance industry then collects

10 Brian Wright, *Insurance Fire Brigades 1680 – 1929: The Birth of the British Fire Service* (2008) 11–27.

11 *Metropolitan Fire Brigades Act 1958* (Vic), s 37(1)(c).

12 *Country Fire Authority Act 1958* (Vic), s 76(1)(b).

13 *State Emergency Services Act 1989* (NSW), s 24F(2)(c).

Furthermore under *State Emergency Services Act 1989* (NSW), Schedule 2, Column 1(1) the total amount payable on premiums as an emergency services levy for property is 80% of the premium and for households is 50% of the premium thus adding a considerable expense to the insurance premium.

14 In Victoria the amount which the fire services levy adds to the cost of an insurance premium is 40% for a domestic household or contents policy and an increase of up to 80% for the commercial sector. This amount is very proscriptive and is determined under *Country Fire Authority (Contribution) Regulations 2009* (Vic), Schedule 3, Column 3 and under *Metropolitan Fire Brigade (Contributions) Regulations 2009* (Vic), Schedule 4.

the fire services levies and distributes it to the fire services.¹⁵ Due to the fact that a high proportion of the funding for fire and other emergency services organisations comes from insurance policy holders there is a link between high insurance premiums resulting in people being uninsured or under insured.

The extent to which there is a correlation between increased premiums due to the fire services levy and non insurance has led the Henry Report¹⁶ to recommend a removal of specific taxes such as the fire services levy from insurance products.¹⁷ The reason for such abolition is that fire services levies imposed through insurance premiums have prevented much access to insurance as the cost of this is too prohibitive for many low and middle income earners. The fact that such a system is promoting non insurance and under insurance has dire consequences for the individuals who are uninsured or underinsured and suffer a substantial loss as a result of a catastrophic event. The problem is also intensified at a community level by the need for the fire services to receive sufficient funding to ensure that there are sufficient facilities, resources and personnel to deal with a catastrophic fire like Black Saturday and other wildfires. In Western Australia since the adoption of a property based model, it has been suggested that there is a marked increase in the resources available to fire services as there is a much broader community base whose contributions increase the amount of funding.

15 Although the insurance companies effectively impose a fire services levy upon insurance premiums they do not know prior to issuing insurance policies of their exact obligations for a particular year as this will depend upon the particular obligations of the insurance company based upon their market share and the number of policy holders who hold insurance policies with that particular company. Therefore ultimately an insurance company may either over or under collect amounts to contribute to fire services. Problematically if the insurance company's estimate is too high a consumer will not be entitled to be reimbursed for the excess they were charged as a fire services levy. The amount that a particular insurer will need to contribute towards the overall funding of the Metropolitan Fire Brigade or the Country Fire Brigade in Victoria or the NSW Fire Brigade or the Rural Fire Brigade in New South Wales will vary from year to year.

See: Public Accounts Committee, Parliament of New South Wales, *Review of Fire Services Funding* (2004); Victoria, *Green Paper – Fire Services and the Non Insured, Parliamentary Paper* (2009); Property Council of Australia (Victorian Division), *Fire Services Funding Review (A Submission Prepared by the Property Council of Australia)* (2003).

16 The Henry Report is a report which is reviewing all aspects of the current taxation system in Australia. One aspect of the Henry Report is to look at state taxes and to discern whether these state taxes satisfy the aims of the taxation system being transparency, efficiency and a means of re-distributing wealth. Importantly it was recommended that the states which do impose fire services levies on insurance premiums under the state tax systems resulted in inefficiency as these promoted inadequate insurance and under insurance.

See: Dr Ken Henry, *Australian's Future Tax System: Final Report* (Australian Government Publishing Service, 2010).

17 Ibid 474.

This paper will compare the position of Victoria and New South Wales which incorporates a fire levy on their insurance premiums with that of Western Australia, South Australia and Queensland who have a property based model. These systems will then be compared with the viability of the hybrid model in Tasmania. The paper will not examine the position in the Australian Capital Territory¹⁸ or the Northern Territory¹⁹ primarily because the majority of their funding comes from the consolidated revenue. In particular it will look at the way that each system affects the number of uninsured and under insured individuals and whether the funding system in that state provides adequate money for operational and equipment resourcing.

