



ACT Emergency Legal Help

An Emergency Legal Assistance
Response Plan for the ACT

August 2012

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ACT Emergency Legal Assistance Response Plan 2012-2013

Part 1 - Introduction

Preface

The preface to the ACT Community Recovery Plan (August 2007)¹ notes that the management of emergencies requires a comprehensive approach embracing prevention, preparedness, response and recovery. Regardless of arrangements to mitigate disasters, it is not possible to protect communities from all hazards and there is a need for recovery activities for physical, social, emotional, psychological, economic, environmental and financial restoration.

The nationally agreed definition of disaster recovery is:²

“... the coordinated process of supporting disaster-affected communities in the reconstruction of the physical infrastructure and restoration of emotional, social, economic and physical wellbeing.”

It is only comparatively recently that it has been recognised that in addition to needing physical, social, emotional, psychological, economic, environmental and financial restoration many people in emergency situations also need support in dealing with the myriad of legal issues that can arise directly or indirectly as a result of the emergency. The importance of a properly planned and coordinated legal support response is demonstrated by experience in Victoria following the bushfires of 2009 and in the Queensland cyclones and floods of 2011 when legal aid commissions, community legal centres and private lawyers among others collaborated in providing free advice and assistance to people affected by those events. People affected by natural disasters and other emergencies experience a wide range of legal issues in the immediate aftermath and during the mid to long term recovery period. Commonly experienced issues include insurance, housing, wills and estates, and coronial processes.

The Victoria and Queensland experience demonstrated the desirability of planning for legal responses in advance of emergencies in order to ensure that the personnel and resources necessary to respond effectively to emergencies can be deployed as quickly as possible.

The ACT Emergency Legal Assistance Response Plan has been developed by the ACT Legal Assistance Forum (ACTLAF). ACTLAF comprises representatives of all legal assistance providers in the ACT and was established in May 2008 to improve coordination between legal assistance services in the ACT and encourage collaborative service delivery.³

In developing the plan ACTLAF drew upon lessons learned in the emergency legal assistance responses to the Victorian bushfires of 2009 and the Queensland floods and cyclone of 2010-11 and consulted widely with participating agencies and other stakeholders to ensure so far as possible that the plan will be effective in the event of an emergency in the ACT.

¹http://www.dhcs.act.gov.au/_data/assets/pdf_file/0005/16187/final_amended_Community_Recovery_Plan_August_2008.pdf

² Australian Emergency Manual – Disaster Recovery, 1996.

³ Legal Aid ACT, Welfare Rights & Legal Centre, Women’s Legal Centre, Tenant’s Union, Consumer Law Centre, Environmental Defender’s Office, Aboriginal Legal Service, ACT Law Society, Aboriginal Justice Centre and the Directorate of Justice and Community Safety.

What this plan does

The ultimate objective of this plan is to ensure that the Canberra community is able to access essential legal services in the event of a significant emergency event.

This plan describes how the ACT legal sector will **resource** and **coordinate** between **participating organisations** the provision of:

- ongoing normal legal services in the event of a significant emergency event; and
- legal services to meet additional community demand for essential legal services arising directly as a consequence of a significant emergency event.

This plan has been developed with regard to the ACT Community Recovery Plan, August 2007.

What this plan does not do

This plan is not intended to deal with arrangements for continuity of business of individual legal service organisations or how individual organisations should each manage their own risks in the event of an emergency. It is up to each individual legal service organisation to plan and coordinate their usual business activities including in the event of a significant emergency event.

Emergency scenarios

Natural and man-made events can cause a **significant emergency event** resulting in:

- interruption of delivery of **normal legal services**
e.g. closure of offices, inability to access office hard copy records, inability to access office and other IT systems, inability to access other services and venues such as courts;
and/or
- additional community demand for **essential legal services** arising as a direct result of the emergency event and for which existing legal sector services may not be sufficiently equipped in terms of expertise and/or resources.

Who approved this plan?

This plan has been endorsed by:

- Legal Aid ACT;
- Welfare Rights & Legal Centre;
- Women's Legal Centre (ACT & Region);
- Environmental Defender's Office - ACT;
- Aboriginal Legal Service (NSW/ACT);
- Aboriginal Justice Centre (ACT);
- Consumer Law Centre (ACT);
- Tenants' Union ACT;
- ACT Bar Association;
- ACT Law Society; and
- ACT Justice and Community Safety Directorate.

