

NSW Independent Bushfire Inquiry

Legal Aid NSW submission

22 May 2020

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Legal Aid
NEW SOUTH WALES 

About Legal Aid NSW

The Legal Aid Commission of New South Wales (**Legal Aid NSW**) is an independent statutory body established under the *Legal Aid Commission Act 1979* (NSW). We provide legal services across New South Wales through a state-wide network of 24 offices and 221 regular outreach locations, with a particular focus on the needs of people who are socially and economically disadvantaged.

We assist with legal problems through a comprehensive suite of services across criminal, family and civil law. Our services range from legal information, education, advice, minor assistance, dispute resolution and duty services, through to an extensive litigation practice. We work in partnership with private lawyers who receive funding from Legal Aid NSW to represent legally aided clients.

We also work in close partnership with LawAccess NSW, community legal centres, the Aboriginal Legal Service (NSW/ACT) Limited and pro bono legal services. Our community partnerships

include 29 Women's Domestic Violence Court Advocacy Services.

The Legal Aid NSW Civil Law Division focuses on legal problems that impact most on disadvantaged communities, such as credit, debt, housing, employment, social security and access to essential social services.

For the past decade, Legal Aid NSW's civil solicitors have provided legal assistance to communities across NSW as part of the government response to disasters.

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Introduction

Legal Aid NSW welcomes the opportunity to provide a submission to the NSW Independent Bushfire Inquiry (**NSW Bushfire Inquiry**).

Our comments are in response to the following terms of reference (3) *the response to the bushfires* and (4) *any other matter*, and we also provide input to inform recommendations regarding (5) *Preparation and planning for future bushfire threats and risks*, and (9) *Coordination and collaboration by the NSW Government with the Australian Government, other state and territory governments and local governments*. We outline our Disaster Response Legal Service and our response to the 2019/2020 bushfire season, and make recommendations regarding possible improvements to the coordination of legal assistance services following disasters.

Legal Aid NSW's Disaster Response Legal Service

For the past decade, Legal Aid NSW has provided legal assistance to communities across NSW as part of the NSW Government's response to disasters. In the event of a disaster, the CEO and executive of Legal Aid NSW administer the Legal Aid Disaster Response Plan, and Legal Aid NSW is the lead agency in coordinating the legal response for NSW.

Legal Aid NSW lawyers specialise in everyday legal issues that often arise during emergencies, causing acute hardship if left unresolved. They include employment, housing and tenancy, fines, social security, credit and debt, insurance, domestic and family violence, access to government payments, family law and crime. Our solicitors attend Recovery Centres to provide legal information and assistance in these areas in the immediate aftermath of a disaster.

Our model of service delivery is holistic, timely and trauma-informed. This aims to mitigate the impact that disasters have on individuals, families and communities. We are committed to a holistic approach to a client's legal problems by providing early legal assistance, identifying systemic legal issues and referring them to appropriate stakeholders or regulators, and providing legal education to affected communities. Where necessary, we provide clients with ongoing legal assistance.

Each Legal Aid NSW lawyer who provides advice and assistance during a disaster has been trained in trauma-informed practice. Rather than provide prescriptive rules, a trauma-informed approach is based on four principles:

- a) acknowledges the widespread impact of trauma and understands pathways to recovery
- b) is aware of the signs and symptoms of trauma in clients, families of survivors as well as staff providing assistance
- c) responds to those signs by fully integrating knowledge about trauma into policies, practice and procedures, and
- d) aims to actively resist re-traumatisation.

Anyone living in communities affected by disasters in NSW can access assistance from our Disaster Response Legal Service (**DRLS**). While many of these people would not generally meet Legal Aid NSW's eligibility criteria, people impacted by disasters often experience unexpected hardship and trauma, and are therefore considered priority clients. Having to leave one's home at short notice, or face the loss of home and/or belongings, businesses or workplaces, often leaves even those with resources and high capability, shocked and unable to move forward without support. The DRLS staff give advice about legal rights and guide clients through the process involved in asserting those rights. People who already experience vulnerability, including Aboriginal people, people with disability and children, receive more intensive socio-legal services from legal and allied professional staff.

