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# Submission to the Independent Review of Commonwealth Disaster Funding

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**Consent option:** Publish with name

**Submitted by:** National Legal Aid

## **Q1. What experience have you had with Commonwealth disaster funding support?**

Commonwealth support for disaster legal assistance for legal aid commissions (LACs) has historically been provided as ad-hoc, event-based, temporary funding through Federation Funding Agreements negotiated under the Intergovernmental Agreement of Federal Financial Relations.

For example, in July 2020, \$8.7 million was provided to New South Wales, Queensland, Victoria and South Australia, for legal assistance services to communities impacted by the 2019-20 bushfires. Our experience is that this funding is often received many months after the disaster.

Some LACs also have experience of funding through the Disaster Recovery Funding Arrangements (DRFA). This process can be protracted and can delay access to funding in the aftermath of a disaster, and it could be more simplified. To illustrate, an application by the NSW Department of Communities and Justice in April 2023 for DRFA funding for Legal Aid NSW (LANSW) to continue to respond to the 2022 floods is still being assessed.

National Legal Aid (NLA) supports a national model of disaster funding that includes ongoing funding for the delivery of disaster baseline legal services across Australia, and a contingency fund to be accessed as needed (see response in Q5).

Ongoing funding would deliver:

### Timely legal help

Providing timely, trauma-informed legal services in the immediate aftermath of a disaster, means legal problems can be resolved before they escalate. Embedding legal help in disaster response can prevent homelessness and further hardship. Time critical matters include tenancy advice for clients facing eviction, advice about unpaid fines to prevent license suspension, helping clients access temporary accommodation under insurance policies, negotiating with landlords over repairs, waiving debts due to hardship and support for domestic and family violence.

### Certainty and consistency

Temporary, short-term Commonwealth funding hampers the ability of LACs to provide consistent services and meet ongoing demand. Disaster legal assistance has become a specialist area of practice, and it can be difficult to rapidly recruit and train mobile lawyers when disasters occur. Ongoing funding





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would enable the legal assistance sector to attract and retain a skilled workforce that can provide outreach to disaster affected communities, ongoing representation and casework, and legal education to strengthen community preparedness. Funding is needed to facilitate sustainable partnerships with stakeholders in emergency management, and the health, housing and welfare sectors.

Importantly, baseline funding enables the provision of a statewide co-ordination function for legal assistance, providing efficiencies and avoiding duplication.

### Ongoing legal help

The long tail of recovery gives rise to legal needs not just immediately following a disaster but also weeks, months and often years afterwards. Legal issues emerge over time or resolution of disputes can be protracted. This includes delays in rebuilding and insurers making decisions. For example, data from the Insurance Council of Australia confirms that as of June 2023, there were still 24,200 open insurance claims from the March 2022 floods in NSW and South-East Queensland. A report by the Financial Rights Legal Centre into insurance problems following disasters also confirmed that insured people are often still struggling with unresolved claims or inadequate repairs several years down the track.

## **Q2. How could Commonwealth funding support communities to reduce their disaster risk?**

### Targeted legal assistance and early intervention

Legal assistance has become an integral part of Australia's disaster resilience. People in communities affected by disasters experience a range of legal problems, such as insurance, housing and tenancy, disaster grants, credit and debt, employment, income support, and domestic and family violence. If left unresolved, these problems can cause acute hardship, prolong recovery, exacerbate trauma, and disadvantage. With ongoing funding, communities have access to critical legal and early intervention services that support recovery. These interventions help build resilience in communities for future disasters, while failure to address legal problems increases vulnerability to future, and inevitable, dislocation. LACs have seen this firsthand in communities impacted by consecutive disasters.

Empirical research highlights the strong link between legal problems and social problems. It shows that legal needs, if left unresolved, lead to other social and legal problems. Research also suggests that disasters can widen existing social inequities, with individuals struggling financially before disasters often the hardest hit.

### Preparedness and risk reduction

LACs along with other legal assistance service providers, such as Community Legal Centres (CLCs) and Aboriginal and Torres Strait Islander Legal Services (ATSILS) play a crucial role in all stages of disaster preparedness, response and recovery.

A significant barrier to risk reduction is the reactive approach to disaster response funding. An event-based funding model only addresses short-term recovery needs. Sustainable and ongoing funding would ensure legal support for at risk communities across the country in disaster preparedness through targeted community legal education (CLE), information and referrals. It would provide the opportunity to mitigate the impacts of disasters and build resilience in individuals, communities, and businesses.





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For example, legal assistance service providers deliver CLE on insurance and disaster preparedness so communities better understand risk. This work is crucial to ensure that the impact of disasters on vulnerable community members is mitigated and that decisions around insurance, home purchase, relocation and disaster planning are properly informed.

A central aspect of CLE is working closely with partner agencies to build capacity in frontline workers to identify and refer legal problems after a disaster.

