

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.

Yours sincerely

Michael Colbran QC
President

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.