

24 June 2022

Professor Mary O’Kane AC and Michael Fuller APM  
2022 NSW Independent Flood Inquiry  
inquiry@floodinquiry.nsw.gov.au  
Via: Flood inquiry submission portal

Dear Ms O’Kane and Mr Fuller,

## **Submission by Legal Aid NSW in response to the 2022 NSW Independent Flood Inquiry**

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

Our comments are in response to the following terms of reference:

*1. The Inquiry is to consider and report to the Premier on the following matters:*

*c. responses to floods*

*d. the transition from incident response to recovery, including the roles, structure and procedures of agencies, government, other entities and the community;*

*e. recovery from floods, including:*

*i. immediate housing, clean-up, financial support and community engagement measures; and*

*ii. longer-term community rebuilding support;*

This submission provides an overview of the Legal Aid NSW Disaster Response Legal Service and our work during the 2022 floods, reflecting on areas that have improved since previous disasters and makes recommendations for further improvements to the coordination of legal assistance services following disasters.

## **Disaster Response Legal Service**

For over a decade Legal Aid NSW has provided legal assistance to communities impacted by disasters across NSW. Our Disaster Response Legal Service (**DRLS**) provides statewide legal assistance, community legal education and information to individuals and communities. Legal Aid NSW is the lead government agency coordinating the legal response to disasters in NSW.

Over the past 6 years the DRLS has provided legal support with the following disasters:

- Kurnell storms, April 2016
- Mona Vale storms, June 2016
- Auburn storms, September 2016
- Western NSW bushfires, February 2017
- North Coast floods, April 2017
- Tathra bushfires, March 2018
- NSW bushfires, 2019/2020
- Mid North Coast and Hawkesbury floods, March 2021
- The Northern NSW and Hawkesbury Floods, March 2022

The DRLS specialises in legal issues that arise during emergencies, which can cause acute hardship if left unresolved. They include insurance entitlements and disputes, housing and tenancy, access to disaster grants, social security, credit and debt, employment, fines and domestic and family violence.

The DRLS service model ensures a timely, targeted and trauma-informed service<sup>1</sup> through a multi-channel approach. The services we offer include:

- the DRLS 1800 helpline operated by LawAccess NSW, open 9.00am to 5.00pm weekdays, Callers are given legal information or 'warm transferred' to our telephone legal advice line staffed by Legal Aid NSW civil lawyers;
- legal assistance at recovery centres, recovery assistance points and mobile outreach hubs;
- attendance at community meetings, providing Community Legal Education (CLE) and information;
- referrals to other agencies and support services, including pro bono legal help for certain matters;
- resources and self-help tools on our website <https://disasterhelp.legalaid.nsw.gov.au/>; and
- advocating on systemic issues with insurers, regulators and other stakeholders.

The DRLS model is client centred and aims to mitigate the impact of disasters on individuals, families, and communities. It adopts a holistic approach to a clients' 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 needed, we provide clients with more intensive casework and allied professional services, such as financial counselling, and non-legal referrals.

Anyone living in communities affected by disasters in NSW can access assistance from the DRLS. For many of our clients, it is the first time they have ever needed Legal Aid. People impacted by disasters often experience unexpected hardship and trauma and are therefore considered priority clients. Leaving one's home at short notice or facing the loss of secure housing, belongings, businesses or workplaces, often leaves people unable to move forward without support, even if they have resources and capability.

Vulnerable and isolated populations, including Aboriginal communities, older people and people living with a disability are disproportionately affected by disasters and therefore receive more intensive socio-legal services from legal and allied professional staff. After the bushfires, studies showed that over one-quarter of the Indigenous population of NSW and Victoria, lived in a bushfire-affected area.<sup>2</sup> The DRLS model incorporates targeted local service delivery strategies for vulnerable groups that are accessible and culturally responsive.

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<sup>1</sup> Each Legal Aid NSW lawyer who provides advice and assistance during a disaster has been trained in trauma-informed practice. Our 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.