When does this plan get activated?

This plan has been developed with regard to the ACT Community Recovery Plan, August 2007 and will be activated by the Emergency Legal Response Group following consultation with or a request by the ACT Community Recovery Coordinator.

The role and responsibilities of the ACT Community Recovery Coordinator include to:

- activate the Community Recovery Plan;
- represent the Community Services Directorate in its community recovery role on the ACT Emergency Management Committee;
- develop and maintain the Community Recovery Functional Plan;
- determine the needs of affected communities, in consultation with the response agencies, communities and the participating agencies; and
- manage and coordinate the community recovery functions.

Any member of the Emergency Legal Response Group can call for a meeting of the Group. Where practicable, the Emergency Legal Response Group will meet face to face. Otherwise the Emergency Legal Response Group can meet by the best available means in the circumstances.

Members of the Emergency Legal Response Group are:

- ACT Community Legal Centres
- ACT Law Society
- Justice and Community Safety Directorate
- Legal Aid ACT

Part 2 – The Emergency Response

Coordination by Emergency Legal Response Group

The Emergency Legal Response Group will coordinate arrangements for the delivery of emergency legal services under the banner of “ACT Emergency Legal Help (ACTELH)”. Participating organisations will cooperate and assist the Emergency Legal Response Group in the organisation of emergency legal services through ACTELH.

Provision of emergency legal services

By looking at the experience of people in the Victorian bushfires it is evident that legal services are not one of the immediate needs of people adversely affected by a significant emergency event. Rather, people’s immediate priorities may instead be more basic requirements such as medical treatment, locating family, accommodation, food, clothing and general shock associated with an unexpected and significant emergency event. Legal needs arising from the emergency event will probably become more evident and relevant once more basic needs have been met. However, helping people to identify and resolve legal issues will help people to deal with other needs and issues arising from the emergency event. Experience elsewhere suggests that the emergency legal response should be in place within two weeks of the emergency event to offer legal help once people have dealt with other more immediate needs.

Depending on the nature and scale of the emergency event, a demand may arise for legal services arising out of the emergency, such as:

- Identification and replacement of lost documents;
- Completion of statutory declarations;
- Wills and estates;
- Housing, fencing and tenancy;
- Social Security issues;
- Insurance;
- Property law including issues associated with rebuilding and new government planning processes;
- Family law;
- Employment;
- Debt;
- Coronial inquest; and
- Commissions of inquiry.

This plan is intended to facilitate the organisation and delivery of legal assistance to meet people’s immediate and short term legal needs following a significant emergency event by coordinating participating organisations through ACTELH. This plan is not intended to deal with longer term legal needs resulting from an emergency event. It is anticipated that longer term legal needs will be met through normal sources of legal assistance. However, the legal sector

should be proactive in recognising and identifying the broad range of longer term legal problems that arise in the aftermath of a significant emergency event, and take steps to bring these to the attention of government and planning bodies so that solutions can be developed.

Depending on the nature and scale of the emergency event it is anticipated that legal services will be provided by organisations participating in ACTELH through:

- a joint operation at a central event (eg. an ACT Emergency Legal Help desk at a disaster recovery centre); and/or
- the ACTELH hotline; and/or
- Legal Aid ACT, a community legal centre or a private law firm (eg. after referral following initial advice at a joint operation at a central event).

Hosting of events for the provision of emergency legal assistance

Where the Emergency Legal Response Group decides to arrange for the provision of ACTELH assistance at a legal outreach or other event (e.g. an ACTELH desk at a disaster recovery centre) the Emergency Legal Response Group will, subject to the agreement of a proposed host organisation (which will be either Legal Aid ACT or an ACT community legal centre) determine a host organisation for that event. That host organisation will then be responsible for:

- ensuring that all legal practitioners who provide legal advice at that event are covered by a policy of professional indemnity insurance maintained by that host organisation;
- ensuring that all volunteers at that event are covered by a policy of volunteers insurance maintained by that host organisation; and
- collecting and managing all records relating to the provision of legal advice at that event.

Various factors will impact on how the essential legal services will be delivered, such as:

- the nature and scale of the emergency event itself;
- whether participating organisations can still access their own premises and systems;
- the extent to which other related services are also impacted (e.g. courts, policy, government services);
- location of emergency victims, eg. disaster recovery centres; and
- coordination with other essential services.