Victorian System and the Imposition of a Fire Services Levy on Insurance Premiums

The problem with the imposition of the fire services levy in Victoria has formally been acknowledged through the Victorian Parliament²⁰ conducting a feasibility study on the effectiveness of the current system.²¹ It has been suggested that the ‘impost on the insured is too high and has become a disincentive for property owners to adequately insure. This is exacerbated by the fact that non insured property owners who do not contribute towards funding of the fire services receive the same protective fire services as insured property owners.’²² Clearly this is inequitable to have the fire services funded by a small proportion of society, yet this funding is used to provide a service available to all. Fire protection should be a service available to all. The problem is not with access to the fire prevention services but rather the equity

18 During the 2009–2010 financial year the amount payable for residential and rural properties as the fire and emergency services levy was \$94.60 (this amount has raised to \$98.20 for the 2010–2011 financial year). Although this rate was to be charged to all landowners, those who were pensioners were to be given a 50% rebate in an attempt to alleviate the financial effects of this contribution. All commercial properties worth an excess of \$16 500 would be charged an amount which would vary depending upon the unimproved value of the property over the three preceding years. The formula to be used for the 2010–2011 financial year is:

(Unimproved value – \$16,500) x 0.3666% (the product of this formula will give tell the commercial property owner what their fire and emergency services levy contributions will amount to)

See: Australian Capital Territory, *Budget 2009–2010: Budget Statement*, Budget Paper No 3 (2009–2010) 43; Taxation Administration (Rates – Fire and Emergency Services Levy) Determination 2010 (No 1).

19 The funding for the fire and emergency services in the Northern Territory come from the consolidated revenue. See: Northern Territory Police, Fire and Emergency Services Website as accessed at <<http://www.nt.gov.au/pfes/>> 29 March 2011.

20 *Fire Services Levy (Feasibility Study) Act 2009* (Vic).

21 The Parliamentary Hansard acknowledges that the current system with the imposition of a fire services levy to policy holders is problematic.

See: Victoria, *Parliamentary Debates*, Legislative Assembly, 10 November 2009, 3762 (Tim Holding, Minister for Minister for Finance, Work Cover and the Transport Accident Commission).

22 Victoria, *Green Paper – Fire Services and the Non Insured*, Parliamentary Paper (2009) 2.

of funding such services whereby a public service should be funded by society as a whole rather than a select class within society. Problematically, it is not simply the provision of the fire services levy on top of the premium charged by insurers but also additional taxes such as GST and Stamp duty which when applied can add ‘a staggering 123% to the base premium’.²³ The problem with this system is that the high charges dissuades many from taking up insurance creating a system of inequity by placing a disproportionately high burden on those adopting insurance to bear the cost of funding fire services in Victoria.

The main problems with the current system are:

1. Lack of transparency and accountability regarding the collection of the fire services levy and what proportion of the money actually goes directly into funding services;
2. Inequity as a small proportion of the Victorian people who adopt insurance are funding the services of the entire state – a cost which should be shared equally amongst members of the community;²⁴
3. Promotion of non insurance or underinsurance due to the cost of premiums being too expensive for many low and middle income earners.

Perhaps one of the biggest problems directly attributable to the imposition of the fire services levy is that those seeking insurance often only see high premiums yet fail to understand how their premiums are calculated. Most people are unaware of the percentage of their premium that goes towards the funding for fire services in Victoria and the need for the service to have this funding to sustain its operations. ‘The fire services levy is almost a hidden tax and is generally poorly understood by the public. The complexity

23 This amount is calculated based upon the percentage increase after the fire services levy, GST and Stamp Duty is attached to an insurance policy for Victorian country commercial insurance.

See – Noel Pettersen, ‘Fire Services Levy and Insurance Discussion Paper’ (Discussion Paper, National Insurance Brokers Association, 2009) 1 <<http://www.niba.com.au/html/37589.cfm>> at 29 March 2011; Professor Danuta Mendelson, *Catastrophic Damages – Liability and Insurance: Australia* (Springer, forthcoming).

The figure which taxes increase a premium on a private dwelling are not as high as that of country commercial dwellings, yet still add an enormous 15–50% to the price of insurance before the other taxes are imposed on top of this increase.

See – Dr Richard Tooth and Dr George Barker, ‘The Non-Insured: Who, Why and Trends’ (Discussion Paper, Insurance Council of Australia, 2007) 4.