ToR (3): the response to the bushfires

Legal Aid NSW's response to the 2019/20 bushfires

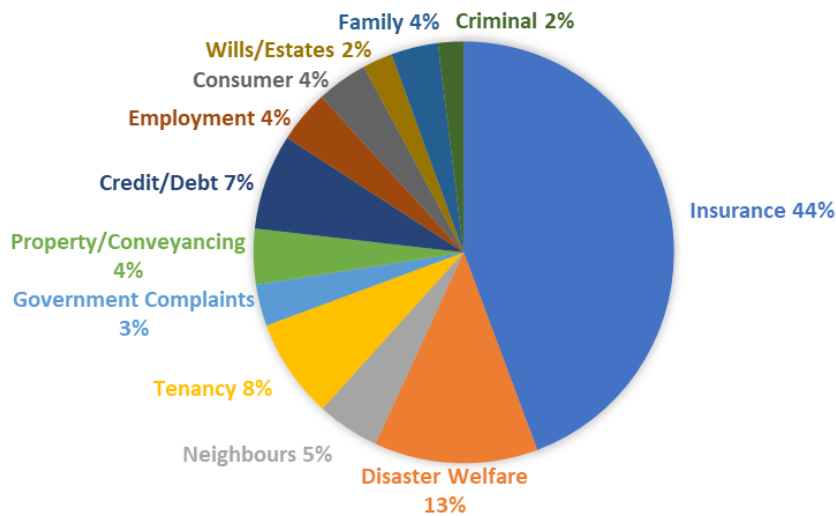
The Legal Aid NSW disaster response to the 2019/20 bushfires commenced in September 2019 and is continuing. Given the unprecedented scale of this bushfire season, we implemented a multi-channel response to ensure that people could get legal help despite extended disruption. Legal Aid NSW's DRLS included a dedicated 1800 helpline (operated by LawAccess NSW), telephone legal advice services, outreach to Recovery Centres, a dedicated website,¹ and extensive community legal education.

Our solicitors continue to assist with a range of legal problems arising from the bushfires including insurance claims and disputes, tenancy, employment, access to government entitlements, credit and debt, financial hardship, neighbour disputes and lost documents. Since early January to 10 May 2020, the DRLS has provided 747 legal advice services and received 406 calls.²

¹ See: <https://disasterhelp.legalaid.nsw.gov.au>

² Of these advice services, approximately 233 were telephone advices and over 514 were face to face advices to clients provided at Recovery Centres and Recovery Assistance Points. Percentages in the matter type chart are based on available data. There are some data limitations as Legal Aid NSW transitioned to a new file management system in early 2020.

LEGAL AID NSW
DISASTER RESPONSE LEGAL SERVICE BUSHFIRE ADVICE SERVICES BY MATTER TYPE



Legal Aid NSW has also presented legal information and education at community recovery meetings in small and often isolated towns across the state. In 2019, Legal Aid NSW attended 20 community meetings in remote, fire affected communities on the North Coast. In 2020, solicitors attended 48 community meetings and mobile hubs coordinated across 13 Local Government Areas.

Since 6 January 2020, Legal Aid NSW disaster recovery lawyers have been rostered on the legal advice line from 9am to 5pm, Monday to Friday. Messages received outside these hours are returned the next business day.

From 13 January 2020 Legal Aid NSW solicitors were deployed to Recovery Centres in communities most seriously affected by the fires in Bega, Bateman's Bay and Ulladulla. The Recovery Centres closed on 28 March 2020 because of the COVID-19 pandemic. Legal Aid NSW solicitors have also attended Recovery Assistance Points and community outreach hubs in Narooma, Cobargo, Quaama, Lake Conjola and Kangaroo Valley, and have travelled with a roaming team of agencies to Recovery Assistance Points across the Snowy Valleys local government area.

Legal Aid NSW also facilitated a statewide approach to the recovery effort in partnership with the legal assistance sector and private legal profession. Participating organisations included Legal Aid NSW, Community Legal Centres NSW (CLCNSW), specialist community legal centres (Financial Rights Legal Centre, Welfare Rights and the Tenants Union), Justice Connect, Law Society of NSW, NSW Bar Association, Ashurst and the Australian Pro Bono Centre.

There was an overwhelming response from the private legal profession to the bushfire emergency. The Law Society of NSW and NSW Bar Association enlisted many volunteers offering pro bono assistance, particularly to individuals or small businesses requiring

commercial, property or planning law advice outside the expertise of Legal Aid NSW or community legal centres.