Who is eligible to receive legal assistance?

All people who have been affected by an emergency event following activation of this plan will be eligible for legal assistance provided via ACTELH. It is anticipated that at least initially there will be no means test or any limitation on areas of legal assistance available through ACTELH, subject only to available legal resources and legal practitioners' areas of expertise. However, it is also anticipated that initial legal needs of people affected by an emergency event will be limited to general information, advice and referral, as opposed to other forms of legal assistance such as advocacy or drafting which may be required in the longer term.

Depending on factors such as the nature of the emergency event, the type of legal issues likely to arise given the nature of the event, the scale of the event itself and the level of legal resources available to meet demand, it may become necessary to review what forms of legal assistance will be provided via ACTELH. Legal needs and resourcing will be monitored by the Emergency Legal Response Group including to determine whether conditions should at some point be placed on eligibility for legal assistance via ACTELH.

It is anticipated that free legal assistance provided through ACTELH will only be initial legal information, advice and/or referral. Where a person is referred via ACTELH to another organisation (e.g. to Legal Aid ACT, a community legal centre or a private law firm) for initial or follow up advice (i.e. outside the scope of the ACTELH response), the usual eligibility criteria and/or retainer arrangements of the relevant organisation will apply to the provision of any legal advice by that organisation.

Communication strategy

Depending on the nature of the emergency event, the Emergency Legal Response Group will communicate with emergency victims via the following means:

- *ACTELH hotline*

The ACTELH hotline will be operated from Legal Aid ACT's premises using the existing Legal Aid Helpline telecommunications infrastructure and staff, augmented as necessary by volunteers from participating organisations. The hotline will operate for such extended hours as are necessary to meet demand. In the event Legal Aid ACT's telecommunications system was unavailable the ACTELH hotline would be established at the ACT Law Society, or failing that at the Justice and Community Safety Directorate.

- *Emergency Legal Help website*

Legal Aid ACT will establish and maintain an ACTELH webpage on its website which will be activated in an emergency at the direction of the Emergency Legal Response Group. The ACTELH website will contain information about the availability of emergency legal advice and assistance including fact sheets and the location of outreach legal advice clinics provided through ACTELH.

- Relevant ACT Government emergency websites will contain links to the ACTELH website.
- *Fact sheets available for download via the website and which can be distributed in hard copy*

A series of facts sheets will be developed by the ACT Legal Assistance Forum on legal issues experienced by people in an emergency such as housing, insurance, wills and estates and coronial processes.

- *Media*

The Emergency Legal Response Group will nominate a media spokesperson. The media spokesperson will liaise and coordinate with media spokespeople from the ACT Government and other emergency service organisations in order to ensure a coordinated and consistent approach to media contact. Communication will be coordinated through the ACT Government's Public Information Coordination Centre.

Emergency legal resources

Resources available to assist through ACTELH are:

- *Staff and members of participating organisations*

Participating organisations are:

- Legal Aid ACT;
 - Welfare Rights & Legal Centre;
 - Women's Legal Centre (ACT & Region);
 - Environmental Defender's Office - ACT;
 - Aboriginal Legal Service (NSW/ACT);
 - Aboriginal Justice Centre (ACT);
 - Consumer Law Centre (ACT);
 - Tenants' Union ACT;
 - ACT Law Society;
 - ACT Justice and Community Safety Directorate; and
 - ACT Bar Association.
- *Volunteers*

The ACT Law Society will maintain a list of names and contact details (including out of hours contacts) for volunteers who may be able to provide emergency legal services likely to arise in the event of a significant emergency event, including in those areas listed in this Part 2 under the heading "Provision of emergency legal services".

All volunteers must hold current practising certificates.

Part 3 – Governance and Administration

Management of emergency legal services

The delivery of emergency legal services through ACTELH will be overseen by the Emergency Legal Response Group with a rotating convenor.