#### Systemic reform

Following disasters, legal assistance service providers and other specialist consumer advocates identify systemic issues arising from their casework and engage industry regulators and government agencies to advocate for improved practices and reform. This systemic advocacy reduces disaster risk by improving systems and practices for disadvantaged members of the community. For example, LANSW lawyers identified that insurers were requiring clients to provide itemised lists of their damaged home contents. This was onerous and retraumatising for clients. For years, LANSW, with other legal assistance providers and consumer advocates, strongly advocated for changes to this practice and in response, the industry revised the General Insurance Code of Practice so that itemised lists would not be required where an insured suffered total loss of property. (Available at [https://insurancecouncil.com.au/wp-content/uploads/2021/10/ICA007\\_COP\\_Report\\_2021-Updates\\_2.1\\_LR.pdf](https://insurancecouncil.com.au/wp-content/uploads/2021/10/ICA007_COP_Report_2021-Updates_2.1_LR.pdf))

#### **Q3. Please describe your understanding of Commonwealth disaster funding processes.**

NLA understands that Commonwealth disaster funding processes for legal assistance includes temporary funding through Federation Funding Agreements. These agreements are individually negotiated with the states and are subject to Commonwealth and state budget processes.

Funding is also available through the jointly funded Commonwealth-State/Territory DRFA.

NLA is aware that a review of the DRFA is occurring concurrently with this review, as well as work to develop a series of "off the shelf" pre-agreed recovery packages designed to expedite the ability of states to request joint funding of legal assistance services following a disaster.

The National Legal Assistance Partnership 2020-25 (NLAP) is a national partnership agreement negotiated between the Australian Government and all states/territories for Commonwealth funded legal assistance. Disaster legal assistance does not have a dedicated funding stream under the NLAP.

A review of the NLAP is currently underway. NLA understand the review will examine how the Commonwealth funds legal assistance services for disaster response.

#### **Q4. Are the funding roles of the Commonwealth, states and territories, and local government, during disaster events clear?**

The funding roles and arrangements during disaster events need to be made more transparent and simplified and joint funding priorities identified across all levels of government so that funding can be made available efficiently and effectively. The provision of funding via all levels of government has contributed to inefficiencies as negotiation between Commonwealth and state and territory governments has extended the time taken to allocate funding, for example, as well as different approaches by different states to DRFA applications. There are also challenges regarding accessing





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funding for services where the 'core' funding is provided via another agency or portfolio as there may be limited understanding of the role of these services and their existing funding arrangements which can lead to further delays and limited access to funds.

#### **Q5. Is there any further information you would like to provide?**

Over recent years, driven by experience, LACs have adapted and developed their services to meet emerging community needs and implemented specialist, trauma-informed service models to deliver legal help and resources quickly and efficiently to disaster affected communities. These services have largely been provided through temporary funding.

With the escalating risk of disasters, NLA considers that there is a strong community need for a sustainable and ongoing national funding model to ensure legal assistance services can continue to provide disaster response legal services, without affecting other core legal services, and to facilitate opportunities for preparedness work, including CLE and engagement, and sector coordination and collaboration. For example, in Victoria disaster legal assistance is coordinated by Disaster Legal Help Victoria, a partnership between the Federation of Community Legal Centres, Justice Connect, the Law Institute of Victoria, the Victorian Aboriginal Legal Service, the Victorian Bar Association and Victoria Legal Aid.

A national model would include funds for the delivery of disaster baseline legal service across Australia, and also a contingency fund to be accessed as needed by any jurisdiction when disasters occur. This would enable services across LACs, CLCs and ATSILSs to be stood up quickly and provide legal assistance in recovery centres and in specialist areas of law such as insurance and housing.

Without commitment to ongoing funding at a national level, the co-ordination, scale and geographical coverage of the disaster legal response will be significantly reduced and communities, particularly in rural and remote areas of Australia, will be less likely to receive appropriate support. A nationally funded disaster response legal service model will build on the expertise gained by LACs, CLCs and ATSILSs to date and, with access to additional emergency-based funding to mobilise services as need arises in disaster affected communities, expand the service to every state and territory and deliver a service that is effective, responsive and accessible.

On 19 May 2023 NLA provided a submission to the Senate Select Committee Inquiry on Australia's Disaster Resilience <https://www.aph.gov.au/DocumentStore.ashx?id=7a93c0d0-e209-49a7-a323-c33c26a79bee&subId=743041>. This submission provides further details relevant to this inquiry.

#### About National Legal Aid

NLA represents the directors of the eight state and territory LACs in Australia.

LACs are independent, statutory bodies established under respective state or territory legislation. They are funded by state or territory and Commonwealth governments to provide legal assistance services to the public, with a particular focus on the needs of people who are economically and/or socially disadvantaged.

NLA brings together the practice experience of the eight Australian state and territory LACs.





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Each year LACs provide over 1.5 million legal services across the nation. These services are delivered from 78 offices in regions and capital cities, and by outreach including in the community, at community-based organisations, and through health justice partnerships. Services are delivered face to face, by video/phone, and online. They cover all law types and include legal advice, information, dispute resolution, legal representation where necessary, and social support and referral services. LACs also have extensive CLE programs.



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