24 Although technically the MFB and the CFA have the capacity to recover some of their costs from those who are not insured under s87 of the *Country Fire Authority Act 1958* (Cth) and s 44 of the *Metropolitan Fire Brigade Act 1958* (Vic) in practice this is never carried out. Further it appears that due to legislative fetters on the power of the Metropolitan Fire Brigade that they would not have the ability to practically collect the money from an individual where there is no insurance policy in place. Furthermore the way the legislation is worded requires consideration of the damage that was occasioned by the fire and the financial situation essentially prohibiting the collection of money for the fire services provided.

of the arrangements works against the public understanding.’²⁵ ‘The 2003 Department of Treasury and Finance Review of the Victorian Fire Service Funding Arrangements found that assuming the contributing insurance companies had charged the ICA recommended rates, in the four years prior to 2003 FSL collections had exceeded the amount required to meet statutory contributions by a total of \$46.85m for the MFB and \$3.68m for the CFA.’²⁶

There are no specific rules dictating what an insurance company must do with the additional funds. Furthermore insurance companies do not have to inform consumers about an excess collected nor are they required to either return this to the consumers who have overpaid or contribute this as additional funding for fire services.²⁷ This urges particular attention to the flaws within our current system. There must be transparency so that consumers can fully understand and appreciate the pricing of their policies and demand accountability of insurance companies. Insurance companies should not be able to cloud the methods of collecting and distributing the fire services levy, because it is within this opaque environment that enables some insurance companies to add any additional amount to policies which in turn may increase some insurers profitability. It must however be remembered that although some insurers have benefitted from the system, it is not entirely their fault rather fault must be attributed to the system which enables this. Essentially if the system does not have very clear mechanisms for transparency and accountability it is only natural that some insurance companies given their commercial objectives may use this for commercial advantage some of which is increasing profitability for their shareholders. Essentially in doing this the insurance companies are merely satisfying their systematic obligations to their shareholders. If the role of insurers is to be transformed from this, it is essential that there is systematic and institutional change which repositions the role of the insurer. If the cloud was removed and the whole process was transparent then it is much more likely the overall outcome would create more economic efficiency. If there was greater efficiency this would benefit a number of protagonists including the public who want to insure through cheaper premiums, the insurance companies through the projected likely increase in the number of insured and the fire services through public satisfaction in their enhanced ability. If there was an increase in the number of people who had insurance this would naturally lead to a likely increase in profitability but ensure that the amount collected was properly severed from other funds and duly allocated towards the provision of fire services and fire protection mechanisms. The transparency

25 Petterson, above n 23, 4.

26 Victoria, 2009 Victorian Bushfires Royal Commission, *2009 Victorian Bushfires Royal Commission – Insurance and the Fire Services Levy (Submissions of the Counsel Assisting)*, 2010, 7.

27 Ibid 5.

of the collection and distribution of the fire services levy is therefore also more likely to get support and justify its legitimacy particularly in relation to the amount each insurance company could charge with proper justification.

The current Victorian review of the funding system (fire services levy) has been an opportunity for Victoria to rectify the current situation which fosters individuals being uninsured or inadequately insured.²⁸ The inequality of a small proportion of the Victorian people funding the emergency services of the whole state however is still a matter which needs to be addressed.²⁹ The ultimate question is how to strike the balance between ensuring sufficient funding for our services whilst minimising onerous burdens on individuals and small businesses. Although it was claimed in late 2010 that there would be changed to the Victoria system in moving away from a system of imposing a fire services levy on insurance premiums there has been no practical advancement which publicly promotes the different alternative funding systems which exist. The main problem in Victoria is that whilst there is a delay in promoting alternatives, the status quo remains entrenching a system

28 Although it has been said that on 27 August 2010 that the fire services levy would be abandoned in place of a property based levy system operative on 1 July 2012.

See: Andrew Main, 'Victoria Abolishes the Fire Services Levy on Insurance', *The Australian* (online) 28 August 2010 as accessed at <<http://www.theaustralian.com.au/business/victoria-abolishes-fire-services-levy-on-insurance/story-e6frg8zx-1225911077603>> ; Jason Silverii, 'Fire Services Levy Abolition Long Overdue' (Media Release, 27 August 2010) 1 <http://www.aar.com.au/med/pressreleases/pr27aug10_01.htm> ;

Despite the suggestion of change there is still great uncertainty about how this will work in practice and in fact uncertainty as to whether the plan to abandon the fire services levy based upon insurance in favour of a property based levy will go ahead. Although a White Paper on the subject matter of the proposed change was due in February 2011, it still has not been released.