The Emergency Legal Response Group is made up of a representative from each of the following agencies:

- ACT Community Legal Centres
- ACT Law Society
- Justice and Community Safety Directorate
- Legal Aid ACT

In the event that the Emergency Legal Response Group activates this plan (see part 1), the Emergency Legal Response Group will, as required:

- meet regularly and act as a central point for information, communication, decision-making and project management;
- establish communications with ACT Government and emergency services including the ACT Community Recovery Coordinator;
- organise regular briefing meetings, group emails and other communications with participating organisations (including their staff, members and volunteers) with regular updates;
- comply with obligations under work safety legislation;⁴
- identify and manage risks associated with the provision of legal services in accordance with this plan and documenting those risks and arrangements in a risk plan;
- ensure that any venue (at which staff, members and volunteers of participating organisations will be providing assistance in accordance with this plan) is suitable, safe

⁴ Under the *Work Safety Act 2008* (ACT) a person or organisation engaging volunteers to carry out work in a not-for-profit undertaking or activity has a duty to ensure work safety by managing risk. This requires taking reasonably practical steps to identify risks and to eliminate or minimise them. The duty includes providing and maintaining a safe workplace and work systems; providing adequate facilities for work safety; monitoring work safety to ensure work-related illness and injury are prevented; keeping incident reports, and providing information about work safety. The person or organisation in control of premises (e.g. the government agency responsible for the disaster recovery centre where ACTELH is located) also has a duty to ensure work safety in relation to the premises by managing risk.

and covered by a policy of public liability insurance;

- assess the likely level of demand and nature of legal assistance required and consider appropriate eligibility criteria for, and scope of, legal assistance provided in accordance with this plan (see part 2 – ‘Who is eligible to receive legal assistance?’);
- identify requirements for, source and deploy equipment, information and materials;
- organise production and distribution of fact sheets and any other written information as needed;
- arrange for the ACT Emergency Legal Help website to go live;
- Agree on the hosting of legal outreach of other legal service events including identifying the host organisation and any requirements of that host organisation for the event;
- in conjunction with participating organisations, arrange the rostering, logistical support and deployment of staff, members and volunteers of participating organisations;
- ensure that staff, members and volunteers of participating organisations:
 - are aware that they must not provide legal advice unless they:
 - hold a current practising certificate;
 - sign a volunteer agreement; and
 - are covered by a policy of Professional Indemnity Insurance;
 - are briefed on records management and confidentiality arrangements (see part 3 – ‘Record keeping’ and ‘Confidentiality’);
 - receive prior briefings on any risk management issues;
 - receive prior briefings on the scope of the legal assistance to be provided under this plan and any specific policies and other requirements of the host agency;
 - receive prior briefings on how to deal with emergency victims who may be traumatised and grieving;
 - have attended an information session outlining the scope (including limitations on that scope) of legal advice which ACTELH will offer;
 - are aware of when and where they will be providing assistance and any coordination arrangements including transport, equipment, stationery, catering, rostering and any other logistical support;
 - are briefed on other resources (eg. website and fact sheets) and potential referrals;
 - are briefed on communication arrangements including media contact only by the media spokesperson nominated by the Emergency Legal Response Group (see part 2 – ‘Communication strategy’ – ‘Media’);
 - are briefed on the use of client sign-up and advice templates;
 - receive client sign-up sheets, advice templates, fact sheets and any other useful forms or information to help legal practitioners to advise on issues which they are likely to encounter;

- review the need for additional resources including funding if required, particularly for legal assistance following the initial response;
- regularly monitor:
 - the demand for legal services;
 - the availability of staff, members and volunteers of participating organisations;
 - the nature of advice being provided;
 - logistical requirements; and
 - risk management;
- at the appropriate time, declare ACTELH response to be concluded;
- to the extent practicable, monitor and maintain data on the types and number of matters dealt with in the course of providing legal assistance through ACTELH; and
- evaluate the ACTELH response including analysis of data collected from advise sheets (see part 4).

Resourcing

Funding may be required to assist in preparing in advance for an emergency legal event, e.g. costs associated with preparing the ACTELH website. This advance funding will assist in ensuring effective advance preparation for a potential emergency response.

Experience in the provision of emergency legal assistance for other emergency events (e.g. the Victorian bushfires) is that significant volunteer support and goodwill is required to deliver the emergency legal assistance. However, depending on the nature and scale of the emergency event, funding may also be required to arrange and support the delivery of emergency legal assistance, e.g. equipment hire, transport, refreshments, etc.

Insurance

If in responding to a significant emergency event participating organisations provide legal services by their usual means and outside of ACTELH, insurance arrangements will be as normal for those participating organisations. However, where organisations and individuals provide assistance including legal advice through ACTELH, the following insurance arrangements will apply:

- *Professional indemnity insurance*

It is essential that any legal practitioner who provides legal assistance through ACTELH does so only whilst covered by a current policy of professional indemnity insurance (PII).

