

☎ t: (03) 9269 0545 f: (03) 9269 0440

E-mail: simon.roberts@vla.vic.gov.au

31 August 2011

Committee Secretary
House of Representatives Standing Committee on
Social Policy and Legal Affairs
PO Box 6021
Parliament House
CANBERRA ACT 2600

By email: spla.reps@aph.gov.au

Dear Committee

Submission of the Victorian Legal Assistance Forum – Inquiry into the operation of the insurance industry during disaster events

Thank you for the opportunity to contribute to this inquiry. The members of the Victorian Legal Assistance Forum (VLAF) have significant experience in legal assistance responses to disaster events, following our collaborative efforts to respond to the devastating 2009 Black Saturday bushfires and also the floods in Victoria in September 2010 and January 2011.

This submission draws on that expertise in responding principally to the terms of reference relating to barriers to external dispute resolution (EDR) and the impact of free legal advice on people's access to EDR.

About VLAF

VLAF is a network of Victorian legal assistance agencies which aims to:

- advocate for increased access to legal services for socially and economically disadvantaged people; and
- continuously improve service delivery models by providers of legal assistance services to be responsive to unmet legal needs.

The members of VLAF are:

- Aboriginal Family Violence Prevention and Legal Service Victoria
- Federation of Community Legal Centres (Victoria)



- Law Institute of Victoria
- Public Interest Law Clearing House
- Victorian Bar
- Victoria Law Foundation
- Victoria Legal Aid
- Victorian Aboriginal Legal Service

Other issues being considered by this inquiry

We note the joint submission to this inquiry by Choice, Consumer Action Law Centre, Financial Counselling Australia and the Footscray Community Legal Centre which recommended amongst others things:

- an Australian Standard for general insurance claims handling and assessment;
- insurers be bound by the General Insurance Code of Practice as a condition of their licence;
- industry funded free hydrologist advice to consumers in disputes regarding flood insurance claims; and
- a specialist insurance legal service be funded in each state and territory to provide assistance to consumers seeking to dispute insurance matters through EDR.

We also note the publication in February 2011 by a range of consumer and legal organisations of a 12 point plan, *A Fair Go in Insurance*, which made the following recommendations:

1. Develop a fair and easily understood standard definition of flood that must be used in all Australian household insurance policies.
2. Introduce a mandatory key fact sheet for general insurance policies.
3. Require clear and bold disclosure of exclusions.
4. Implement last year's Senate recommendation to extend national unfair contract terms protections to insurance contracts.
5. Implement a six month timeframe for determining insurance claims.
6. Encourage the industry to offer total replacement policies instead of sum insured policies.
7. Require insurers to offer fortnightly payment and Centrepay payment options.
8. Require insurers to inform consumers calling about a claim about their right to make a claim, appeal a decision or go to the Financial Ombudsman Scheme.
9. Ensure important information about flood mapping and insurance claims data is publicly available.
10. Establish a panel of independent hydrologists who are available to consumers in dispute with their insurer regarding flood damage claims.

11. Establish a flood legal and financial counselling program.
12. Refer a flood insurance inquiry to the Productivity Commission to investigate full flood cover for the Australian community.

We urge the inquiry to consider these recommendations as relevant to its terms of reference.

Our experience in responding to disasters in Victoria

Most of the members of VLAF were involved in Bushfire Legal Help (BLH), a unique collaboration of peak legal assistance agencies in Victoria which delivered legal services to people affected by the 2009 Black Saturday bushfires.

The work conducted by BLH is documented in the report, *Legal assistance and community recovery after the 2009 Victorian bushfires: The Bushfire Legal Help response*. The report is available at http://www.bushfirelegalhelp.org.au/cb_pages/images/BLH_project_report_final.pdf. A copy is attached to this submission.

Some of the key features of the response involved:

- delivering services under the common BLH banner;
- delivering advice services based at local relief centres;
- establishing a BLH hotline;
- establishing a BLH website with fact sheets on common legal issues: www.bushfirelegalhelp.org.au;
- establishing a Bushfire Insurance Unit, located at Victoria Legal Aid and staffed by legal aid and community legal centre lawyers;
- conducting community legal education workshops for affected communities and the non-legal workers assisting them; and
- collaboration between legal aid, community legal centres and the private profession acting pro bono to provide ongoing assistance to clients where needed.

More recently, members of VLAF were involved in responding to floods in Victoria in September 2010 and January 2011. This work involved:

- providing individual legal assistance to clients;
- delivering community legal education workshops;
- developing a fact sheet on insurance and floods (based on material developed by Legal Aid NSW);
- developing a service contact list for people affected by the floods; and
- working on law reform and policy issues concerning flood insurance (see *A Fair Go in Insurance* referred to above).