See: Department of Treasury and Finance, 'Fire Services Funding Review' (2010) at <[http://www.dtf.vic.gov.au/CA25713E0002EF43/WebObj/RevisedToRPDF/\\$File/RevisedToRPDF.pdf](http://www.dtf.vic.gov.au/CA25713E0002EF43/WebObj/RevisedToRPDF/$File/RevisedToRPDF.pdf)>

Furthermore currently there has also been the failure to release the draft legislation as originally planned based upon the initial agenda for abolishing the insurance based levy system and instead opting for a property based system. The abolition of the fire services levy and the exploration of different models are also not specifically listed as a project in which the Department of Treasury and Finance is currently involved in.

Therefore it is still questionable whether the fire services levy will actually be abandoned in practice or whether such promises were merely put onto the political agenda due to the impending state election at the time the comments were made.

See: Editorial, 'Clarity Vital on the Fire Services Levy', *The Weekly Times* (online) 16 February 2011 <http://www.weeklytimesnow.com.au/article/2011/02/16/296061_opinion-news.html>

29 Until the system is actually changed and the new change is implemented the insurance industry will continue to contribute more than \$500m per year towards providing funding for the fire services levy. In the year ending 30 June 2011 the insurance industry in Victoria was contributing in excess of \$309m towards the funding of the Country Fire Authority alone. See: Country Fire Authority, *Country Fire Authority Summary of Funding 2010*, 2010 as accessed at <www.cfa.vic.gov.au> 29 March 2011. For corresponding figures for the Metropolitan Fire Brigade please see: Metropolitan Fire Brigade, *Metropolitan Fire Brigade Summary of Funding 2010*, 2010 as accessed at <www.mfb.vic.gov.au> at 29 March 2011.

which due to its inherently high costs ensures that many are uninsured or inadequately insured. Essentially it is important that those who are uninsured or under insured purchase insurance policies rather than 'rely heavily upon government and public assistance in the event of a disaster like the 2009 Victorian bushfires.'³⁰ When the system abolishing the current fire services levy is decided upon and implemented it should ensure that it promotes insurance as an essential protection for each individual in society to possess in order to protect their own economic interests.

**System in New South Wales and the Imposition of a
Fire Services Levy on Insurance Premiums**

The way in which the fire services levy is imposed in New South Wales operates in the same manner as the system discussed in Victoria. The only difference between the regime operative in NSW is that there is a marginal decrease in the proportion of funding whereby 73.7%³¹ of the funding for fire services is provided by levies added to insurance premiums. One of the differences is however, the way in which the levy is calculated whereby in NSW the fire services levy adds 50% to the insurance premium for households.³²

Although a number of problems with the system were outlined by the Public Accounts Committee in 2004³³ these problems still have not been remedied. The problems included:

- A lack of transparency and accountability particularly in checking the full amount collected from the consumer is paid to fund emergency services AND
- Lack of equity and limited funding due a small class of people funding fire and emergency services something which everyone living in NSW is entitled to reap the benefits from and thus the costs of which should be shared more equally.³⁴

30 Insurance Council of Australia, 2009 Victorian Bushfires Royal Commission, *Insurance and the Fire Services Levy: Submissions of the Insurance Council of Australia Ltd* (April 2010) 4.

31 *State Emergency Services Act 1989* (NSW), s 24F(2)(c).

32 *State Emergency Services Act 1989* (NSW), Schedule 2, Column 1(1).

The total amount payable on premiums as an emergency services levy for property is 80% of the premium and for households is 50% of the premium thus adding a considerable expense to the insurance premium.

This is in comparison to the fire services levy imposing an increase of the cost of obtaining an insurance policy by 40% for private and domestic household and contents insurance and the same rate of 80% applies in relation to business policies in Victoria. See: *Country Fire Authority (Contributions) Regulations 2009* (Vic), Schedule 3, Column 3; *Metropolitan Fire Brigades (Contributions) Regulation 2009* (Vic), Schedule 4.

33 Public Accounts Committee, Parliament of New South Wales, *Public Accounts Committee – Review of Fire Service Funding* (2004) 53–64, 77–101.

34 *Ibid.*

Ultimately the Public Accounts Committee found that the ‘current funding system is inefficient as it distorts economic efficiency by being a significant additional cost (a deterrent) on the purchase of appropriate insurance.’³⁵ Clearly the system is inadequate and action needs to be taken to reform the system in order to facilitate greater access to insurance and a reduction in those uninsured or underinsured prior to the occurrence of a future catastrophic event.³⁶

**Property Based System for Collecting Emergency Services –
Western Australian Model**

Since 2004 the system for the funding of fire and emergency services in Western Australia was changed so that the states fire and emergency services are now funded through a property based model. This system was brought in as a solution to three key problems that were seen from the previous system which centered on an insurance based levy.