<sup>2</sup> B Williamson, F Markham and JK Weir, Aboriginal Peoples and the Response to the 2019–2020 Bushfires (Centre for Aboriginal Economic Policy Research Working Paper 134, 2020)

## Terms of Reference

1. The Inquiry is to consider and report to the Premier on the following matters:

c. responses to floods;

### **Legal Aid NSW's response to the 2022 Floods**

#### **Collaborative model of service delivery**

Following the 2022 floods, Legal Aid NSW immediately mobilised the Disaster Response Legal Service, and the response is ongoing. To 20 June 2022, we have provided 2593 legal services.

Due to the magnitude of the disaster affecting the NSW Northern Rivers, Clarence Valley and Hawkesbury areas, an adaptive and flexible response was required to reach as many flood affected people as possible. The DRLS model was activated including the 1800 helpline, face to face legal help at recovery centres, CLE and the DRLS website, with self-help tools.

Legal Aid NSW also coordinated the statewide legal assistance sector disaster response with Community Legal Centres, Tenants Advice and Advocacy Services, Justice Connect, Law Society of NSW and the NSW Bar Association. This resulted in a coordinated and rapid sector response, with clearly defined referral pathways.

We also worked closely with the NSW Tenants Union and Financial Rights Legal Centre's Insurance Law Service for specialist legal and strategic input.

Given the scale and spread of the floods, Resilience NSW established 11 recovery centres and 25 recovery assistance points across NSW.

To spread resources widely, we partnered with the Northern Rivers Community Legal Centre and the Western Sydney Community Legal Centre and local tenancy services to maximise attendance at recovery centres. This collaboration was essential in ensuring that communities worst affected had access to legal services. Together we staffed recovery centres, shared information about emerging systemic issues and provided training and resources to ensure consistent client service delivery.

#### **The response**

On 28 February 2022 Legal Aid NSW activated the 1800 helpline, providing telephone advice to anyone in the state affected by the floods. Legal Aid NSW lawyers have been rostered on the legal advice line from 9am to 5pm, Monday to Friday. Flood affected people can call the advice line between operating hours and are directly connected to a solicitor for legal advice. This service is particularly effective for people who are cut-off, isolated or do not have transport.

From Monday 7 March 2022, one week after the catastrophic floods in Northern NSW, Legal Aid NSW deployed solicitors to recovery centres established by Resilience NSW in the Northern

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<[https://caepr.cass.anu.edu.au/sites/default/files/docs/2020/3/CAEPR\\_WP\\_no\\_134\\_2020\\_Williamson\\_Markham\\_Weir.pdf](https://caepr.cass.anu.edu.au/sites/default/files/docs/2020/3/CAEPR_WP_no_134_2020_Williamson_Markham_Weir.pdf)>.

Rivers. We deployed solicitors to the Clarence Valley and Western Sydney recovery centres as soon as they opened. In conjunction with the Northern Rivers Community Legal Centre, North Coast Tenants Advice and Advocacy Service (NORTAAS) and the Western Sydney Community Legal Centre, we have provided face to face advice and information at 11 recovery centres across 8 Local Government Areas at Ballina, Kyogle, Lismore, Mullumbimby, Murwillumbah, Evans Head, Casino, Grafton, Maclean, South Windsor and Wiseman’s Ferry.

Legal Aid NSW and the Northern Rivers Community Legal Centre, NORTAAS, the Western Sydney Community Legal Centre and Shoalcoast Community Legal Centre also attended 25 disaster outreaches and recovery assistance points established by Resilience NSW and local Councils to reach people in isolated and smaller communities. These were established in Woodburn, Broadwater, Coraki, South Golden Beach, Chinderah, Ballina Keys Caravan Park, Koori Mail Hub, South Lismore Train Station, Goonellabah, Wardell, Jali Land Council, Nimbin, Drews Camp, Yamba, Lawrence, Brushgrove, and Tucabia. We also attended outreaches in Western Sydney at Camden, Riverstone, Londonderry and McGraths Hill and on the NSW South Coast at Kangaroo Valley, Sanctuary Point/St Georges Basin, Sussex Inlet and Lake Conjola.

The DRLS also provided Resilience NSW with information, fact sheets and access to the 1800 Helpline to assist impacted communities across the Hunter region and Central Coast.

