

SUBMISSION TO THE NATIONAL LEGAL ASSISTANCE PARTNERSHIP (NLAP) INDEPENDENT REVIEW 2023

A joint submission by Community Legal Centres Australia, National Family Violence Prevention and Legal Services Forum, National Aboriginal and Torres Strait Islander Legal Services, and National Legal Aid

NLAP and disaster legal assistance

27/10/2023

Acknowledgement of Country

We acknowledge and pay our respects to Aboriginal and Torres Strait Islander peoples and Traditional Custodians across Australia, including Elders past and present. Disasters exacerbate social inequalities and discrimination, and we acknowledge the strength and resilience of all First Nations people amid these conditions. We recognise the tremendous leadership of Aboriginal Elders and Aboriginal community-controlled services in disaster response and recovery.

NLAP and Disaster Legal Assistance

Thank you for the opportunity to submit to the Independent Review of the National Legal Assistance Partnership (NLAP). This submission focuses on disaster legal assistance and has been prepared collaboratively by Community Legal Centres Australia (CLCA), the National Aboriginal and Torres Strait Islander Legal Services (NATSILS), the National Family Violence Prevention and Legal Services Forum (FVPLS) and National Legal Aid (NLA). The views expressed in this submission are supported by all four peak bodies and recommend high level systemic change that is essential on a State, Territory and National level. Although there are learnings to be shared between each State and Territory on best practice models, the particulars of each jurisdiction's model or recommendations for specific distribution of funding is not part of these recommendations.

Disasters cause huge disruption and insecurity in Australian communities, creating new legal issues and exacerbating existing issues. The Victoria Law Foundation's recent Public Understanding of Law Survey 2023 ("the PULS Survey") is the first detailed examination of the length of justiciable problems in Australia since the Australia-wide legal needs survey undertaken by the NSW Law and Justice Foundation over 10 years ago.

The PULS Survey found that

- while 50% of justiciable problems end within 9 months, just under 30% remain unresolved after five years.¹
- The longer justiciable problems go on, the more likely they are to never be resolved.²
- With regards to the Black Summer Bushfires in Victoria, respondents who reported that their work or home life was affected by the fires were significantly more likely to report problems that lasted longer than those reported by other respondents and were more likely than others to be unhappy with the progress or outcome of their problems.³
- Bushfire-impacted respondents were more likely to have one or more justiciable problems (57% compared to the 41% of respondents not affected).⁴

Recent disasters such as the Black Summer Bushfires 2019-2020, the Covid-19 pandemic, and the widespread flood events across the country in 2021-2023 have demonstrated that significant legal need arises in such events and points to the necessity of improving how disaster legal assistance is planned and funded to meet the increased need. International research shows that disasters exacerbate existing disadvantage and can tip others who were previously coping into disadvantage.⁵

¹ N.J. Balmer et al (2023), *The Public Understanding of Law Survey (PULS) Volume 1: Everyday Problems and Legal Need*, Melbourne: Victoria Law Foundation, p. 133.

² Ibid.

³ Ibid, p. 19.

⁴ Ibid, p. 95.

⁵ A. Howard et al (2018), How social isolation affects disaster preparedness and response in Australia: Implications for social work, *Australian Social Work* 71(4), <https://doi.org/10.1080/0312407X.2018.1487461>, pp. 392-404; J. Howell et al (2018) 'As Disaster Costs Rise, So Does Inequality', *Socius* 4, <https://doi.org/10.1177/2378023118816795>; R. Hale et al (2021), "Post-disaster access to justice", *Crossroads of Rural Crime*, <https://doi.org/10.1108/978-1-80043-644-220211012>, pp. 167-179.

Many of the legal issues Australian Legal Assistance Forum (ALAF) members are seeing in service provision fall within Commonwealth areas of the law including insurance, employment, discrimination, family law, and social security. Further, priority client groups are presenting to our services regularly.

With climate projections warning of an impending reality of compounding and consecutive disasters, it is crucial that improvements are urgently made to the planning and funding of disaster legal assistance. It must be a priority of the NLAP to ensure that disaster legal assistance is no longer funded reactively and distributed slowly and unevenly across the legal assistance sector. Instead, a comprehensive approach to funding disaster legal assistance needs to be achieved, which recognises and funds legal assistance **as a core service** during all stages of the disaster cycle.

Disaster Legal Assistance also needs to be designed and delivered in accordance with the Closing the Gap priority reforms.

Recommendation 1

Core funding for disaster legal service providers must be included in future NLAP agreements.