Reports indicate that ‘there is evidence that after Western Australia stopped basing its fire services levy on insurance, the level of non-insurance for both building and contents declined.’³⁷ FESA (Fire and Emergency Services Authority of Western Australia) confirms the success in the new system both in providing greater transparency, equity and ensuring sufficiency of funding ultimately increasing the capacity of Western Australia to deal with emergency situations.³⁸ In a recent report in December 2009, FESA have suggested the greatest benefit derived from the change is ‘more flexible funding arrangements which can accommodate the urgent replacement of

35 Ibid 53.

36 The reason why the adequacy of the system must be realistically assessed and recommendations for improvements adopted is due to the fact that some of the surveys conducted as part of the Public Accounts Committee’s report suggested in a survey by the Insurance Australia Group Ltd in 2001 that as many as 39% of the respondents of the survey revealed they either were not covered by insurance or were not covered by adequate insurance due to the expense in obtaining insurance (something which is at least partially attributable to the fire services levy imposed on insurance premiums). This is a very serious problem because if a fire did occur there would be a large proportion of NSW who would either not be covered or would not be adequately covered thus relying upon government handouts or the benevolence of the Australian public to assist them in the aftermath. Further this will also mean that the fire services in NSW have a substantial amount less funding for operational and equipment resources than if this problem was not present and people were not dissuaded from taking up property insurance.

See: Public Accounts Committee, Parliament of New South Wales, *Review of Fire Services Funding* (2004), 54; Insurance Australia Group Ltd, MJ Powling *Research Consulting Business Insurance: A National Survey of Small and Medium Business*, July 2001.

37 Henry, above n 16, Commonwealth, 473.

38 Fire and Emergency Services Authority of Western Australia, *Fire and Emergency Services of Western Australia – State of Service*, December 2009 as accessed at <<http://internet.fesa.wa.gov.au/Pages/Home.aspx>> on 29 March 2011.

critical equipment and vehicles.’³⁹ This has resulted in 77% of the firefighting equipment including the vehicles being replaced with new or refurbished equipment in the last seven years. There has also been a huge increase in the availability of personal protective equipment, something which traditionally many volunteer fire fighters had to fundraise in order to have available for usage.⁴⁰ Furthermore the way that the funding has been distributed and provided to the different fire and emergency services under the new system means that all funding is on a needs basis⁴¹ and is thus better equipping all parts of the state to deal with catastrophic events and mitigate any resultant losses.

The way that the current system in Western Australia operates is dividing the land into emergency services levy areas and then allocating base fixed charges for these areas.⁴² In addition to the fixed charge there will also be an additional amount payable which will be determined by the gross rental value of the property.⁴³

‘The current system benefits the entire Western Australian community as emergency response involves emergency services personnel from all over the state. With proper equipment and resources not only is their safety improved but that of the entire community.’⁴⁴ Furthermore in removing the levy from insurance premiums there has been an increase in the number of insured people many of whom were previously unable to afford insurance but now have access due to the savings in the premiums which have been passed on to consumers.

Property Based System for Collecting Emergency Services – South Australian Model

A similar system of funding through a land based tax currently exists in South Australia after its introduction in 1998⁴⁵ with the majority of the funding for

39 Ibid 2.

40 FESA (Fire and Emergency Services Authority), ‘Emergency Services Levy: Why was the ESL funding system introduced?’, FESA <<http://www.fesa.wa.gov.au/internet/default.aspx?MenuID=184>> at 29 March 2011.

41 During the Second Reading Speech Mr JC Kobelke outlined the inadequacies of the previous system whereby some areas had insufficient funds for their volunteer fire fighters to be provided with protective clothing without additional fundraising.

See: Western Australia, *Parliamentary Debates*, Legislative Assembly, 25 September 2002, 1572 (Mr JC Kobelke).

42 *Fire and Emergency Services Authority of Western Australia Act 1998* (WA), s 36B.

43 *Fire and Emergency Services Authority of Western Australia Act 1998* (WA), s 36H.

44 *Emergency Services Levy* (2009) Fire and Emergency Services of Western Australia <www.fesa.wa.gov.au> 26 May 2010.