The demand for legal services following the 2022 floods has been unprecedented in the history of Legal Aid NSW. Since late February 2022 to 20 June 2022, the DRLS provided **2,593** legal services and received **420** calls on the 1800 helpline operated by LawAccess. There is continuing demand for legal services and legal issues are becoming more complex and time intensive.

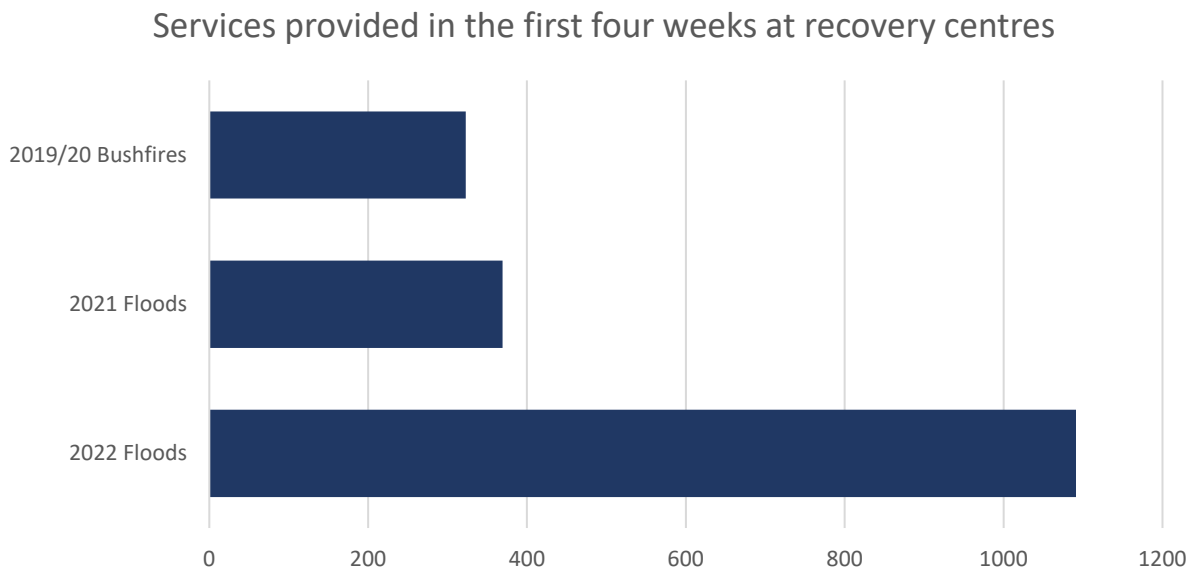
*Table 1: Legal Aid NSW and Community Legal Centre services to flood impacted individuals - 1 March to 20 June 2022<sup>3</sup>*

Total Legal Aid NSW services	Recovery Centres/RAPs services	Telephone adviceline services	Services at Legal Aid NSW offices	1800 helpline calls answered by LawAccess	Services by CLCs and NORTAAS at Recovery Centres/ RAPs
<b>2,593</b>	2,164	268	158	<b>420</b>	<b>637</b>

The exponential increase in demand for legal services following the 2022 floods, compared to previous disasters is illustrated in Figure 1 which compares the number of legal services provided during the first 4-week period at recovery centres following the 2019/2020 bushfires and 2021 floods compared to the current floods.