Community members require early assistance when a disaster strikes, and legal assistance providers must be ready for immediate mobilisation. Currently, disaster funding is provided reactively after a disaster event, and usually takes many months for the allocation of funds to be determined. This causes significant delays to disaster-impacted individuals receiving the legal assistance they need and creates a risk of further exacerbation of legal problems. Funding needs to be delivered on an ongoing basis, so that legal services are resourced and ready to go when a disaster hits.

Our primary recommendation for core funding is supported by the recent findings of the PULS Survey. Individuals impacted by the 2019-2020 bushfires in Victoria were “more likely to have justiciable problems, have a greater number and longer-lasting problems, and make greater use of services”.⁶ Further, the PULS Survey recognised that disaster legal response will “become more necessary and need to last longer”.⁷

⁶ N.J. Balmer et al (2023), *The Public Understanding of Law Survey (PULS) Volume 1: Everyday Problems and Legal Need*, Melbourne: Victoria Law Foundation, p. 9.

⁷ Ibid.

Bill⁸ attended a recovery centre after his property flooded in November 2022. He had flood insurance but was feeling helpless and overwhelmed by the insurance process. He openly discussed his struggle with mental health following the trauma of the floods. He didn't know how much he was insured for, was frustrated with the delay and unsure of his rights.

The solicitor explained the insurance process, including his entitlements under the policy and his appeal rights. They obtained reports, the initial building assessment and estimated timeframes from the insurer, to give Bill some certainty.

As Bill was experiencing financial hardship, they advocated for the insurer to prioritise the claim and make an emergency payment of \$5,000 plus payments for food and medicine spoilage.

They also advised him to speak to his bank about a mortgage variation due to hardship and referred him to a local financial counsellor. As Bill was struggling with his health and finding his mutual reporting obligations for Jobseeker overwhelming, his solicitor advised him to reconnect with his doctor and get a medical certificate so he could suspend reporting obligations while he was unfit for work.

The solicitor continued to advocate for Bill on his insurance claim over the next 7 months and in July 2023 his claim was settled for over \$130,000.

Without timely legal help and appropriate referrals, Bill's unresolved legal problems may have led to severe financial hardship, mortgage default, homelessness, being cut off from income benefits and a deterioration in health.

As demonstrated by Bill's case study above, core funding to support timely, specialised legal advice would provide immediate benefits for individuals, such as avoiding homelessness or further financial hardship, and has broader social and economic benefits through improved individual and community wellbeing and a reduction in costs in addressing these problems by other publicly funded systems. A report by the Financial Rights Legal Centre into insurance problems following disasters confirmed that insured people are still struggling with unresolved claims or inadequate repairs several years on, highlighting the unsuitability of fixed-term contracts for the staff supporting these individuals.⁹

Core funding would also avoid the existing challenges for the legal assistance sector to easily activate legal services created by current short and fixed-term funding for disaster recovery including staff recruitment, supervision, training, retention, loss of expertise and interruption of service delivery. would result in significant economic benefit for government as recruitment, training and supervision costs of staff would be greatly reduced and positive impacts on disaster-impacted communities would be delivered.

⁸ Not the client's real name.

⁹ Financial Rights Legal Centre (2021), *Exposed: Insurance Problems After Extreme Weather Events*, p. 19.

Almost 12 months on, many individuals impacted by the 2022 Floods are still grappling with insurance issues, have not commenced rebuilding and issues around buy-back schemes and pod villages are just starting to emerge. Core funding would allow legal services providers to provide support across the entire disaster cycle and ensure that services are still available for emerging and ongoing legal need months and years after the disaster event.

Parties to the National Agreement on Closing the Gap “*acknowledge that Aboriginal and Torres Strait Islander community-controlled services are better for Aboriginal and Torres Strait Islander people, achieve better results, employ more Aboriginal and Torres Strait Islander people and are often preferred over mainstream services.*” This confirms that funding for supporting Aboriginal and Torres Strait Islander people throughout all cycles of disaster recovery with legal services should be prioritised for ATSiLS and Family Violence Prevention Legal Services.

1a: Funding for coordination function in disaster legal response

To ensure communities impacted by disaster receive the immediate legal expertise and support required, a collaborative, and supportive sector-wide approach to service delivery is necessary. This requires coordination to achieve efficiencies through maximising reach, avoiding duplication and streamlining referrals to ensure that all communities big and small receive the help they need. Funding this statewide coordination function is crucial in achieving these aims. Coordination can include activities such as a presence at recovery centres, the management of volunteers and working closely with government recovery agencies, local councils, community services, and the insurance industry to ensure that legal needs are met, and appropriate and timely support is provided.

