

24 June 2014



Commissioner Johnathon Coppel, and
Commissioner Karen Chester
Productivity Commission

By email: disaster.funding@pc.gov.au

Dear Commissioners

Inquiry into Natural Disaster Funding

I refer to the above Inquiry and welcome the opportunity to provide some brief comments on behalf of the Law Council of Australia.

The Law Council is the peak body of the Australian legal profession, representing 60,000 Australian lawyers. The Law Council speaks on behalf of the profession on a range of national legal and policy matters.

The Law Council submits that the need for legal services is seldom accounted for in the advent of a natural disaster. It is acknowledged that securing the immediate safety and well-being of people affected by a natural disaster remains the foremost priority. However, in the profession's experience following recent natural disasters, including the 2009 bushfires in Victoria, and the 2010 floods in Queensland, unmet legal need very quickly emerges in a range of situations, especially for people whose homes and livelihoods have been destroyed and whose loved-ones have died.

I enclose a document entitled '*Emergency Preparedness and Disaster Planning for the Legal Profession in Australia*' (the Paper), which was developed by the National Pro Bono Resource Centre and endorsed by the Law Council in July 2011. It sets out a plan for disaster preparedness based on the experience of law societies, legal assistance and pro bono providers that mobilised in recent disasters.

As noted in the Paper, serious natural disasters inevitably result in a surge in demand for legal services to deal with a range of legal issues, including employment and tenancy matters, insurance claims, estate and property matters. This significant increase in demand is rarely accounted for in the early stages of government responses, if at all. While State, Territory and Federal Governments share the bulk of responsibility for funding legal aid, community legal services and Aboriginal and Torres Strait Islander legal services, there is no mechanism under the existing National Partnership Agreement on Legal Assistance Services to adjust funding for legal assistance providers in affected areas.

The Law Council submits that the legal need in the wake of a natural disaster needs to be addressed in the following ways:

Identifying legal needs

It is noted that a significant number of legal problems in the wake of a disaster, emerge through inadequate insurance coverage, unclear contractual terms under policies of insurance, ineffective regulation of insurer conduct and lack of community legal awareness.

The demand for legal services can be controlled to a significant extent by ensuring insurance contracts are clear about matters that are excluded and consumers are notified about any changes to their cover. It can also be controlled by improving and increasing the provision of community legal education, through enhanced funding for those important services provided by legal aid commissions, CLCs and ATSILS.

Meeting legal needs in the relief stage of the disaster

Legal assistance should be considered an important element of any front-line response to natural disasters. People severely affected by natural disasters require advice and assistance by providers who can effectively 'triage' their legal needs about immediate insurance claims, tenancy problems, estate planning and property damage. Other acute legal needs in the aftermath of a disaster include such matters as proof of identity, access to bank accounts and emergency funds, claims on superannuation and insurance, benefits and special assistance grants.

The most appropriate providers of that assistance are legal assistance bodies (LACs, CLCs and ATSILS) in the affected region, and the private legal profession with the assistance of pro-bono clearinghouses.

Legal assistance bodies and pro bono clearinghouses require a mechanism to ensure sufficient funding is made available, often quickly, to ensure the legal needs of those affected can be met urgently, to ensure their legal problems do not escalate into more serious issues at a later point. Such escalation was one of the key findings of the Legal Australia-Wide survey into unmet legal need in Australia¹. It may be possible to address this under the NPA, which the Productivity Commission has recently suggested should be renegotiated with these kinds of objectives in mind.²

Providing legal assistance post relief stage

It is also necessary to ensure the ongoing legal needs of those affected can be met as they attempt to get their affairs in order. For example, many people face difficulties obtaining indemnity from insurers or ensuring they are receiving the correct relief or entitlements from government.

The Law Council suggests that legal assistance providers and pro bono clearing houses should be allocated sufficient funding to provide ongoing services in the post-relief stage of the disaster response.

The Law Council would be pleased to expand on these comments should the Productivity Commission require clarification.

Please contact Nick Parmeter on (02) 61003750 or at nick.parmeter@lawcouncil.asn.au if the Law Council can be of any further assistance.

Yours sincerely



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¹ 2012), *Report of the Legal-Australia-Wide Survey*, NSW Law and Justice Foundation. See <http://www.lawfoundation.net.au/ljf/app/6DDF12F188975AC9CA257A910006089D.html>

² Productivity Commission, *Draft Report into Access to Justice Arrangements*, April 2014, Draft Recommendation 21.5.



Emergency Preparedness and Disaster Planning for the Legal Profession in Australia

June 2011

Prepared by



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Executive summary

In light of the recent disasters in Australia and overseas, the National Pro Bono Resource Centre has developed a resource to assist the Australian legal profession in each State and Territory to prepare a disaster response plan in readiness for any disasters occurring in their jurisdiction. It consists of a research paper and a guide to preparation of a disaster plan.

In preparing this resource, the Centre has drawn on the experience of those who organised and delivered legal assistance in response to the 2009 bushfires in Victoria, and the more recent flood and cyclone emergencies in Queensland and fires in Western Australia.

The key issues which were identified through the Centre's research are:

Preparation, including a disaster response team and a well organised and agreed disaster response plan, is vital for both the public affected by a disaster and the legal profession.

Having a clearly branded unified legal assistance response, with one hotline number, one website and one logo, provides those affected by the disaster with an easily recognisable and accessible way to find legal information and assistance.