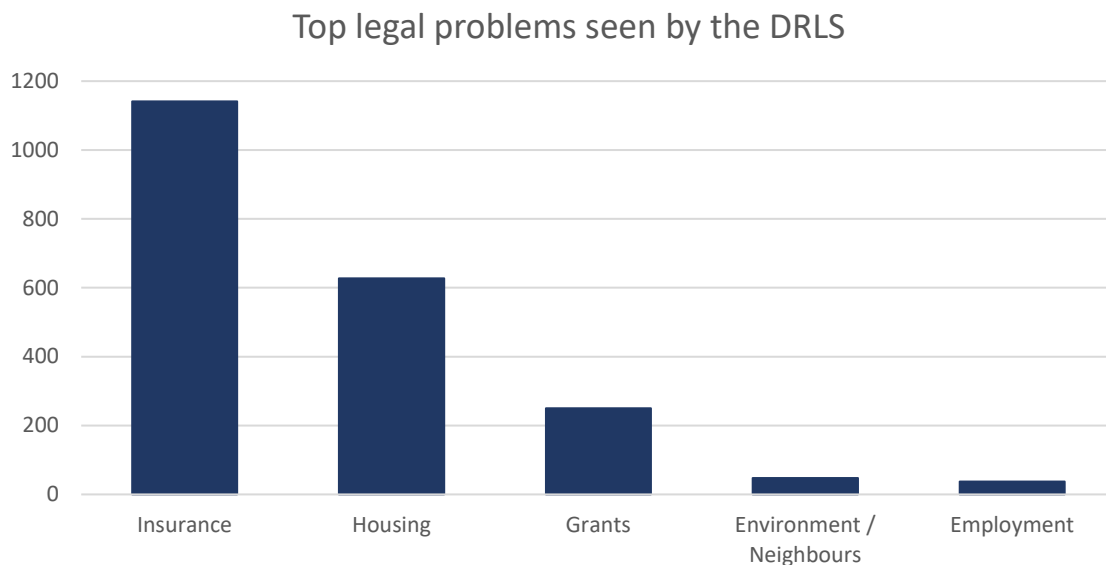
<sup>3</sup> Some manual approximations have been used.

Figure 1: Comparison of number of services provided in the first four weeks at recovery centres across three recent disasters



The legal problems arising from the floods have included insurance claims and disputes, tenancy, employment, access to government grants, credit and debt, financial hardship, neighbour disputes, and lost documents. Many clients presented with more than one legal issue, reflecting the complexity and diversity of legal needs following a disaster. Only primary matter groups are captured in the Figure 2 below, noting that some clients experienced multiple and concurrent legal problems.

Figure 2: Main types of legal problems seen by the DRLS<sup>4</sup>



<sup>4</sup> Some manual approximations have been used.

In addition to face-to-face legal services, we have provided Community Legal Education (CLE). This includes panel presentations at the Insurance Council of Australia community forums in Murwillumbah, Mullumbimby, Casino, Lismore, Lennox Head and Kingscliff.

We have used mainstream and social media to raise awareness of legal help available through Facebook, Twitter, Instagram and LinkedIn reaching more than 120,000 people. We did media interviews and appeared on ABC Radio National's 'The Law Report' recorded live at the Lismore Flood Recovery Centre.<sup>5</sup>

In total, over 50 Legal Aid NSW staff members supported the recovery effort at recovery centres to provide on the spot legal help. We deployed local staff from the Lismore, Coffs Harbour and Western Sydney regional offices as well as specialist lawyers from the DRLS. The mix of local knowledge and legal expertise in disaster recovery provided targeted and specialised advice to disaster affected communities.

The DRLS is still staffing recovery centres and the 1800 helpline and are providing ongoing assistance through casework and CLE. This will continue over the coming months and years.

The DRLS also monitors systemic issues that have a disproportionate impact on vulnerable or disadvantaged members of the community and advocates for improved practices and reform. Specialist lawyers have established direct working relationships with industry, including major insurers and banks, regulators and government and regularly engage to raise and advocate on these issues, such as underinsurance and inadequate protections for caravan park residents.

#### d. the transition from incident response to recovery, including the roles, structure and procedures of agencies, government, other entities and the community;

Legal Aid NSW is not in a position to provide detailed comment on operational responses to the floods and the transition from incident response to recovery, including the roles, structure and procedures of agencies, government, other entities and the community.

However, from over a decade of experience in disaster response, we make the observation that recovery centres were established in record time after the disaster, in comparison to previous disasters. As a result we reached more people and provided more legal services in the first 4 weeks (see figure 1 above). We also observed closer collaboration and communication with key partners such as Resilience NSW, local councils and Service NSW.

#### e. recovery from floods, including:

##### i. immediate housing, clean-up, financial support

Accessible legal services are essential in aiding recovery after a disaster. Early intervention is crucial in limiting the potential severity of the client's legal problem and can prevent it escalating into acute hardship or irreversible legal harm. These interventions also help build resilience in individual clients and communities for future disasters. Unresolved legal issues adversely impact long term recovery from disasters and compound existing trauma and entrench disadvantage.