Where the Emergency Legal Response Group arranges for the provision of legal assistance through ACTELH at a legal outreach or other legal service event (eg. an ACTELH desk at a disaster recovery centre) the host organisation appointed by the Emergency Legal Response Group will ensure that all legal practitioners who provide legal advice at that event are covered by a policy of professional indemnity insurance maintained by that host organisation.

Even where a legal practitioner attends an ACTELH event within the course of their employment, it is intended that the professional insurance policy of the host organisation will cover any legal advice provided by that legal practitioner at the ACTELH event.

For example:

A Legal Aid employed legal practitioner who attends an ACTELH event hosted by a community legal centre will be covered by the professional indemnity insurance policy of that community legal centre host in respect of legal advice which that Legal Aid employed legal practitioner provides at that event.

However, a host organisation's professional indemnity insurance will only apply to legal advice provided **at that event**. Any subsequent advice **will not** be covered by that host organisation's professional indemnity insurance policy unless the subsequent advice is undertaken on behalf of and with the clear and express consent of that host organisation.

For example:

A volunteer legal practitioner who provides legal advice at a disaster recovery centre hosted by Legal Aid ACT as part of the ACTELH response will be covered by Legal Aid ACT's professional indemnity policy for the provision of legal advice at that hosted event.

However, that volunteer legal practitioner will not be covered by Legal Aid ACT's professional indemnity insurance policy if that volunteer legal practitioner later provides advice (including follow up advice to a client who that practitioner met at the Legal Aid hosted ACTELH event) outside of that ACTELH event.

- *Volunteers insurance*

It will be the responsibility of each organisation hosting a legal advice outreach or other legal service venue to ensure that volunteers working under their supervision are covered by appropriate volunteer insurance.

- *Public liability insurance (e.g. at a centralised venue such as a disaster recovery centre)*

Public liability insurance will be arranged either by the ACT Government (e.g. at an ACT Government run disaster recovery centre) or by the organisation hosting a legal advice outreach or other legal service venue.

Record keeping

If, in responding to a significant emergency event, participating organisations provide legal services by their usual means of delivery, the normal record keeping arrangements for those participating organisations will apply.

However, specific record keeping arrangements may be required in other circumstances, such as where participating organisations provide emergency legal services off site (e.g. through a ACTELH coordinated desk at a disaster recovery centre) or volunteers are called to help deliver emergency legal services.

In the event:

- participating organisations jointly provide centralised emergency legal assistance through ACTELH (eg. an ACTELH desk at a disaster recovery centre); and/or
- volunteers are called to help deliver emergency legal services through ACTELH,

the following record keeping arrangements will apply.

A standard template will be developed under the ACTELH header to be used when legal advice is given by volunteers. The template will be used to record advice and client contact details. Another standard form will be used for referrals. Individual agencies can add further identifiers to the template to meet their reporting needs.

The legal organisation that hosts an ACTELH event will control and be generally responsible for records of legal assistance created at that ACTELH event. Amongst other things, legal organisation that hosts a disaster recovery centre will:

- store the records created at the centre in line with their usual storage policies;
- retain and destroy the records created at the centre in line with their usual retention and destruction policies; and
- provide access to client records as required by clients and legal advisers in accordance with normal policies and legal obligations.

Confidentiality

All legal practitioners (staff and volunteers) who assist in providing emergency legal assistance will be subject to their professional confidentiality obligations. Obligations of confidentiality also apply to paralegals and other personnel engaged in the provision of emergency legal assistance.

Part 4 – Evaluation of Emergency Legal Response

Where possible, the authors of this plan have considered experiences and lessons learned following other significant emergency events, including Victorian bushfires and Queensland floods. However, this plan remains untested by an emergency event. In the event this plan is activated, the subsequent experiences will identify opportunities to further develop this plan for future emergency events.

In the event this plan is activated, the Emergency Legal Response Group will evaluate the effectiveness of the emergency legal response including the overall effectiveness of coordination and delivery of legal services through ACTELH. This review will be undertaken as agreed by the Emergency Legal Response Group, either at stages or upon completion of the emergency event.

Part 5 – Review of ACT Emergency Legal Assistance Response Plan

The Emergency Legal Response Group will meet every six months to ensure that the details of this emergency response plan are accurate and up to date.