The type and extent of the legal need should be assessed early on, so that appropriate resources can be marshalled to meet the actual needs that arise at different stages. Much of this can be anticipated based on recent Australian experience, which has shown that immediate issues involve loss of key documents, and how to respond to employment and tenancy obligations. Other legal issues, such as those involving estates, property and insurance claims have peaked at a later stage, three to six months after the disaster.

Members of the public do not necessarily recognise insurance as being a legal issue, and resources may need to be directed toward community legal education to address this.

Managing the large numbers of lawyers who want to help with the relief effort has presented a challenge for those coordinating disaster response in Australia. Rather than recruiting volunteers to provide short term assistance, it may be better for the profession to focus its efforts on boosting the capacity of existing legal advice and referral mechanisms that deal with the influx of cases in the mid to longer term, which is the stage when requests for legal assistance has peaked in recent disaster experience.

For lawyers who want to help with the relief effort, having a clearly established and agreed plan will help to manage their expectations and to understand and decide the best way they can contribute their services within the framework of a coordinated disaster response plan.

Key recommendations

- A. That the legal community in each State and Territory should develop an Emergency Preparedness and Disaster Plan that sets out the roles of the key organisations involved in responding to a disaster, particularly Legal Aid, the State or Territory Law Society, the pro bono clearing house, law firms with developed pro bono practices and Community Legal Centres.
- B. That the Emergency Preparedness and Disaster Plan should address the issues outlined in this paper¹, including coordination and branding of the legal response, assessing legal need at different stages and matching legal response to meet that need, and managing volunteers and their expectations.
- C. That the organisations that subscribe to any Emergency Preparedness and Disaster Plan prepare to undertake their agreed role in the event of a disaster.
- D. That the Commonwealth, and each State and Territory, formally recognise that a response by the legal profession to the aftermath of a disaster is an essential part of the Emergency Response.
- E. That the Commonwealth, and/or each State and Territory, should provide an assurance of adequate additional funding to Legal Aid, CLCs, ATSILs and pro bono clearing houses following a disaster to ensure that these agencies can plan for and meet the legal needs of disaster victims while maintaining existing legal services.

¹ Attached to this paper is a practical guide to preparing a disaster response plan for your legal community

Background

Following recent natural disasters occurring in Australia and overseas, the National Pro Bono Resource Centre undertook research with a view to preparing a resource to assist each Australian State and Territory legal community to be better prepared to provide a legal response in the event of a disaster occurring in their jurisdiction.

This paper focuses on the provision of legal services to the public in the event of a disaster, rather than business continuity planning for the legal profession itself. While this is an equally important issue, it is not the subject of this paper.

The Centre initially supplemented the information it obtained from the report of the Victorian Bushfire Legal Help (“BLH”) partnership which was published in March 2010 with disaster response plans developed by legal professional bodies in the United States following disasters such as 9/11 and Hurricane Katrina. However, during the period of the Centre’s research, several Australian jurisdictions have experienced disasters of their own. With this resource, the Centre aims to capture the knowledge and experience of those who coordinated legal response following the Victorian bushfires in February 2009 (as documented in the BLH report), the flood and cyclone emergencies in Queensland and the Northern Territory (February 2011), and bushfires in Western Australia (February 2011). In addition to consulting those directly involved in coordinating the legal response to these disasters, the Centre has circulated and received feedback on draft copies of this resource from key legal profession stakeholders (who are acknowledged below).

As the short term recovery phase (two to six months following a disaster) is the critical time for gathering information, while experience and lessons learned are still fresh in people’s minds, this is the best time to prepare an effective emergency response for the next disaster.

The Australian experience of the legal community’s response in the immediate aftermath of a disaster has been that many wish to assist in the relief effort. The challenge is to create a legal response that will address the identified need in an efficient manner. Lawyers from legal aid, community legal centres, private firms and the bar need to work together in a coordinated effort with emergency response organisations to be effective in meeting the needs of those affected by a disaster. It is the coordination of this effort through planning that is the subject of this paper.

Attached to this paper is a guide to the preparation of a legal response plan, which is a loosely chronological, practical guide to the issues that someone who is preparing a plan is likely to need to consider.

I. Emergency Preparedness and Disaster Planning for the Legal Profession in Australia

A ROLE OF THE LEGAL PROFESSION

1. The response of the legal profession to a mass disaster should as a minimum provide information and support for those affected, the public, and the media, on relevant legal issues and solutions.
2. As the legal response is only a part of the emergency response, the Legal Response Team needs to identify and form relationships with emergency response organisations. A two-way dialog would allow the legal profession's potential contribution to be better understood and coordinated in a holistic way with other services but also better identify whether, where and when legal services might be useful or required². Recent Australian experience of disasters has shown that people do not necessarily identify insurance issues as legal issues and will not seek legal assistance for an insurance problem unless they are effectively referred from another service.
3. Legal assistance need not necessarily be personalised. It may address a systemic or common issue. E.g. it could consist of preparation of fact sheets or conduct of information sessions to affected persons.
4. In some cases the legal profession may also be required to undertake negotiations on behalf of those affected and provide an avenue for those affected to pursue complaints, problems and claims.
5. There is a distinction to be made between information and advice that is sought immediately after a disaster occurs, and advice that is not required until later. Immediate assistance may be sought in relation to destroyed documents (wills, identity documents, certificates), employment/income issues from not being able to work, accommodation/rental property issues, and some insurance and mortgage problems. However the experience of recent disasters in Australia has been that requests for legal assistance peak three to six months after a disaster. Compensation claims, disputes with insurers, more complex or intractable matters require careful

² Note that Recommendation 2 of BLH report, p. 3 recommends development of innovative collaborative models of service delivery where legal services are co-located with housing, health and counselling services.

referral and/or dedicated resources. For example, Caxton Legal Centre (Caxton) in Queensland has used Commonwealth and Insurance Council of Australia funding to engage three lawyers (for four to six months)³ to staff its insurance unit which has a caseload that is rapidly increasing several months after the flood and cyclone disasters.