In NSW, pro bono referrals were managed by Justice Connect via their award-winning online portal. This technology platform can receive and distribute a high volume of pro bono requests quickly and efficiently. During the bushfire crisis, 68 NSW law firms registered with Justice Connect to provide pro bono assistance, bringing the total number of participating firms to 168. 59 matters were successfully referred to pro bono legal help.

Legal Aid NSW also worked closely with community legal centres across NSW and co-ordinated our legal services. For example, together with the Financial Rights Legal Centre's Insurance Law Service, we provided training to Shoalcoast Community Legal Centre on the South Coast, which then went on to assist clients in Recovery Centres and at community meetings.

In total, 60 Legal Aid NSW civil solicitors supported the recovery effort. We will continue to provide assistance through ongoing casework over the coming months.

ToR (4) Any other matters including (5) Preparation and planning for future bushfire threats and risks and (9) Coordination and collaboration by the NSW Government with the Australian Government, other state and territory governments and local governments.

Need for Government funded disaster response legal services

It is now well-recognised that legal assistance is an important element in the recovery of disaster-affected communities. Empirical research demonstrates the strong link between legal problems and social problems. It shows that legal needs, if left unmet, often lead to other social and legal problems.³ In turn, this can prevent individuals and families from re-establishing their lives following a disaster, and can stall the recovery of disaster affected communities.

It is likely that disasters will occur more frequently in Australia in the future. We consider that there is a strong need for funded legal services to be part of any Government response to disasters such as bushfires. Funded legal services contribute to the preparation and recovery stages of disaster management,⁴ and assist to minimise the adverse impact of disasters on people and communities. We consider that our expertise and coverage in metropolitan, as well as rural, regional and remote areas across NSW, makes Legal Aid NSW best placed to provide these services to communities. We also co-ordinate our services with the wider legal assistance sector within NSW.

3 See Pleasence, P., Balmer, N. & Sandefur, R. (2013) *Paths to Justice: A Past, Present and Future Roadmap*, UCL Centre for Empirical Legal Studies, London.

4 Outlined in the New South Wales Statement Emergency Management Plan, December 2018, <<https://www.emergency.nsw.gov.au/Documents/publications/20181207-NSW-state-emergency-management-plan.pdf>>

In our experience, community legal education on topics such as the risks of underinsurance contribute to disaster readiness and assist communities to prepare for emergencies. Insurance can be particularly important for people on low incomes, who often do not have the social and financial resources to withstand financial shocks arising from unexpected events including disasters. Community legal education on this topic can assist people to make informed decisions and take informed risks about insurance.

In the recovery stages, legal assistance services are also critical. Our advice and assistance services in the aftermath of a disaster contribute to minimising the consequences of the disaster and support individuals to recover. There is a strong community demand for legal assistance at this time. Legal need following disasters varies according to the nature and scale of the disaster, and the community affected. As well as insurance-related problems, which are a recurrent area of significant legal need,⁵ in our experience there is also strong demand for advice and assistance in areas including residential tenancy, family violence, and fencing disputes.

For example, so far in response to the 2019/20 bushfires, Legal Aid NSW has provided over 747 advice services. The tangible benefit of Legal Aid NSW's services is demonstrated by the case examples below.

Case Examples:

Insurance: Our client's farm was completely destroyed by bushfire. Her insurer informed her that certain expenses would come out of her total sum insured. After reviewing our client's documents, we advised that she may be entitled to an additional payment from her insurer regarding some of these expenses. We assisted our client to write to her insurer and respond to their letters. This matter resolved with our client receiving an additional payment from her insurer of over \$20,000. Our client provided this feedback about the solicitor who assisted her: *"There are certain people I will remember for the rest of my life, and you, are one of them. You gave me comfort and help on one of the worst days of my life and for that, I will always be most grateful."*

Insurance: Our client and his wife are older people whose property was partially destroyed by fire. After assessors attended their property, the insurance company offered our client a relatively low sum to settle their matter. We assisted our client through his insurer's internal dispute resolution process. Our client's matter has now settled for almost three times the initial amount offered by the insurance company.

⁵ See Townsend, J. "Natural disasters: designing services to respond to legal need" (2016) 31(9) Australian Environment Review; and Legal Aid NSW Response to Issues Paper on Natural Disaster Funding Arrangements (2014), http://www.legalaid.nsw.gov.au/__data/assets/pdf_file/0003/19722/Submission-Natural-Disaster-Funding-Arrangements-June-2014-final.pdf

Insurance: Our client was unable to pay her ongoing expenses because of multiple delays in being reimbursed by her insurance company. We assisted our client to make a complaint to the insurance company, and she received the funds two days later.