45 The impetus for the new system was the promotion of a fairer and more transparent system that promoted greater accountability in relation to the allocation of funding for fire services in South

fire and emergency services⁴⁶ now being collected through an emergency services levy imposed on the land.⁴⁷ There is also additional revenue collected through a charge imposed on the registration of all vehicles and vessels in South Australia. The emergency services levy which is imposed upon a vehicle or the vessel is calculated by categorising a vehicle or vessel and then charging the corresponding fixed amount to the insured.⁴⁸

The way that the land tax is calculated is by having a base fixed charge which is payable regardless of the type of land or its value. An additional amount will then be charged, the calculation of which is dependent upon which emergency services area the land falls within.⁴⁹ There are four main emergency services areas: one around the Greater Adelaide and three rural areas. There is also a sub divisional classification as to whether the land is commercial, industrial, residential or rural land. The sub divisional classification also affects the additional amount payable as part of the emergency services levy.⁵⁰ A flexible additional charge is then imposed based upon the value of the land.⁵¹ The fixed and flexible charges are then added together and the landowner will be liable to pay that amount as their emergency services levy.

The current system in South Australia for imposing a levy on land, vehicles and vessels has resulted in greater equity. The way that the system is administered has led to greater transparency and therefore greater community satisfaction, particularly as this has led to a marked increase in the amount of revenue that is available for fire and other emergency services.⁵² Importantly when the

Australia. This system was introduced to reflect the fact that everyone in South Australia has access to the fire services for the protection of life and property in the event of a fire and thus equality demands those who have access to the system should contribute fairly rather than under the previous system which placed an unduly harsh burden on those who undertook insurance.

See: South Australia, *Parliamentary Debates*, House of Representatives, 4 June 1998, 1138 (IF Evans, Minister for Police, Correctional Services and Emergency Services).

46 In 2005 with the introduction of the *Fire and Emergency Services Act 2005* (SA) the fire and emergency services of South Australia being the South Australian Metropolitan Fire Service, the South Australian Country Fire Services and the South Australian State Emergency Services. At this time there was also the introduction of SAFE Com (South Australian Fire and Emergency Services Commission) as a means to further improve the system, ensure greater systems for accountability and streamline the funding to enable a better overall provision of fire and emergency services in South Australia.

See: John Murray, 'The Review of the *Fire and Emergency Services Act 2005* – Pursuant to Section 149 of the *Fire and Emergencies Service Act 2005*', March 2008, 3.

47 *Emergency Services Funding Act 1998* (SA), s 3.

48 *Emergency Services Funding Act 1998* (SA), Division 2.

49 *Emergency Services Funding Act 1998* (SA), s 8(1).

50 *Emergency Services Funding Act 1998* (SA), s 8(1).

51 *Emergency Services Funding Act 1998* (SA), s 6(1).

52 During the 1999–2000 financial year the Budget Statement showed an increase in revenue by \$69.7 million due to the changes in the way that the emergency services were funded and the move from an insurance based model to a model based upon a levy imposed on property.

levy is due, a requirement is that a notice outlining the amount payable as well as how this was calculated is provided to consumers. There are also plentiful web resources for SA landowners to understand why they need to pay for the emergency services levy and information about working out their liabilities through the use of rate calculators. To lessen the burden of this fee associated with land ownership, individuals are also able to pay their fee in quarterly installments. Essentially the change from an insurance based system to a land tax based system has satisfied the three main problems with the insurance based funding model as it promotes transparency, ensures sufficient funding and fosters equality as everyone who owns real property or movable property pays money towards the operation of the fire and emergency services.

Property Based System for Collecting Emergency Services – Queensland Model

In Queensland the majority of funding for the Queensland Fire and Rescue Service comes from an urban fire levy scheme which is essentially a tax imposed against urban property in Queensland.⁵³ The Queensland system is different to that in both South Australia and Western Australia as the amount that is charged is determined by the classification and use of the land but is in no way dependent upon the value of the land. The legislation in Queensland merely provides the local councils to collect the urban fire levy.⁵⁴ The regulations specify the exact amount that is payable for a particular year.⁵⁵

The levy is imposed upon land and it firstly requires a classification of the land into one of the four defined urban areas. Once the land is classified as being urban, it will again be assessed based upon its usage to determine the

See: South Australia, *State Budget 1999–2000: Budget Statement*, Chapter 6 (1999–2000).

In the 2008–2009 financial year the Budget Statement also indicated the ability for the SA Government to increase its spending on fire and emergency services including the ability for it to fund additional research and to fund an aerial fire fighting service operational within the state. Again there is a correlation between the imposition of a levy on land and the improvement of the fire and emergency services in the State.