6. A response plan will provide guidance for legal assistance providers as to what might be triggers for initiating action and the process for deciding to implement the plan. Most legal disaster plans deal with the immediate aftermath even though cases arising from a disaster may go on for years after the event. Meeting the immediate legal need is likely to be provided free to the public by Legal Aid, Community Legal Centres, private firm pro bono lawyers and barristers. Careful coordination of these legal service providers will maximise the effectiveness of the legal response they can provide.
7. In the longer term legal advice is likely to be provided under a variety of lawyer-client agreements (pro bono, legal aid, no win-no fee, full fee) and existing referral pathways should be adequate for those in need to find an appropriate legal service provider.
8. Having a strongly branded and coordinated legal response to the disaster is important. This involves all parts of the legal community working together to provide an easily accessible, recognisable and legitimate disaster legal help service with one hotline, one website and one logo. A well coordinated response requires a response team and a carefully considered plan. It enables better coordination with emergency agencies and other services i.e. local councils. It also minimises the risk of unethical conduct of individual lawyers or firms soliciting clients at the site of a disaster⁴, as well as clearly distinguishing the disaster relief effort of lawyers from those launching class actions⁵ and seeking other commercial legal arrangements.
9. For the relief effort to be able to utilise volunteer resources effectively, it is vital for key legal organisations to do their own planning and prepare their members for what they might contribute in accordance with the disaster response plan.

³ These lawyers have been recruited by Caxton from ASIC, Clayton Utz and DibbsBarker.

⁴ Note that lawyers from plaintiff firms attending relief centres for the Victorian bushfires made it clear that they were acting as BLH and would not represent their firms. BLH report, p.25.

See the principal goals of the New York State Bar Association Mass Disaster Response Plan which focuses on preventing unethical conduct of lawyers. found at <http://www.abanet.org/barserv/disaster/newyork.pdf>

⁵ Within a week of the Victorian bushfires class actions had been launched against electricity supply companies. See *The Age* 15 February 2009 at <http://www.theage.com.au/national/huge-fire-class-action-launched-20090214-87pg.html>

10. Lawyers may be required to undertake various tasks including staffing a telephone hotline, attending at Recovery Centres to provide advice and assistance, and being part of 'roadshow' type information sessions and clinics. In the experience of the Law Council of Australia, much of this work does not require a legal response and is more akin to the role of a Citizens Advice Bureau⁶. However, some matters requiring a legal response are referred through from Recovery Centres and the hotline phone service to legal aid, pro bono lawyers and firms or community legal centres. It will be important to utilise existing referral pathways and mechanisms to facilitate these legal referrals but to also be aware that the amount and nature of the work required may be extraordinary depending on the scale and nature of the disaster.
11. The collaboration, coordination, and preparation of the legal community, ensure that there is minimal duplication in effort and result in a more robust and efficient response to victims with specific legal needs.
12. The Legal Response Team also needs to liaise with other agencies, professions and industries which are likely to be implicated in disaster response and recovery. These might include services such as housing, health, counselling, and the insurance industry, the banks, financial providers, and appropriate agencies in government. For example the Red Cross provided legal referrals to some of those affected by the Victorian bushfire. In the aftermath of the recent Western Australian bushfires, the Law Society found that local MPs and schools were good outlets for relaying information about the availability of fact sheets, insurance seminars and information hotlines.

B RELATIONSHIP TO EMERGENCY RESPONSE PLANS

13. Legal assistance is not currently part of Commonwealth or State and Territory Disaster Response Plans. Lessons learnt from the Victorian BLH experience point to the need for legal assistance services to be integrated into existing and future emergency response plans, so that stronger collaboration can be developed with other services such as local councils and health and welfare agencies and any 'onsite clinics' occur at an appropriate time as part of a coordinated emergency response. The Victorian BLH Report⁷ found that legal assistance needs to be part of emergency plans and community recovery when natural disasters occur⁸.

⁶ Letter from Law Council of Australia to NPBRC dated 10 March 2011

⁷ Found at http://www.bushfirelegalhelp.org.au/cb_pages/images/BLH_project_report_final.pdf

⁸ Ibid. P. 3. Note also the Media Release Monday 15 June 2010, "LEGAL ASSISTANCE SHOULD BE PART OF EMERGENCY PLANS at http://www.bushfirelegalhelp.org.au/cb_pages/news/bushfire_legal_help_report.php

14. The Victorian experience also demonstrated that any legal assistance response to an emergency will require significant resources to properly coordinate and refer matters in the immediate to medium term, and meet the cost of disbursements in the longer term. Even though the initial legal services may be provided without charge to the public, with law firms and barristers willing to provide a range of services on a pro bono basis, there are significant costs associated with properly coordinating and referring matters, and longer term legal assistance. An example of some of the costs involved in the BLH effort is the cost of employing nine full time staff members in project management and coordination roles from 8 February to 30 June 2010. BLH also staffed an insurance unit and an advice service at Whittlesea Community Legal Service after this initial period. These positions were partially funded by the Victoria Legal Aid, who funded approximately 60% of the BLH effort, and also by using some of the Commonwealth's funding contribution of \$220,000 to Victorian community legal centres to deliver legal assistance services towards the Victorian bushfire response.
15. The executive summary of the BLH Report explained that BLH was a largely unfunded partnership, which was primarily resourced by the goodwill and generosity of each of its members.