Insurance: Our client, who was evacuating between her home and her daughter's home, had her car stolen with precious possessions inside. She had been packing her car with the keys inside and it was unlocked. When she turned to say goodbye to her daughter, a man with a tomahawk ran towards the car, jumped into the seat and drove off. Upon phoning her insurer she was told she had no claim as the keys were inside the car when it was stolen. We reviewed her policy and learned that this interpretation of her exclusion clause was incorrect. We lodged an internal dispute with her insurer. Within one day of lodging an internal dispute, we were contacted by the insurer who advised that they would allow her claim to proceed.

Financial hardship: We assisted an elderly client obtain a waiver of a large electricity bill. The client had lost her home and was in substantial financial hardship. She said: *"the matter which caused me such stress is sorted and I can cross it off the long list I have still to work through. Thank you for your patience and kindness is assisting me in this matter."*

Tenancy: Our client and her husband had evacuated to Victoria from rental premises during the bushfires. They had only been living in NSW for 14 months and had no support in the area. During the evacuation their landlord advised them that the water tank was contaminated, but informed them several weeks later that it was fine and they could return home. However, the agent issued a notice of termination incorrectly alleging non-payment of rent, which was later withdrawn. It now appears that the water tank is still contaminated, although the landlord denies any problem and the real estate agent will not act on their concerns. They received another notice of termination which appears to be retaliatory. Legal Aid NSW gave advice about the termination notice and referred the clients to their local Tenants Advice and Advocacy Service.

Replacement of lost documents: Our client's property was destroyed in the bushfires, including her certificate of title and she needed assistance to apply for a replacement. We assisted our client to complete the application form and statutory declaration and certified supporting documents.

Employment: Our client lost his job after taking sick leave because of the emotional distress he experienced after the bushfires, which heavily damaged his community. Legal Aid NSW's specialist employment law team is providing ongoing assistance to this client.

Temporary accommodation: Legal Aid NSW assisted a client to gain compensation from his insurer for failing to provide temporary accommodation assistance. Our client contacted the Disaster Response hotline in April 2020. The client lives at his property

in Southern NSW with his wife and five children. They evacuated their property on New Year's Eve 2019 due to the incoming fires. After three days the family returned to their home due to increasing fire threats in the evacuation area.

When the family arrived home, there was damage to fences, sheds and water tanks on their property, with the primary residence remaining intact. There was no power and no access to clean water as the tanks had been damaged and there was ash in the remaining water. The family contacted their insurer once they were back in their property to begin the claims process.

The family spoke with numerous representatives of their insurer over the phone, had assessors attend, and attended the nearby Disaster Response Centre. His insurer was aware that the family was without power or clean water and only once mentioned the option of temporary accommodation. Our client was experiencing trauma and elected to stay in the property on the promise from the insurer that the essential services would be restored immediately. There were further delays in doing this and all up the family spent almost six weeks in the property without power or clean water.

The client then made a claim for temporary accommodation with his insurer for the time spent in the property without power or water. The insurer denied this claim on the basis that the client had not incurred any temporary accommodation expenses. Legal Aid NSW argued that the family had suffered non-economic loss for the 6-week period living in the property that was uninhabitable. Legal Aid NSW argued that this loss resulted from the insurer delay in completing repairs and poor handling of the claim, given they had knowledge of the family's circumstances and failed to provide temporary accommodation options. The insurer agreed to compensate the client \$5,000 after Legal Aid escalated the complaint.

We suggest that the NSW Government consider establishing a disaster recovery fund, to enable NSW-based legal assistance services to recover costs incurred to assist communities to prepare for the legal impact of disasters, and to provide frontline legal help during recovery. This would ensure that Legal Aid NSW is able to proactively plan for the delivery of legal services, drawing on our significant experience, resources and readiness, without compromising the ability to plan and deliver core legal services within our existing budget. When a disaster occurs, such a model would also allow Legal Aid NSW to adapt the delivery of our legal services to meet the needs of local areas, alongside the delivery of other essential services.