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<sup>5</sup> <https://www.abc.net.au/radionational/programs/lawreport/floods-legal-needs/13796644>

The 2022 floods have again demonstrated that embedding legal services in the immediate recovery response provides better outcomes for individuals in a range of areas, including housing, clean-up and financial needs. Examples are provided below.

### Housing

Legal Aid NSW solicitors provided timely advice on issues relating to immediate housing needs both at recovery centres and on the 1800 Helpline. This included tenancy law advice, advising clients on their rights regarding abatement and reduction of rent, habitability, repairs, termination and issues with landlords “cleaning up” tenant belongings after the flood. Providing timely advice allows clients to make informed choices about the future of their tenancy and can prevent homelessness.

#### **Case Study**

The DRLS advised two clients at the Murwillumbah recovery centre. Their rental property had been inundated with flood water up to the flood boards. They had ongoing issues with being unable to use the downstairs section of the house, loss of power and air-conditioning and concerns about the structural integrity of the property. It is the third time the property has flooded.

The landlord came to the property two weeks after the flood and was difficult and abusive causing our clients considerable distress. He refused to have the structural integrity of the property assessed, proposing to undertake repairs himself.

We assisted by negotiating directly with the real estate agent. The outcome was a rent reduction of \$100 per week from the date of the flood with a refund, urgent repairs and an agreement that the landlord would not enter property or undertake further non-urgent repairs.

The floods had a significant impact on people living in caravan parks where flood waters caused damage to caravans or cabins that were either rented directly from the park or owned by residents who paid site fees to park operators.

We assisted clients to correspond with the Department of Communities and Justice (DCJ) Housing about emergency accommodation options and helped clients to apply for housing support packages when they became available, such as the NSW Government Flood Recovery Support Rental Payment. We note the significant affordable housing crisis in the Northern Rivers which was further exacerbated by the 2022 floods. We welcome the introduction of government assistance through emergency accommodation and the Flood Recovery Support Rental Payment. We recommend that these schemes should be reviewed and extended where homes are still uninhabitable and unable to be returned to.

Legal Aid NSW also assisted with the immediate housing need by providing advice on insurance policies, which often include temporary accommodation coverage. We assisted clients to identify this coverage, correspondence with their insurer to arrange claiming this benefit and in some instances negotiated alternatives with the insurer where temporary accommodation could not be obtained.

### Case Study

We assisted an elderly client with multiple health issues who attended the Lismore Recovery centre several times. His home was completely inundated, and he needed temporary accommodation, near his medical specialists and GP. His insurance policy covered him for flood and temporary accommodation benefit (TA), however he was staying with friends because his insurer had not paid the TA. Our client wanted a lump sum payment for a temporary dwelling on his property so he could remain close to medical services and supervise the rebuild of his home. The Lismore City Council has amended its policies to allow temporary dwellings on land without a Development Application (DA) for up to two years.

Eleven weeks after the flood, his insurer had not given him anything for TA nor paid his contents which were very clearly a total loss. Despite being fully insured he had to rely on friends for accommodation.

Legal Aid NSW wrote to the insurer to try to resolve the matter. After 14 days without a response despite follow up, we lodged a dispute with the Australian Financial Complaints Authority (AFCA). Three days after lodging the dispute the full TA benefit and the total loss amount for contents was paid to the client. The client was very happy and relieved as the situation he had been in was causing him a great deal of stress.

Affordable insurance is a significant problem in flood prone areas. Many of our insured clients do not have flood coverage under their policies. In most cases, this was directly due to the high and prohibitive cost of flood insurance. For clients without flood insurance and where their damage is a result of flood waters, they face the prospect of having to fund their recovery themselves. Retirees and those on government benefits face increasing challenges if they are unable to access credit to do the necessary rebuilds themselves. We envisage that the impact on insurance premiums will continue to increase as disaster events intensify.