The Bushfire Legal Help partnership has demonstrated the need for funding to be allocated at both the state and national level, so that the provision of legal services to resolve everyday problems is available to the same extent as other emergency management services in a crisis situation (such as relief centres, housing, health and medical services)⁹.

16. A substantial proportion of legal assistance work following a disaster is undertaken by already under-resourced Community Legal Centres and Legal Aid Commissions in addition to their existing caseloads. Caxton Legal Centre (Caxton) and QPILCH each devoted one senior staff member full time for the entire month of January 2011 to coordinate the flood and cyclone legal help service in Queensland, which meant that other services were dropped during this period. Caxton's Director also stated that he was only able to confidently resource the flood and cyclone legal help response with two part-time staff from Caxton's own surplus funds, once the Commonwealth announced its intended funding contribution of \$200,000. Similarly, Victoria Legal Aid stresses that its board made the decision to stretch its resources to fund BLH in that particular instance, but that it comes at a cost of fewer resources for its regular services, and it would be better in future to be able to plan with certainty as to funding.

⁹ BLH Report, p. 2

17. Legal assistance is not currently explicitly listed as an “eligible measure” which would attract Commonwealth Government funding under the Natural Disaster Relief and Recovery Arrangements (“NDRRA”) to assist states and territories facing emergency costs and facilitate access for volunteers at disaster sites. One-off funding has been provided by the Commonwealth A-G to support the legal services of Victorian BLH and the Queensland Floods Legal Help responses¹⁰. The Commonwealth Attorney General’s Department (Emergency Management Australia) introduced the idea of including legal assistance as an eligible measure under the NDRRA at the July 2010 meeting of the NDRRA Stakeholders Group meeting. The matter was considered at the December 2010 meeting of this group but is still under consideration.¹¹
18. It may be that legal assistance could be included as part of the Category A measure set out at paragraph 3.2.2(g) of the *NDRRA Determination 2007*¹² as assistance for “personal and financial counselling aimed at alleviating personal hardship and distress arising as a direct result of the natural disaster” but it would be clearer if this was amended to explicitly include legal assistance. This is important given that funds are normally provided to the States and Territories by the Commonwealth under the NDRRA on a cost-recovery basis. This would allow States and Territories to appropriately plan their legal assistance response in light of the level of funding that is likely to be available.
19. Whether or not legal assistance is included as an eligible measure under the NDRRA, experience has shown that legal assistance providers need to be able to rely on additional sources of funding to meet the costs associated with the increase in demand for legal assistance as a result of a disaster.
20. Comments below are arranged on the basis of the Preparation, Response and Recovery stages of emergency planning.

¹⁰ Media Release, More funding for Queensland flood legal help, http://www.ag.gov.au/www/ministers/mcclelland.nsf/Page/MediaReleases_2011_FirstQuarter_31January2010-MorefundingforQueenslandfloodlegalhelp

¹¹ Information provided by Social Inclusion Division, Cth A-G’s Department January 2011.

¹² Found at http://www.ag.gov.au/www/emaweb/emaweb.nsf/Page/EmergencyManagement_RecoveringfromEmergencies_NaturalDisasterReliefandRecoveryArrangements_NDRRAGuidelines

C PREPARATION

Response planning

21. Planning is essential to identify emerging and potential threats and for a response team to be in a position to take quick and efficient action in the event of a disaster in accordance with an agreed Response Plan.
22. A Response Plan explains the triggers and procedures to be followed in determining whether the Response Plan should be implemented. These take into account the nature of the particular disaster and the types of legal questions that victims and their families may have in its immediate aftermath. This will involve the gathering of information and assessment of the extent of the legal need. i.e. the extent of personal injury, death, and/or property damage resulting from the disaster. Some disasters may not give rise to immediate legal needs and will not warrant the invocation of the legal response plan or provision of immediate, short-term pro bono services¹³. Common subject areas of legal need can be anticipated from Australia's recent disaster experience.
23. Response plans also set guidelines for the members of the Legal Response Team to follow in responding to the needs of victims and their families, as well as to the needs of the public and the media, *immediately* after a disaster. The attached guide to preparing a disaster response plan provides a more comprehensive checklist of suggested issues to be included.
24. Some of the issues that are included in various legal response disaster emergency plans perused by the Centre include:
 - Chain of command and how is the plan activated (including who is responsible for *activating* the plan)
 - Developing a strong brand under which the legal response team operates and principles for use of that brand or banner
 - Articulation of the roles and responsibilities of the legal response team partners
 - Communication strategy and contact details for liaison with the frontline Emergency Response Agencies

¹³ The New York State Bar Association Mass Disaster Response Plan Revised 1998 found at <http://www.abanet.org/barserv/disaster/newyork.pdf>

- Establishment and staffing of a legal help hotline (proposed script for legal line and intake procedure¹⁴)
- Preparation, publication and availability of factsheets and frequently asked Q & As
- Provision of clinics and legal information to persons at shelters, relief centres and disaster recovery centres
- Procedures and processes for recruiting volunteers (eg police checks for those working with children, process to ensure the qualifications and experience of volunteers match the task, necessary pre-involvement briefings, professional indemnity insurance)
- ‘Roadshow’ type legal information sessions for victims¹⁵
- Logistics for field volunteers– transport, shelter, office equipment, insurance, mechanisms for feedback on problems and support for coordinators
- Agreed legal advice/referral mechanisms and protocols eg legal advice record forms (which make it easy to distinguish disaster impacted clients from regular clients), confidentiality agreements, conflict checks, establishment of client-solicitor relationship
- Communication and coordination with the private legal profession, particularly to manage the expectations of volunteers.
- Communication and coordination with those affected by the disaster
- Media strategy and spokesperson for the legal response team

25. An official legal response website established for a particular disaster, containing, or linking to the most relevant fact sheets will make it easier for those affected to find authoritative, credible and relevant information. It may also minimise duplication of effort in preparing this information. Recent Australian experience with different types of natural disasters has raised the question about whether to have a single disaster help site which links to separate pages for flood, fire, cyclones and other types of emergencies.