We consider that this approach is more efficient than creating a new service for each disaster. It would also ensure that experience and knowledge gained from providing legal services in earlier disasters is maintained and incorporated into future preparation and response strategies. This is particularly relevant to providing a best practice trauma-informed approach. Our experience in managing disasters for the last 10 years proved invaluable in quickly mobilising the DRLS in response to the 2019/20 bushfires. We were

able to harness the expertise and knowledge of existing staff and expand the service to become statewide within days. We did this mostly with existing resources.

Previously, our disaster response work has been localised and manageable, usually with only one Recovery Centre providing a hub for community assistance. We could deploy resources on a short-term basis to provide onsite legal help. But the unprecedented scale and spread of the 2019/20 bushfires, with multiple and geographically dispersed assistance channels, put a significant strain on resources and business as usual operations. A more sustainable funding approach is required to allow Legal Aid NSW to continue to provide an intensive response during the recovery phase, without adversely affecting the delivery of core legal services. The ability to recoup these costs should be built into the NSW Government's recovery budget to ensure that legal assistance services can continue to provide rapid, flexible and needs-based services.

In our view, when a disaster impacts on more than one state or territory simultaneously, a nationally coordinated approach to providing funded legal services is required. Through our representative body National Legal Aid (NLA), Legal Aid NSW along with other Legal Aid Commissions throughout Australia, is preparing a submission to the Senate Inquiry into *'Lessons to be learned in relation to the Australian bushfire season 2019-20'*. NLA recommends that the Federal Government consider funding disaster legal services as part of any nationally coordinated response to bushfires and other disasters. Legal Aid NSW also recommended that the Federal Government consider funding disaster response legal services on an ongoing basis, in a submission to the Royal Commission into Natural Disaster Arrangements. We enclose a copy of this submission for information.

Recommendation 1: That the NSW Government consider establishing a disaster recovery fund, to enable NSW-based legal assistance services to recover costs incurred to assist communities to prepare for the legal impact of disasters, and to provide frontline legal help during recovery.

Administrative process

Legal Aid NSW had anticipated and planned for resources to be diverted to the DRLS. However, the operational management arising from the recovery process was significant, and required a senior solicitor working full time to coordinate service delivery.⁶ This was in addition to our specialist disaster and insurance senior lawyer who oversaw advice and casework.

We understand that the scale of the fires was unprecedented, impacting 5.4 million hectares (7 per cent of the state),⁷ and creating logistical challenges for many affected

⁶ With the assistance of administrative staff to book and coordinate staff travel and a project officer to collect and analyse service statistics.

⁷ As of 3 February 2020. 'Understanding the effect of the 2019-20 fires', NSW Department of Planning, Industry and Environment website <<https://www.environment.nsw.gov.au/topics/parks-reserves-and-protected-areas/fire/park-recovery-and-rehabilitation/recovering-from-2019-20-fires/understanding-the-impact-of-the-2019-20-fires>>

communities and organisations involved in the recovery process. Many organisations had to make new arrangements quickly, and in our experience, it was difficult to keep up with changes in the lines of responsibility and decision-making within various government organisations. For example, in some areas the disaster recovery efforts were managed by local councils, whereas in other areas they were managed by state government agencies. While early legal assistance is integral to recovery for the reasons outlined above, Legal Aid NSW and others legal assistance services were sometimes overlooked or were late inclusions to the recovery efforts. We recommend that a systems approach to disaster recovery should embed legal assistance at all stages of disaster planning, preparedness and response. We also recommend that one agency should have overall carriage and control of initial disaster recovery operations to establish a clear and consistent recovery structure and process that is applied across the state. This will also help to facilitate consistent inclusion of legal assistance services at all stages of disaster planning, preparedness and response in NSW.

Recommendation 2: That the NSW Government designate a single agency for the overall management and coordination of disaster recovery, including maintaining clear contact points and reporting lines in each affected community, and clearly communicate any changes to those processes in a consistent manner, state-wide.

Streamlining communication to support community led recovery

Legal Aid NSW acknowledges the importance of community led recovery. We support the approach outlined in National Principle III for Disaster Recovery⁸ which provides:

Using community-led approaches - Successful recovery is responsive and flexible, engaging communities and empowering them to move forward. Recovery should:

- centre on the community, to enable those affected by a disaster to actively participate in their own recovery
- seek to address the needs of all affected communities
- allow individuals, families and communities to manage their own recovery
- consider the values, culture and priorities of all affected communities
- use and develop community knowledge, leadership and resilience
- recognise that communities may choose different paths to recovery
- ensure that the specific and changing needs of affected communities are met with flexible and adaptable policies, plans, and services, and
- build strong partnerships between communities and those involved in the recovery process.