Legal Aid NSW welcomes the government flood grant support provided to individuals without insurance. Presently there is the Disaster Relief Grant administered by Resilience NSW for low-income earners to assist with repairs and contents replacement. The NSW government also introduced the Back Home Grant for homeowners and tenants to assist with building repairs up to \$15,000 and contents replacement up to \$5,000. Legal Aid NSW advised numerous clients on grant eligibility, assisting in collecting and submitting evidence in support of applications and assisting with reviews where guidelines were applied incorrectly. Given the importance of these grants, clearer guidelines and appeal pathways need to be established to ensure consistency and equality in accessing these grants.

We note that the loss amount in most cases far exceeds the value of the Back Home Grant and Disaster Relief Grant. Whilst we understand that the above grants are not intended to replace insurance, we again state that the predominant reason that people did not have flood cover was affordability. Insurance affordability is a growing problem for government, industry and communities that will require innovative solutions.



## Financial Support

Access to timely legal advice also assists in mitigating against the immediate and longer-term financial impacts of disasters.

Legal Aid NSW solicitors provide financial hardship advice and credit and debt assistance. This includes helping clients to access hardship arrangements with their bank or creditor, locate other forms of financial assistance such as government and charitable grants and advise on employment disaster related issues. Early legal advice allows solicitors to problem spot financial issues early and advise clients of their options to lessen further impact. This includes warm referrals to financial counsellors who can address longer-term financial needs.

## Clean-up

Various clean-up assistance programs established by state and federal government, and charities were overwhelming for our clients. Embedding legal support in the recovery model assisted individuals to navigate the many options. Legal Aid NSW provided advice to clients on debris removal coverage under insurance policies. We advised on government and local council clean-up initiatives. Where more complex environmental issues presented, we facilitated referrals to pro bono partners through Justice Connect. Having one service with oversight over the options available to individuals and being able to provide individual advice on these options directly assisted individuals with the clean-up process.

These examples, along with high demand, demonstrate the value of legal services in addressing issues relating to housing, clean-up and financial assistance. Free and accessible legal services in the immediate recovery phase allows people to make informed decisions and helps minimize the impact of these issues in the immediate aftermath and over the long term. Disasters have a long tail. In our casework experience ongoing legal support is required to deal with the complexity of problems that arise as people slowly rebuild their lives.

## **Recommendation**

- **Review and consider extending housing support schemes like the Flood Recovery Support Rental Payment.**
- **Clearer guidelines, timeframes and appeal pathways be established for government flood support grants to ensure consistency in accessing these grants.**

### **i. community engagement measures**

In our experience, the community engagement measures adopted by Resilience NSW, the lead government agency for coordinating disaster response in NSW, were wide-ranging and more effective than previous disasters. There were more recovery centres established in the 2022 floods than the 2021 floods and 2019/2020 bushfires combined. The importance of face-to-face services in an accessible “one stop” location has proven to be an effective model which has expanded and improved with each disaster. Legal Services are now recognised as an essential service in recovery centres.

The large number of recovery centres and recovery assistance points posed a significant resourcing challenge for all service providers, noting that for many services attendance at recovery centres is in addition to “business as usual” work. This challenge will only increase, as the scale, frequency and intensity of disasters increases. Through partnerships with Community Legal Centres, Legal Aid NSW was able to substantially meet this challenge, with consistent legal services being provided at all recovery centres. However, we were not able to be at all recovery centres or recovery assistance points every day, and at times needed to prioritise attendance and establish other options for legal help such as the 1800 helpline or referrals to local Legal Aid NSW regional offices. To ensure that future demand for legal need is met, a sustainable resourcing model that can respond to surge demand is urgently required for the legal assistance sector.

For individuals who were not able to access a face-to-face service, Legal Aid NSW promoted our 1800 helpline where legal advice is provided over the phone. Disaster specific publications were developed and distributed to community organisations, further advising people on where and how to seek legal assistance. We also provided extensive Community Legal Education (see above).

Despite the number of recovery centres, there are some inherent access barriers. After the floods, many people were cut off or had their modes of transportation destroyed. We commend the establishment of shuttle buses to assist people to access the recovery centres and recommend this be a part of recovery models moving forward.