¹⁴ For sample phone scripts See para 4.1 Phone Banks/Hotline of the Victorian Disaster Response Package (July 2011) and State Bar of Texas – Disaster Response Plan (Natural Disasters)

<http://www.abanet.org/barserv/disaster/texas.pdf> .

¹⁵ In the weeks following the Queensland floods, legal information and advice sessions about flood insurance claims were conducted in 6 regional centres by officers from Legal Aid Queensland, Insurance Council of Australia and the Financial Ombudsman Service. See www.legalaid.qld.gov.au/media/Media-releases/Pages/Free-legal-information-and-advice-about-flood-insurance-claims.aspx

26. Recent Australian experience has identified legal issues where there has been a high demand for fact sheets. A good list of these exist on the Queensland Flood and Cyclone Legal Help website and range from “Have you lost an important document in the floods?” to “Deceased Estates”¹⁶. It will be important to reach an agreement on whose responsibility it will be to keep factsheets up to date and to commission new ones if a threat emerges.
27. A Legal Response Team can benefit from knowledge of other States’ experiences and sharing resources. E.g. The Queensland Legal Aid factsheet “Queensland Government flood response: Need help getting an insurance claim paid?”¹⁷, was adapted from the Legal Aid New South Wales publication Storms, Floods, Insurance and You, and the Victorian BLH Handbook. The BLH website also contains a number of other excellent fact sheets that could be redeployed quickly if required. Various CLCs have relevant factsheets on their websites and there are many other relevant legal information sites.
28. Each State and Territory in Australia will need to prepare its own Disaster Response Plan based on local circumstances that sets out the trigger for implementation and the response process in the event of a disaster. Contacts for persons experienced in organising a legal response to a disaster can be obtained by contacting the National Pro Bono Resource Centre.

Response Team

29. A feature of the Australian and US legal profession’s¹⁸ response to disasters has been the willingness of all sectors of the profession to offer to help. Experience shows that an effective legal response requires a Legal Response Team.
30. In Victoria, no such team and plan existed before the bushfires but members of the response team once established were:
- Victoria Legal Aid
 - Federation of Community Legal Centres (CLCs)
 - Public Interest Law Clearing House (VIC)(providing a conduit to law firm pro bono practices and barristers willing to take on pro bono legal work.)
 - Law Institute of Victoria

¹⁶ See full list of fact sheets at <http://www.legalaid.qld.gov.au/FLOODS/Pages/Legal-information.aspx>

¹⁷ See factsheet at <http://www.legalaid.qld.gov.au/publications/Factsheets-and-guides/Factsheets/Documents/fs-stormInsurance.pdf>

¹⁸ See list of US Disaster Law Resources at www.abanet.org/disaster/statelocal.html

- The Victorian Bar

These organisations were actively supported by the A-G of Victoria, the Department of Justice, and the Victoria Law Foundation.

31. These organisations worked quickly in the days following the fires to establish their respective roles and activities. E.g. The BLH Hotline was established and took its first calls within 4 days of the bushfires.

32. Similarly in Queensland, no such team existed before the current floods. The initial media release on 13 January 2011 directed all those seeking assistance to the general legal aid switchboard number, but a flood legal help response team was announced¹⁹ on 21 January 2011 together with a dedicated website and a 1300 number for the hotline.

The team included:

- Department of Justice and Attorney-General
- Legal Aid Queensland
- Queensland Law Society
- Queensland Public Interest Law Clearing House
- Queensland Association of Independent Legal Services
- Bar Association of Queensland
- Aboriginal and Torres Strait Islander Legal Service

organised under the Flood and Cyclone Legal Help/Queensland Legal Assistance Forum (QLAF) banner.

33. As experience in Victoria and Queensland has shown, the organisations that will form a response team for each State and Territory will be different. To provide the best possible legal response it is important for the legal community (perhaps via a Legal Assistance Forum (LAF)) to identify and coordinate the organisations that would need to work together in the event of an emergency, with each relevant organisation nominating an individual or team as the organisation's representative on the Response Team in the event of a disaster.

¹⁹ See Media Release Free Legal Services on offer to flood victims, <http://www.cabinet.qld.gov.au/MMS/StatementDisplaySingle.aspx?id=73381>

34. In Victoria, Queensland and Western Australia Legal Aid has been the key co-ordinating agency providing the legal help phone hotline, the website with factsheets, the co-ordinating staff and other logistics.
35. The Response Team will be better prepared to deal with a disaster if all the nominees meet periodically to update their understanding of the role of their organisation, emerging threats, proactive initiatives and delivery ideas.
36. It is equally important for the nominees to take whatever plans they develop from Response Team meetings and inform their individual organisations and members to prepare accordingly. This may involve each organisation having its own plan about what their contribution might involve and ensuring their members are trained to undertake the roles they will be expected to play if the plan is implemented.