The BLH website has also recently been rebranded Disaster Legal Help to reflect its broader focus and ongoing role: www.disasterlegalhelp.org.au

Insurance is a common issue people need legal help with following a disaster

Insurance was the most common legal issue people affected by the 2009 fires sought help with. For example, in the first six months of the BLH hotline, 2165 calls were answered and referred to participating agencies. Around 65-70% of those calls related to insurance matters.

In the first two months of operation of the Bushfire Insurance Unit, in the immediate aftermath of the fires, the unit:

- provided telephone legal advice and information on more than 200 occasions;
- delivered 17 community legal education clinics and roadshows;
- assisted third parties, typically non-legal Department of Human Services case managers, on 40 occasions; and
- opened 89 files.

Insurance was the most common area of referrals for bushfire pro bono legal assistance made by the Public Interest Law Clearing House, accounting for 23% of matters.

The Bushfire Legal Help website (now Disaster Legal Help) has had a total of 10,616 new visitors and 3601 returning visitors since its launch in March 2009. The insurance fact sheet is the ninth most popular fact sheet (out of around 20 fact sheets) and has had a total of 815 pageviews and 666 unique pageviews since the site's launch. The average time that visitors spent on the page was 2.21 minutes, which is a good indication that people have found the information relevant and useful.

The demand for legal assistance following the Victorian floods was not as high compared to the 2009 bushfires, and we did not collect statistics across the VLAF members around the level of assistance provided. Anecdotally, insurance was the most common legal issue on which people affected by the floods sought legal help.

Consumer awareness of insurance policy coverage and exclusions is low

Our experience in responding to disasters highlights that people generally have low levels of awareness around:

- the difference between sum insured and replacement policies;
- the availability of additional benefits under the coverage such as temporary accommodation; and
- the scope of coverage for different types of water inundation and particular exclusions.

The Bushfire Insurance Unit assisted a number of people who were underinsured due to a sum insured policy with inadequate coverage. Other issues arose in relation to uncertainty as to whether damage to items such as fences, dams, bores, water tanks and vegetable gardens was covered by

the relevant policy. The unit also dealt with a number of cases where clients were told by banks and other lenders that they must pay all or part of an insurance payout to service their mortgage.

Delays, inadequate communication and disputes over replacement costs

While many insurers handled claims following the 2009 bushfires appropriately, the Bushfire Insurance Unit assisted a number of clients experiencing undue delay in resolving their claims, some more than 12 months after the fires. The unit also assisted clients who were not being adequately informed of the status of claims, and clients who were in dispute with insurers over the cost of rebuilding (see Case study 3 below).

Consumer awareness of rights to access EDR is low

Our experience in responding to disasters highlights that people generally have low levels of awareness around the General Insurance Code of Practice and their rights to refer a disputed claim to EDR through the Financial Ombudsman Service.

Free legal services enhance access to EDR and achieve better outcomes for people affected by disasters

Our experience clearly confirms that the availability of free legal services enhances people's access to EDR, and helps individuals realise the benefits they are entitled to under their insurance policies.

Access to justice research, such as the NSW Law and Justice Foundation's 2006 report, *Justice made to measure: NSW legal needs survey in disadvantaged areas*, confirms that:

- many people do not identify legal problems as such;
- there is a substantial rate of inaction in response to legal issues; and
- when people do seek help, they generally do not seek it from traditional sources of legal help, instead speaking to friends, family, co-workers, teachers etc.

This research highlights the need for broad awareness raising so that people are aware of their rights and the avenues for them to take action. In the context of insurance and disasters, it is critical to raise awareness about people's rights under their insurance policies. This can be facilitated by initiatives such as:

- developing and promoting community legal education materials such as fact sheets;
- conducting training and workshops for people affected by disasters;
- conducting training and workshops for workers who are assisting people affected by disasters, such as case managers, financial counsellors and generalist legal assistance lawyers; and
- awareness raising around insurance rights through radio, news and television community service announcements.

At a more detailed level, there is a need for specialist, in-depth assistance on disputed insurance claims.

Specialist insurance legal services can achieve significant positive outcomes for people affected by disasters

Insurance is a specialised and often complex area of law. Achieving good outcomes for clients often requires specialist knowledge of insurance law. The experience of the Bushfire Insurance Unit confirmed the positive impact that specialist insurance lawyers can have.

Case study 1

A woman seeking to make an insurance claim following the fires, found that she was massively under-insured. The telephone call when she took out the insurance had been recorded and revealed that the sum insured was arrived at following a “guesstimate” by the telephone operator, which was accepted by the woman. The guesstimate was actually \$80,000 less than the figure suggested by the web calculator of the same insurer. With assistance from the Bushfire Insurance Unit, the insurer agreed to provide the woman with \$80,000 in addition to her sum insured.