Other barriers are not physical but can involve distrust or intimidation in attending centres filled with government agencies and service providers. The environment can be overwhelming and there are challenges with privacy. We support the establishment of targeted local outreach and recovery assistance points to provide more accessible locations or modes of service delivery for identified communities. The DRLS and Northern Rivers Community Legal Centre provided face-to-face legal help at many of these outreaches. Other innovations included the highly successful door knocking campaigns, that saw a spike in people accessing help including legal advice.

Whilst we support the adaptive approach in establishing outreaches, we recommend that better consultation occur to stagger the outreach and days of recovery centre operation so that attendance can be guaranteed.

Resilience NSW also responded to emerging systemic issues, including the delay in processing government grants. To address this need, Resilience NSW and Service NSW jointly established a “Grants Blitz” at Lismore, Casino and Evans Head. Legal services were present at all these outreaches, providing advice on eligibility and assisting clients to gather evidence in support of their applications. We support this initiative in addressing systemic issues as they arise.

Resilience NSW and local councils endeavoured to reach Aboriginal communities impacted by the floods through targeted outreach at locations such as Goonellebah, Coraki, Box Ridge, Jali Land Council and at a Closing the Gap event in Yamba. Legal Aid NSW staff from the DRLS and the Civil Law Service for Aboriginal Communities, and the Northern Rivers CLC provided advice and other support at these events. Legal Aid NSW commends these initiatives and supports the continued development of community-led strategies to better reach Aboriginal communities.

### Case Study

A Legal Aid NSW solicitor from our Civil Law Service for Aboriginal Communities (CLSAC) attended a community engagement event resulting in 7 Aboriginal people attending the Coraki Recovery Assistance Point. One was an older Aboriginal woman who had been renting and lost everything. Her home was uninhabitable, and she was staying with other family members nearby. The CLSAC Solicitor supported her to liaise with all the services at the Recovery Assistance Point. She registered for the Back Home Grant, got information about Salvos relief, spoke to Services Australia and ordered new pension cards and Medicare cards and stopped her ongoing Centrepay deduction going to her landlord. Through talking to her, we discovered she has been paying full rent since the floods for a property which was uninhabitable.

The solicitor contacted the landlord and asked for a rent abatement. The landlord agreed to a rent abatement to \$0 while the property is uninhabitable and to credit the payments she had made up until then. The client was also assisted to apply for \$5000 financial relief through Koori Mail.

### Recommendation

- **Establish a sustainable resourcing model for the legal assistance sector that can respond to surge demand.**
- **Further review and consideration should be given to the number of recovery centres established to ensure that limited resources are being appropriately directed, including staggering of open days when multiple centers are established.**
- **Include the use of shuttle buses in recovery models to assist people to access the recovery centres.**
- **Develop community-led and culturally safe outreach and engagement strategies for Aboriginal communities impacted by disasters.**

#### ii. longer-term community rebuilding support

Longer-term community rebuilding support must include legal assistance. Ongoing legal assistance is needed after recovery centres close. Legal issues become more complex with time, such as when insurers refuse claims or clients receive termination notices, Legal advice and representation is often required to navigate these complex areas.

Legal Aid NSW is still assisting clients with ongoing insurance and other disputes from the 2019/2020 bushfire and 2021 floods. This demonstrates the long nature and complexity of legal problems that can arise after a disaster. Communities need to have access to accessible legal services to aid in longer term recovery.

As recovery centres close, the natural shift moves towards local government and community led recovery and rebuilding activities. Legal assistance adds value to these activities. There are also many people who are yet to access recovery services. Equally, there are those who will develop more complex legal issues. We will continue to work with frontline community workers to build their capacity to identify legal problems and know how to refer for legal help.

Having legal services included in the longer-term community recovery, by partnering with community organisations and providing community legal education, ensures important disaster related legal need is met.

### **Recommendation**

- **A longer-term approach to funding is needed for the legal assistance sector to provide community engagement and ongoing casework services to disaster affected communities beyond the immediate recovery phase.**

Thank you again for the opportunity to provide feedback to this enquiry.

If you have any questions or would like to discuss this matter further, please contact Sally Bryant, Manager, Disaster Response Legal Service, at  
or on .

Yours sincerely



Meredith Osborne  
**Director Civil Law**  
**Legal Aid NSW**