Managing volunteers

37. One challenge that has been identified in managing the many volunteers who wish to assist is matching their skills and experience with the tasks required²⁰. While volunteers may be highly qualified and experienced legal professionals, they must be matched with actual needs that arise at different stages following the disaster. Recent experience has shown that the demand for legal advice in the immediate aftermath of a disaster is limited to particular issues, and other issues may emerge some months later (see paragraph 5). A response team with a well organised plan can initiate training for legal professionals in the necessary skills well before an emergency occurs.
38. Legal professionals who participate in relevant training before a disaster occurs will make it easier for legal response coordinators to identify those with the appropriate skills. An effective process for matching volunteers to the tasks required will involve inquiring as to a potential volunteer's prior experience and their suitability for the task. For example in Victoria staff members of law firms, who had been involved in Homeless Persons Legal Service, were experienced in working with people experiencing trauma, and so were identified as appropriate to staff clinics in the Recovery Centres.
39. In Victoria and Queensland a "blast email" to all Law Institute/Society members was used to recruit volunteers. This resulted in many more expressions of interest in helping than were possible to accommodate. This approach also raised issues of who would provide appropriate legal supervision and professional indemnity insurance cover for those wanting to volunteer. It also created work for pro bono coordinators

²⁰ Both PILCH (VIC), Victoria Legal Aid and QPILCH reported massive support and interest from members of the legal profession willing to help and this being a management issue.

in responding to their many staff who contacted them on receipt of this email. This approach does not target the people who have the skills and experience to match the need.

40. Experience has shown that the need for lawyers varies considerably over time from the date of the disaster. Ideally, the strategy for recruiting and managing volunteers needs to reflect this. It may be that a strategy that develops and coordinates “disaster-ready volunteers” who are ready to be deployed at short notice (similar to SES volunteers) would be a viable alternative strategy to the “blast email”.

41. At the time that a response plan needs to be implemented, it will be important to brief volunteers at the time of their deployment on the issues specific to the particular disaster and updates as the situation changes. The BLH effort started with face-to-face briefings but later recorded briefings on DVDs and distributed them as required.

Disaster risk reduction

42. The Legal Response Team could also take some pro active initiatives identifying ways to minimise the impact that a disaster will have on both the affected public and legal service providers. For example, loss of critical identity documents is a common legal issue in the aftermath of a disaster. The legal profession could work towards providing a legal solution such as encouraging banks to become repositories of electronic copies of such documents. Legal service providers who were forced to stop operating during the Queensland flood and cyclone emergencies are developing their own contingency plans which involve offsite storage of copies of important documents. Storage of vital information and copies of vital documents in a number of geographic centres is one way to reduce the risk that all of these vital records will be destroyed in one particular centre.

D RESPONDING

43. The benefit of careful planning at the preparation stage is that the response to an emergency will be robust but also flexible enough to deal with unforeseen events. Action should be responsive to the community's changing needs. e.g. At a particular time after the disaster, road-shows and public meetings may be more useful than clinics. The strength of the relationships that have been developed through the planning process is likely to make it easier to negotiate and agree on changes to the plan in response to unfolding events.

E RECOVERING

44. This is the stage of a disaster where more sustained legal effort may be necessary to resolve disputes and obtain adequate compensation etc. While a matter may initially be handled as part of a pro bono legal assistance response it may not be sustainable for the services to continue to be provided for free if they continue for months or years. There are likely to be more individual lawyer-client relationships, some pro bono or legal aid, while others may be on a no-win no-fee, or fully paid, basis. Legal aid assistance is unlikely to be available for many ongoing civil claims.
45. The emphasis on the nature of the legal matters for which assistance is sought is likely to change in the recovery phase. For example in the Victorian bushfires longer term matters included new government planning processes and insurance disputes.

46. The recovery phase is a time when the legal community can play the role of identifying systemic issues and advocating for appropriate change. An important recommendation of the BLH report was that:

The legal assistance sector needs to be proactive in recognising and identifying the broad range of longer-term legal problems that arise in the aftermath of a major emergency, and take steps to bring these to the attention of governments and planning bodies so that solutions can be developed.

It is also an important time for the legal community to evaluate the effectiveness of its disaster response and update its response plans in light of lessons learned.

II. A guide to preparing a Disaster Response Plan for your legal community

A PREPARATION

1 Establishing a legal response team

The first step towards a well coordinated response is the identification of the stakeholders who will form a legal response team that will develop and agree on a response plan.

The organisations that will form a legal response team for each State and Territory will depend on the capacity and structure of the legal profession in that jurisdiction.

To provide the best possible legal response it is important for the legal community (perhaps via a Legal Assistance Forum (LAF)) to identify and coordinate the organisations that would need to work together in the event of an emergency, with each relevant organisation nominating an individual or team as the organisation's representative on the legal response team in the event of a disaster.

Checklist issues:

- ✓ Identify organisations which will form the response team
- ✓ Each organisation to nominate a representative to attend meetings and take responsibility for implementation
- ✓ Response team to arrange periodic meetings to develop and revise plan

2 Coordinating with emergency response organisations and other stakeholders

2.1 How does the legal response fit with the broader emergency response plan

As the legal response is only a part of the emergency response, the legal response team needs to form relationships with emergency response organizations. This will help the response team to identify the likely needs, and the contribution required from the legal profession to address those needs, in the event of a disaster. It also needs to liaise with other professions and industries which are likely to be implicated in disaster response and recovery.

This would allow the legal profession's potential contribution to help in an emergency to be better understood and coordinated in a holistic way. It also allows the legal response team to work effectively with other stakeholders who may also be involved in providing the legal assistance response.