The model of coordination will be determined by the geography, capability and risk profile of each State.

However, we refer to the Australian Council of Social Service’s Submission to the Independent Review of Commonwealth Disaster Funding, which recommended that funding should support locally guided place-based responses on the basis that “*local communities know what is needed, are well connected, have solutions, and are empowered by ownership of the response*”.¹⁰

1b: Ongoing funding for legal assistance services including place-based and specialist service providers to address particular areas of legal need, such as social security, insurance and tenancy.

Regional, rural, and remote areas are particularly vulnerable to climate disasters. When disasters occur, these already isolated communities can become further isolated if floodwaters, fires, or smoke physically cut off outside assistance. Further, we know that the presence of place-based services promotes help-seeking behaviour, as disaster-impacted individuals prefer face-to-face appointments – particularly when their legal issues are complex. Local legal services are also better situated to build strong relationships with other support services locally and to promote legal preparedness within their

¹⁰ See <https://www.acoss.org.au/wp-content/uploads/2023/08/ACOSS-Submission-to-Independent-Review-of-Commonwealth-Disaster-Funding-08082023-Final.pdf>

communities. Ongoing funding of local services would ensure that legal preparedness is embedded within communities and that more Australians can access legal assistance after a disaster strikes.

Specialist legal services also require ongoing funding. A large proportion of disaster-impacted individuals present to legal assistance services with problems around social security, insurance, and tenancy. It may be necessary to refer these individuals to specialist services that provide support services or advice to workers in areas of law that may fall outside the remit of a local service.

Research on the impact of disasters on Aboriginal and Torres Strait Islander people, and the service sector responses to these disasters exposes the demographic fault lines that play out in “disaster justice”.ⁱThe research found the absence of cultural considerations or the appreciation of and funding for Aboriginal controlled organisations in some cases resulted in poor experiences and outcomes for Aboriginal and Torres Strait Islander people. This mitigates towards quarantined funding for ATSILS to develop, plan, coordinate and delivery disaster recovery responses with and for Aboriginal and Torres Strait Islander communities impacted by disaster.

1c: Funding must be flexible.

Legal assistance providers need flexibility in funding so that they can decide the best composition of roles for their disaster workforce. Historically, funding allocations are for front-line legal roles. However, this overlooks the importance of other support roles and needs in the delivery of disaster legal assistance. Legal service providers need to have flexibility in funding allocations to determine the composition of roles needed for service delivery. This includes the type, for example, legal, allied professionals, policy, education or engagement, and seniority of roles required.

1d: Early intervention investment funding to promote disaster risk reduction and strategic advocacy is crucial.

Early prevention work reduces the number of people otherwise requiring legal assistance after a disaster, thereby delivering economic benefits in the form of avoided costs. This work requires building solid networks in communities with other support services to ensure referral pathways are established before a disaster hits and that service delivery runs smoothly for clients. It also requires systematic preparedness work to ensure community members are aware of their legal risks and know what they can do to better protect themselves from legal issues occurring. Community legal education and communications/media campaigns should be funded in a systematic and wide-reaching manner so that all regions of Australia are legally prepared.

We also note the role of Aboriginal Community Controlled Organisations (ACCOs) that are already embedded in communities and the benefit of adequately and appropriately resourcing ATSILS’ and FVPLS’s capacity to partner with ACCOs to undertake early intervention work, including community legal education, that might help prevent poor outcomes in the event of disasters in those communities.

Community Legal Education

Delivering community legal education may help community members to better identify legal risks and undertake preparedness activities to better mitigate these risks. Should legal issues occur, community legal education may also improve individuals’ ability to identify their issues as legal issues, and arm them with the knowledge of where and how to seek help. This helps with both the avoidance of legal

issues occurring in the first place and, if they do occur, with addressing those issues in a timely manner before they worsen. Targeted community legal education is fundamental to disaster risk reduction and builds resilience in individuals, communities, and businesses.

Capacity Building in the Sector

Training and education in disaster-specific areas of law is essential to ensure that the capacity of the legal sector can meet the needs of the communities both in preparation for and recovery from disasters. This training needs to ensure that trauma-informed, culturally sensitive training is provided to all legal service providers and is also available to any potential volunteer workforce, who contribute their expertise to this work. It is too late to deliver such training when a disaster strikes, as resources and capacity became focused on disaster response.

Funding should also be provided to ATSILS and FVPLS to create resources and deliver training to other organisations specifically to support work in and with within Aboriginal and Torres Strait Islander communities.