See: South Australia, *State Budget 1999–2000: Budget Statement*, Chapter 6 (1999–2000).

53 Currently this system only operates for the funding of urban fire services in Queensland. A similar system operates for to impose a levy for the use of Ambulance in Queensland. In a recent report analysing the legislation dealing with emergencies and disaster management in Queensland one of the major problems with the Queensland system was said to be the fact that currently there is no levy to support the services of the SES and that such funding should be implemented in the future perhaps to work in conjunction with the fire services or the ambulance services to facilitate a better response during emergency.

See: Jim O’Sullivan and The Consultancy Bureau Pty Ltd, *Report on the Review of Disaster Management Legislation and Policy in Queensland*, August 2009, 121.

54 *Fire and Rescue Services Act 1990* (Qld), s 112.

55 *Fire and Rescue Service Regulation 2001* (Qld), Schedule 2.

final levy to be charged.⁵⁶ Interestingly, this levy is also only charged in the urban areas of the state as the fire services for the rural areas are entirely funded by the Queensland state government.

**Hybrid System of Funding Emergency Services from Property Rates
and Insurance Premiums as adopted in Tasmania**

The system of funding for fire services in Tasmania is a combination of contribution by insurance companies which is achieved through imposing a tax on commercial insurance policies and motor vehicle insurance policies; contributions made by the Treasurer and levies based upon land (the cost of which varies depending upon risks and potential hazards to the land).⁵⁷ At the present commercial insurance policies contribute 24.2% of the total cost of funding the fire services and land owners contribute 46.1% through the public safety levy and the remainder is provided from other sources.⁵⁸

Despite the small population, the amount raised under the land tax system has proven to be a success in terms of improving the service, facilities and infrastructure of the Tasmanian fire service. It has helped in the purchase of land upon which fire stations and other such facilities have subsequently been built and it has also helped to replace and repair fire trucks and other such equipment.⁵⁹ Furthermore the new system has not only kept the Tasmanian fire service out of debt but rather it has allowed them to pay off their previous debt of \$7million and retain a minimal surplus which can be called upon for catastrophic wildfires. This system also ensures flexibility in the fire service contribution ensuring that at all times there is sufficient funding for the safe and effective operation of the Tasmanian fire services. This is achieved through the Commission having the power to alter the amount payable on a yearly basis depending upon the needs of the fire service and the projected amount of commercial insurance and motor vehicle insurance.

The imposition of the fire services levy on land accommodates for socio-economic factors whereby pensioners who would otherwise be required to

56 Queensland Fire and Rescue Service, 'Urban Fire Levy Administration Procedures Manual', Version 4.0, November 2009.

57 *Fire Services Act 1979* (Tas), s 77A.

58 Department of Treasury and Finance of Tasmania, 'Response to Commission Position Paper 2008/2011 – Miscellaneous Review', January 2009.

59 One example in which the increased funds from the hybrid system have had a practical effect was that it has enabled the purchase of lots of land in Cambridge, Youngtown, Burnie and for a huge improvement to the state headquarters in Hobart. The purchase of this land had enabled fire services to be built in these areas thus extending the services around the state and better equipping the state to deal with wildfires.

pay a fire services contribution will receive a rebate.⁶⁰ Further the imposition of a fire services levy on commercial insurance recognises that commercial entities are often better equipped to absorb the funding costs and contribute towards the fire services and therefore should be required to do so as a way of giving back to their community.

The system also promotes transparency whereby a council who imposes a fire services levy on top of the rates payment must specifically outline to the ratepayer the proportion that pertains to the fire services contribution.⁶¹ There are also a number of dedicated websites outlining what the fire services levy is and how it is calculated ensuring that consumers understand how the fire services funds will be used.⁶² Those who pay the fire services levy know the full amount that is contributed actually goes towards the provision of fire and other emergency services in Tasmania. The system is also more equitable because a greater pool of people contribute and commercial enterprises who are often well equipped financially to pay for such services are also required to pay an additional amount through their insurance.