Checklist issues:

- ✓ Identify other stakeholders with whom to coordinate the legal response
 - Emergency Management Australia
 - Red Cross
 - housing
 - health
 - counselling
 - insurance industry
 - banks
 - financial providers
 - local councils
 - appropriate government agencies
- ✓ Consult with other stakeholders by discussing what contribution is required from the legal profession, and what the legal profession can contribute
- ✓ Distribute and seek feedback on the legal response plan
- ✓ Prepare a Contact and Referral directory

3 Agreeing to members' roles in preparing for and responding to a disaster

The Response Team members will be better prepared to deal with a disaster if they agree on their roles in the event of the legal response plan being activated. All the nominees should meet periodically to update their understanding of the role of their organisation, emerging threats, proactive initiatives and delivery ideas.

It is equally important for the nominees to take whatever plans they develop from legal response team meetings and inform their individual organisations and members to prepare accordingly. This may involve each organisation having its own plan about what their contribution might involve and ensuring their members are trained to undertake the roles they will be expected to play if the plan is implemented.

Checklist issues:

- ✓ What kinds of services will the legal response team provide?
 - Hotline
 - Website
 - Clinics
 - Roadshows
 - Factsheets/handbook
 - Referral
- ✓ Who is responsible for preparing and providing those services?
- ✓ Response team representatives to take plans and updates back to their members to enable those organisations to prepare themselves and train their members for the

- ✓ contribution they are expected to make under the plan
- ✓ Response team organisations to develop their own emergency plan and brief/train/prepare their members for the role they have agreed to play

4 Volunteer pre-planning

4.1 Determining the role and need for volunteers

It is important to establish the needs that volunteers may be able to fulfill before undertaking any recruitment. Volunteers recruited to staff clinics at recovery centres in Victoria and Queensland did not see the high number of clients they were expecting to assist. The lessons learned from these experiences will help the legal response team to effectively prepare to have appropriate personnel available at the time when the peaks in requests for legal assistance are likely to occur. This may be some weeks or months after the disaster occurs.

4.2 Develop procedures and processes for recruiting and managing volunteers

One challenge that has been identified in managing the many volunteers who wish to assist, is managing their expectations and, for those that are required, matching their skills and experience with the tasks. An effective process for matching volunteers to the tasks required will involve inquiring as to a potential volunteer's prior experience and their suitability for the task.

While volunteers may be highly qualified and experienced legal professionals, they may not have dealt with the kind of clients and issues that arise following a disaster. A response team with a well organised plan can initiate training for legal professionals in the necessary skills well before an emergency occurs. Legal professionals who participate in such training before a disaster will make it easier for the legal response coordinators to identify those with the appropriate skills when an emergency occurs.

Checklist issues:

- ✓ Identify skills required in volunteers and organize training accordingly
- ✓ Develop procedures and processes for recruiting and managing volunteers
 - Draft a communication to go to all members of the legal profession about how the legal response is being organized and how they might help
 - Develop forms for identifying and assessing volunteers' skills and experience
 - Develop process to ensure the qualifications and experience of volunteers match the task
 - Develop procedure for police checks for those working with children
 - Identify any necessary pre-involvement briefings
 - Create sample volunteer agreements (clarify which legal practice is delivering the services)
 - Develop legal advice record forms, conflict checks, confidentiality agreements, and other legal advice/referral mechanisms and protocols

5 Establishing communication protocols and information resources

5.1 Communication with the legal profession

These communications can be 'ready to go' once a disaster occurs but need to be developed in consultation with all legal response team members. Recent Australian experience has been that many lawyers will express their interest in assisting in response to a call for volunteers, so it may be helpful to take an approach that will target lawyers who have the particular skills and experience for tasks required, as well as explaining how others can help. For example a strategy that develops and coordinates "disaster-ready volunteers" who can be called upon at short notice (similar to SES volunteers) may be a viable alternative strategy to the "blast email" to all lawyers calling for volunteers.

For those lawyers that express interest in volunteering there needs to be an ongoing communications strategy that keeps these lawyers advised about developments, coordination mechanisms and opportunities to assist.

5.2 Communication with frontline emergency response agencies

Identification of key agencies and contacts for these communications should be in place before a disaster occurs, so that the legal response is well coordinated with the wider emergency response.

5.3 Communication with those affected by the disaster

Experience has shown that an official legal help hotline and website established for a particular disaster are two essential ways to communicate with those affected. There may be some utility in keeping a dedicated legal help hotline number which can be activated any time that a disaster occurs.

An official legal response website containing, or linking to the most relevant factsheets will make it easier for those affected to find authoritative, credible and relevant information. To ensure that the information is correct and current, it will be important to reach an agreement on whose responsibility it will be to keep factsheets up to date and to commission new ones once a threat emerges.

This communication may need to involve community education about the types of issues about which they can seek legal help. For example experience has shown that people affected by a disaster do not identify insurance issues as legal issues.

5.4 Communications with the media – spokesperson

This should be centralised through a single spokesperson and media releases should be cleared by all legal response team members in an expeditious process. This person (or position) should be agreed by legal response team members and specified in the plan.

5.5 Producing a contact and referral directory

Checklist issues:

- ✓ Nominate a spokesperson (or position) for the legal response team
- ✓ Develop strategies and protocols for communication with
 - the private legal profession
 - frontline Emergency Response Agencies
 - those affected by the disaster
 - the media
 - legal response team members
- ✓ Prepare draft communication with the legal profession about the disaster response plan and the best way they can express interest in being involved
- ✓ Make arrangements for setting up a legal help hotline that can be activated as soon as it is required
- ✓ Agree on who is best to staff the legal help hotline
- ✓ Gather factsheets and other information resources from previous relief efforts and draft new ones as necessary
- ✓ Prepare a contact and referral directory of all relevant emergency response agencies and organizations

6 Developing principles for use of the brand

Having a strongly branded and coordinated legal response to the disaster is important. It clearly distinguishes the disaster response effort of lawyers, from those launching class actions and seeking other commercial legal arrangements. It also minimises the risk of unethical conduct of individual lawyers or firms soliciting clients at the site of a disaster.