Capacity building our frontline partners to be able to identify legal issues and understand referral pathways is fundamental to ensuring the early identification and resolution of legal issues.

Policy and Law Reform

Policy roles are important given the substantial legal reforms that will be required to support climate adaptation in Australia and to prevent larger cohorts of Australians from experiencing legal problems and/or falling into disadvantage. Widespread reforms are needed in areas such as insurance, planning, human rights legislation and the protection and legal status of wildlife and animals, to better protect Australians and the natural environment from the impacts of disaster. This includes developing relationships with regulators, industry and Government and using casework to identify systemic issues that have a disproportionate impact on disadvantaged members of the community and to advocate for improved practices and law reform. This also has the significant economic benefit of reducing legal costs on a large scale through mitigation. As such, it is important that this work is recognised for its crucial role in early intervention and funded appropriately.

1e: Consultation with legal assistance providers, peak bodies, and key stakeholders.

When new funding decisions are being made, or old ones are revised or revisited, rigorous consultation must occur with legal assistance providers, peak bodies, coordinating agencies and other key stakeholders. Staff at these organisations have on-the-ground experience and know the emerging issues, including the level of need and risk, and so consultation with them will ensure funding is directed at the right place and time delivering better access to justice for impacted and at-risk communities. Funding decisions must also be consistent with regional disaster risk profiles and ensuring genuine choice in legal service providers for impacted populations to facilitate best outcomes.

1f: Data reporting requirements are simplified, and the government uses the data to produce analyses that help guide policy.

Data reporting requirements for disaster-funded work are extensive and a significant impost on staff, and yet this work is not funded. The NLAP needs to recognise that data collection and reporting is part

of the work and fund this adequately. Data terms and collection needs to be meaningful and specific to disaster work. Requirements should be simplified and match the kinds of data collected in the often-chaotic context of a disaster recovery centre or during a protracted period of case management where clients often have multiple and intersecting legal issues. Reporting requirements should seek the minimum amount of data necessary and allow for both quantitative and qualitative data inputs that reflect the complexity of the work.

Further, data reporting should be matched with equal efforts by government to analyse the data to identify emerging trends and needs. Sharing this analysis with legal assistance providers, peak bodies and coordinating agencies (if present) would be beneficial to all. Undertaking regular analysis of the data provided and using this analysis to inform funding decisions would also ensure that funding allocations are evidence-based.

Recommendation 2

Contingency funding to support surge capacity as needed.

In addition to the above, we recommend that contingency funding is immediately available following a large-scale disaster to support surge capacity. Flexible surge capacity is described as a “necessary evolution” in crisis management literature.¹¹ When a large-scale disaster legal response is activated, it is necessary to scale up the legal assistance sector workforce and service delivery costs to meet the increased level of legal need in impacted communities. The frontline response to a large-scale disaster can extend over weeks and months, making contingency funding even more critical. Noting the challenges of recruitment in regional, rural and remote areas where disasters often cause greatest impact, investing in salary parity across the legal assistance sector will increase the opportunity to meet any surge demand – while ensuring communities have genuine choice in appropriate culturally informed legal assistance from preferred providers.

In addition, in some states and territories, volunteer and pro bono lawyers offer their time and expertise for free in response to a disaster. However, other consequential expenses such as travel, accommodation and necessary safety equipment should be cost free. The establishment of contingency funding would ensure the legal sector is able to adequately support volunteers and pro bono lawyers who offer up their time.

This is particularly important when local services may themselves be impacted by the disaster and reliant on the coordination and assistance of other parts of the sector to respond to emerging legal needs.¹²

¹¹ Townsville Community Law (2021), *Disaster Readiness for the Legal Assistance Sector: Disaster Legal Assistance in Queensland*, p. 13.

¹² See, for example, Williamson B et al, Centre for Aboriginal Economic Policy Research, *Aboriginal Peoples and the response to the 2019-2020 bushfires* at <https://caepr.cass.anu.edu.au/research/publications/aboriginal-peoples-and-response-2019-2020-bushfires>

ⁱ See, for example, Williamson B et al, Centre for Aboriginal Economic Policy Research, *Aboriginal Peoples and the response to the 2019-2020 bushfires* at <https://caepr.cass.anu.edu.au/research/publications/aboriginal-peoples-and-response-2019-2020-bushfires>



NATSILS

National Aboriginal and
Torres Strait Islander Legal Services
TRUE JUSTICE FOR OUR PEOPLE



Community Legal Centres
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NATIONAL
FAMILY VIOLENCE PREVENTION
AND LEGAL SERVICES
FORUM