Case study 2

After attending a legal education roadshow event, a man approached the Bushfire Insurance Unit’s lawyer to seek assistance to complain that his insurer had not sent him a renewal notice. He said his house had been uninsured at the date of the bushfires and he had not been aware of this as the insurer had failed to send him a renewal notice.

Under insurance legislation, a failure to provide a renewal notice creates an automatic extension of the insurance policy for the same period as the original cover, in this case being 12 months, which covered the date of the fires.

The Bushfire Insurance Unit, through the Insurance Council of Australia, requested the insurer provide a copy of its policy and the most recent renewal notice. The insurer reviewed the documents and concluded it had failed to send a renewal notice to the appropriate address and agreed the client was entitled to the benefit of automatic cover. The insurer advised the client he would receive a minimum of \$220,000.

Case study 3

One of the lawyers from the Bushfire Insurance Unit assisted eight clients to resolve disputed claims with the same interstate insurer. The claims had not been resolved more than a year after the fires. The main issue in dispute involved the clients’ concerns that the insurer was not offering them sufficient funds to properly rebuild their homes, as was required in the insurance policy. The dispute was compounded by poor communication from the insurer. Following intervention from the lawyer, the claims were quickly resolved. In total, we understand the clients received more than \$1 million additional funds to allow them to properly rebuild their homes.

Need to maintain capacity to respond – specialist insurance legal service

The strength of a legal assistance response to a disaster relies on the capacity and expertise of the relevant agencies to respond in a timely and effective way. This capacity and expertise can be maintained by:

- documenting past responses and reflecting on lessons learned (see for example, the BLH report referred to above);
- maintaining the currency of community legal education materials (for this reason, VLAF is maintaining the rebranded Disaster Legal Help website); and
- establishing a disaster response plan setting out the roles of individual agencies in responding to a disaster and how the disaster response is triggered. The National Pro Bono Resource Centre 2011 report, *Emergency Preparedness and Disaster Planning for the Legal Profession in Australia*, provides guidance on establishing a plan. VLAF is currently finalising its disaster response plan.

In addition, there is a need to develop and maintain expertise around insurance law. Apart from the Insurance Law Service in New South Wales, there are no free legal services that specialise in insurance law. The Bushfire Insurance Unit in Victoria was a one-off project, that drew on the experience of three legal aid and community legal centre lawyers, and a seconded lawyer from the NSW Insurance Law Service. We recommend that a specialist insurance legal service be funded in each state and territory to provide assistance to consumers seeking to dispute insurance matters through EDR.

Funding legal assistance responses to disasters should be integrated into government emergency response planning and be properly funded.

We recommend that the funding and planning of the delivery of legal assistance responses to disasters should be integrated into Federal, State and Territory emergency response planning. This is important to ensure that people are provided with legal advice in a timely way, and before legal problems have developed and become more complex to resolve. Early intervention is more cost effective and also significantly reduces anxiety about legal problems among victims of disasters who are dealing with a wide range of significant and difficult stressors following a disaster.

The overwhelming immediate legal response work in the recent disasters of which we speak has been unfunded by government. It is difficult for the sector to respond in a disaster situation when private legal pro bono resources and community legal centres are already stretched. The efforts in recent disasters have been successful because of a great deal of goodwill, and have been intricate to the response and recovery process. It is an arrangement that cannot be depended upon during future disasters without substantial government resources, especially when it comes to ongoing disaster recovery and insurance claim issues.

The limited funding for civil legal aid by governments over the past 15 years causes injustice when those who cannot afford robust legal representation are seeking to assert their rights against well

resourced insurers. Planning for disaster legal response by government must therefore always include a commitment to fund grants of legal assistance for the civil action necessary to enforce people's rights.

Proper funding is also important in ensuring both the effectiveness of legal assistance responses to disasters and maintaining normal service provision. Without additional funding, implementing an appropriate disaster response risks compromising existing service delivery, as resources need to be redirected away from existing service areas to the disaster service.

The BLH response was assisted by a one-off allocation of \$220,000 by the Commonwealth Attorney-General's Department which was distributed to six generalist community legal centres and the Public Interest Law Clearing House. Apart from this funding, the BLH response was largely unfunded and was resourced by its members by the reallocation of existing resources and goodwill. Similarly, the response to the 2010 and 2011 Victorian floods received no additional funding.

More information

For more information please contact:

Hugh de Kretser, Executive Officer, Federation of Community Legal Centres (Victoria) Inc on (03) 9652 1505 or executiveofficer@fclc.org.au

Joel Townsend Director, Civil Justice, Access & Equity, Victoria Legal Aid on (03) 9269 0691 or joelt@vla.vic.gov.au

Yours faithfully

Bevan Warner
Chairperson