Checklist issues:

- ✓ Develop principles for use the brand for the legal response that may be adopted in the event of a disaster, including branding of:
 - Media releases and spokesperson
 - Legal help hotline
 - Legal help website
 - Clinics
 - Roadshows

7 Establishing the procedure for activating the plan

The procedure for activating the plan needs to take into account the particular disaster and the types of legal questions that victims and their families may have in its immediate aftermath.

Checklist issues:

- ✓ What agencies should be approached to establish relevant information about the legal response required by the disaster or emergency?
- ✓ What triggers the initiation of action and what is the process for deciding to implement the plan?
- ✓ Who is responsible for activating the plan?

8 Establishing the mechanism for recording costs of providing legal assistance

Legal assistance is not currently explicitly listed as an “eligible measure” which would attract Commonwealth Government funding under the Natural Disaster Relief and Recovery Arrangements (“**NDRRA**”) to assist states and territories facing emergency costs and facilitate access for volunteers at disaster sites. Whether or not this matter is resolved, an important part of planning will be to have mechanisms for recording the cost of legal assistance. If legal assistance is included as an “eligible measure”, funds are normally provided to the States and Territories by the Commonwealth under the NDRRA on a cost-recovery basis. While the issue is still being discussed, it will nevertheless be helpful to have actual figures to illustrate the cost of providing such assistance.

Checklist issues:

- ✓ Develop mechanism for recording costs of providing legal assistance

B RESPONSE

9 Information gathering about the nature of the disaster

This section of the plan relates to the gathering of information about the nature of the disaster which will help the response team to decide whether the plan needs to be activated, and the scope of the response that is needed. The stakeholders identified in the contact and referral directory will be important sources of information.

10 Identifying the legal issues likely to arise from the disaster and their priority

Each disaster will raise common and also unique legal issues that will peak in different periods after the disaster. Legal assistance for some matters may not be required until 3 or 6

months after the event. Therefore it may be helpful to analyse the legal issues in terms of phases:

Phase 1: Immediate Response

Phase 2: Medium Term (rebuilding)

Phase 3: Long Term/Ongoing (re-establishment)

The legal issues that are likely to arise at each of these stages can be anticipated from recent Australian disaster experience.

11 Activating the plan

Following an analysis of information gathered about the disaster and the legal issues it raises, the response team will be in a position to make a decision about whether to activate the plan.

12 Establishing the brand/banner

Once a decision has been made to activate the plan, the legal response team will need to establish the brand/banner under which the response plan will be implemented.

Checklist issues:

✓ Create the logo which will be used to identify/represent/promote the brand
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13 Establishing the response in accordance with the response plan

13.1 Implementing pre-arranged legal service delivery processes and protocols

The agreed arrangements for each of the key entities to deliver legal services (i.e. Legal Aid, pro bono clearing house, law firm pro bono programs, CLCs) will need to be implemented in accordance with the plan by the relevant members of the legal response team.

13.2 Setting up a telephone hotline

13.3 Staffing a telephone hotline

13.4 Setting up an official legal response website

13.5 Reviewing and publishing factsheets and FAQs

13.6 Establishing clinics and providing legal information to persons at shelters, relief centres and disaster recovery centres

Any onsite volunteers will need briefing on the specific issues they need to deal with, and the procedures and protocols that they need to follow in carrying out their work.

Arrangements will need to be made to provide any field volunteers with logistical support.

Checklist issues:

- ✓ Use pre-prepared resources to identify and manage volunteers
- ✓ Provide onsite volunteers with:
 - pre-deployment briefing on issues specific to the disaster
 - training on procedures and protocols for case intake and referral
- ✓ Arrange logistical support for field volunteers
 - transport
 - shelter
 - office equipment
 - insurance
 - mechanisms for volunteers to provide feedback to coordinators on any problems or need for support

13.7 Coordinating 'roadshow' type legal information sessions for victims

13.8 Recording costs of providing legal assistance

C RECOVERY

14 Information gathering from the response experience

The recovery phase is a time when the legal community can play the role of identifying systemic issues and advocating for appropriate change, so it would be helpful if the plan provided a mechanism for recording feedback on lessons learned to inform proactive initiatives as well as future disaster planning. For example, loss of critical identity documents is a common legal issue in the aftermath of a disaster. The legal profession could work towards providing a legal solution such as encouraging banks to become repositories of electronic copies of such documents.

Checklist issues:

- ✓ Develop mechanism for encouraging and recording feedback and lessons learned

15 Wrapping up and aftermath – ongoing legal assistance arrangements

The emphasis on the nature of the legal matters for which assistance is sought is likely to change in the recovery phase. For example in the Victorian bushfires longer term matters included new government planning processes and insurance disputes.

Also this is the stage of a disaster where more sustained legal effort may be necessary to resolve compensation claims, disputes with insurers, and more complex or intractable matters which will require careful referral. In the longer term legal advice is likely to be provided under a variety of lawyer-client agreements (pro bono, legal aid, no win-no fee, full fee).

Checklist issues:

- ✓ Provide training in longer term legal issues that may arise e.g. clinic for legal practitioners on insurance may be appropriate.