**Insurance Regulatory System in Australia for Catastrophic Loss –
Prompting an Increase in Insurance**

Currently in Australia our insurance system is comprised of three main models (for fire and emergency services funding) which are an insurance based levy, a property based levy and a hybrid system. The existence of all three systems has effectively maintained the defects which promote individuals to be either uninsured or underinsured.⁶³ The problems are particularly grave in Victoria and New South Wales where the imposition of fire services levies on top of other taxes such as the GST and Stamp Duty taxes have contributed to unreasonable levels of underinsurance and this has also increased the incidence of non insurance. The outcome of the fire services levy coupled with the taxes cumulatively being added has led to a situation where insurance is becoming unaffordable for many.⁶⁴ Evidence supporting the effect of the system creating unaffordability in insurance is that the fire services levy and other taxes at times add as much as 123% to an insurance premium.⁶⁵ The additional cost for a number of people is essentially the difference between finding insurance viable and having to risk not having adequate levels of insurance due to cost.

60 *Fire Services Act 1979* (Tas), s 95.

61 *Fire Services Act 1979* (Tas), s 81D.

62 Tasmanian Fire Services (Bushfire Planning Group), *Guidelines for Development in Bushfire Prone Areas of Tasmania – Living With Fire in Tasmania*, 2005.

63 Australian Law Reform Commission, *Insurance Contracts*, Report No 20 (1982) xxi–xxxx.

64 Commonwealth, ‘Australia’s Future Tax System’ (Report to the Treasurer, May 2010) 474.

65 Pettersen, above n 24, 1; Mendelson, above n 4.

There are huge societal impacts from under insurance and uninsurance. The consequence goes beyond the individuals who may suffer personal financial or property ruin after a catastrophic fire. Rather the situation is such that it has the potential to perpetrate dependence upon government handouts and public benevolence. Therefore this issue transcends the purely legal and economic bounds and becomes rather a more deep seated sociological one.⁶⁶ There are also very serious potential ramifications for society through the contributions to the funding of the fire services. As the funding services in Victoria and New South Wales rely upon insurance it means that with a decrease in levels of adequate insurability that the fire services will either have a reduced amount of funds to work with or those who are paying for insurance will continue to be thrust with the ever increasing burden of funding these services for the entire state.

Particularly in states such as Victoria and New South Wales which are funded through levies imposed upon insurance premiums many volunteer fire fighters miss out on essential funding. Anecdotal evidence suggests that due to the way funding is received has resulted in a number of volunteer firefighters being forced to fundraise or otherwise to pay for the equipment themselves in order to be able to provide their fire fighting services to the community. The current system also alienates many people and prevents them from having access to insurance. Although a change has been suggested for Victoria, the format of there is no absolute clarification of whether the fire services levy will be abolished or what will take its place although promises were made in the pre-election campaign to transform the system to a property based levy system. Essentially even if the situation changes for Victoria, the imposition of a fire services levy in New South Wales will continue to exist and create problems.

In order to adequately measure the inadequacies of the system the fire services levy was juxtaposed with the property based levy. In Western Australia, South Australia and Queensland since the imposition of a system primarily deriving its funding from a land based tax there have been huge improvements. The improvements have been said to create a better service and has enabled the fire services to obtain better equipment which in turn has increased efficiency and ensured their efforts are, more effective in extinguishing fires and mitigating the potential for loss to life or property. The hybrid system in Tasmania too has had success in increasing the funding enabling the provision of better equipment and training to ensure a superior service to that which was previously funded through levies on insurance premiums.

66 Insurance Council of Australia, above n 31, 4.

Essentially, in light of the increasing number of weather related disasters, particularly catastrophic fires this is no longer an issue that can be put off. The funding of fire services is an issue that must be given priority and dominate current public debate. The best way to improve the system is to create a uniform system whereby each state collects their fire services funding in the same manner. The states should still retain the power to administer their systems and distribute the funding but there should be uniformity in the way the funds are actually collected. In having greater uniformity in terms of the means of collection for the fire services levy, individuals would be better aware of how they are paying for fire services. This in turn is likely to promulgate and legitimate a greater right of the general public to demand accountability and transparency in the way that the money is collected, distributed and ultimately used to provide fire services. Through improving our system⁶⁷ and creating greater clarity in the contributions towards fire services this should lead to an increase in insurance and also reduce the amount of underinsurance in all states and territories whilst improving public safety and promoting superior fire and emergency services. Ultimately reducing the pressures preventing people from obtaining insurance cover and thus inducing an increase in the number of insured's is likely to reap huge societal rewards that will be felt particularly in times of crisis such as when the next catastrophic fire occurs.

67 For a full discussion of the different options available for reforming the problems with the current insurance regime please see: Edward Mortimer, Anthony Bergin and Rachel Carter, 'Sharing the Risk: Financing Australia's Disaster Resilience', *Australasian Strategic Policy Institute* (February 2011) 1, 1–24.