In our experience, the recovery process from the 2019/20 bushfires varied significantly in different regions. For example, some local government areas had a series of community

8 Emergency Management Australia (EMA) has established six National Principles for Disaster Recovery which are incorporated into NSW recovery planning and set out on page 4 of the NSW Recovery Plan, November 2016, available at <<https://www.emergency.nsw.gov.au/Documents/plans/supporting-plans/Supporting-Plan-Recovery-2016.pdf>>

meetings and no Recovery Centres, some had roaming recovery centres which travelled to a different town each day and some areas had a recovery centre as well as Recovery Assistance Points. Given the geographic spread of the fires, some local councils also introduced mobile recovery hubs in more remote areas. We saw that local councils were committed and determined to try to find innovative and effective ways to reach the whole community, especially the most isolated and vulnerable.

We were contacted by different people from local councils and State Government agencies with requests for assistance or our attendance at community meetings, sometimes at very short notice. In other instances, we found out about community meetings via Facebook groups and offered our assistance. Sometimes meetings clashed and we were faced with the difficult decision about which communities to prioritise.

In our experience, the sheer spread of the fires and diversity of community responses caused logistical challenges in planning, allocating resources effectively and prioritising competing requests. Where a particular recovery officer was responsible for a certain area, providing our services was much easier.

We support local co-ordinators being appointed for communities affected by future disasters, to act as a single point of contact for organisations like Legal Aid NSW. However, in our recent work in response to the 2019/20 bushfires, we had difficulty finding out who this person was, or how to contact them. We suggest this information is clearly communicated to organisations assisting with the recovery process, or is easily accessible. This would streamline communication between the community and organisations providing assistance.

We also suggest that the NSW Bushfire Inquiry consider models for community-led recovery that involve an overarching framework within which communities manage their own recovery. This could still provide communities with flexibility and autonomy whilst assisting large organisations to plan, allocate resources, and most effectively assist communities.

Recommendation 3:

- (i) Local co-ordinators should be appointed for communities affected by future disasters, to act as a single point of contact for organisations, and this information should be easily accessible and clearly communicated to organisations assisting with the recovery process.**
- (ii) The NSW Bushfire Inquiry should consider models for community-led recovery that involve an overarching framework, within which communities manage their own recovery, to provide communities with flexibility and autonomy whilst assisting large organisations to plan, allocate resources, and most effectively assist communities.**

Rationale for locations of Disaster Recovery Centres

We suggest that the NSW Government publish its reasons for the locations of established Recovery Centres. This transparency would assist communities to understand why Recovery Centres were located in some communities but not in others.

We have observed a community perception that resources allocated to the recovery process may have been unevenly distributed. For example, there were three Recovery Centres established on the South Coast as well as several Recovery Assistance Points, but no Recovery Centres on the Mid North Coast where there was significant property loss. We recognise that there may be sound logistical reasons for this, however the rationale for the location of Recovery Centres has not been clearly communicated to those communities.

Government Clean-Up Assistance

Legal Aid NSW welcomes the NSW and Federal Government funding for property clean-up. However, in our experience it has been difficult to obtain information regarding how the government funding for clean-up interacts with individual insurance policies, which may also include clean-up.

The NSW Government's '*Bushfire recovery clean-up Frequently Asked Questions*' webpage states that "[t]he Insurance Council of Australia has committed that insurers will maximise the funds available in their customers' policies for rebuilding."⁹ An insurer has also told us that the NSW Government and the Insurance Council of Australia have agreed to a Statement of Principles regarding bushfire clean-up, and that insurers are basing their decisions on this. To date, Legal Aid NSW has been unable to obtain a copy of the Statement of Principles.

It is difficult for our solicitors to answer clients' questions regarding clean-up and their insurance policies, without further information or access to the Statement of Principles. Different insurers structure their insurance policies differently. Some include clean-up costs in the building insurance sum total, and others have a separate component for clean-up costs. We require more information on how the Statement of Principles operates in respect of different policies to provide comprehensive advice to our clients on the maximum funds available to them for rebuilding.

9 'Bushfire recovery clean up frequently asked questions', Service NSW webpage, April 2020, <<https://www.service.nsw.gov.au/system/files/2020-04/Bushfire%20recovery%20clean-up%20FAQs.pdf>>