

This special legal edition of the Australian Journal of Emergency Management in context

By Richard Thornton, Deputy CEO & Research Director, Bushfire CRC.

It is an honour to provide the overview of these papers in this special edition. The topics raised in these papers are crucial to the nation and to the role of emergency management. They delve into the depths of matters needing consideration and understanding.

These papers represent research, funded by the Bushfire Cooperative Research Centre (CRC), to address aspects of mainstreaming fire and emergency management across legal and policy sectors. Three papers, Carter (La Trobe), Eburn and Dovers (ANU) and Handmer and McLennan (RMIT University) are written by key researchers in this area. The other three, by Biggs, Fetchik and McNamara, are written by students who took part in *Australian Disaster Law*, a postgraduate law unit, designed and coordinated by Michael Eburn, and offered by the ANU College of Law in 2011. Offered as part of various Masters programmes and as part of the Juris Doctor (a postgraduate law degree), this unit, and these papers, are practical demonstrations of the work being conducted by the Bushfire CRC and the ANU to encourage new researchers to think about how law and policy impact upon Australia's resilience.

This special edition covers aspects of policy and law relating to natural disasters, discussing topics such as how success is measured in disaster response; how responsibility is shared; who should pay for disasters and how; and what are the legalities of the Commonwealth involvement in disaster response.

A crucial element of emergency management is to understand what we are trying to achieve, and equally importantly how would we measure success (Eburn and Dovers, 2012). Eburn and Dovers argue in their paper that a clear set of policy objectives is missing in many instances. They discuss a critical question raised in many inquiries, most recently the Keelty inquiry into the Perth Hills fires of 2011: 'What is the measure of success of the outcome of a bushfire?' (Keelty, 2011). They further report on initial analysis of a series of interviews with chief offices of emergency response agencies that emphasise the importance of needing to take an outcome focus to measurement, and to extend the concept to what was saved as well as what was lost. This would place the inevitability of losses in a context where the full impacts could be better judged and lessons could be learnt.

Many recent inquiries have invoked the need for shared responsibility (Keelty, 2011; Teague *et al.*, 2010), and it has been enshrined in the recent Council



of Australian Governments' strategy for disaster resilience (COAG 2011); however, what does this really mean and how should it be achieved? This is the topic discussed by McLennan and Handmer, who review various approaches from outside the Australian fire and emergency management sphere (McLennan and Handmer, 2012). They describe seven broad types of mechanisms by which sharing responsibility can be achieved and they raise the question: 'Why are particular mechanisms on the radar for Australian fire and emergency management while others are not?'

Who pays the costs of natural disasters is the topic addressed by two papers in this special edition. Biggs compares and contrasts the disaster relief arrangements with those in place for flooding in the USA (Biggs, 2012), while Carter examines the state of the retail insurance industry and the chronic issues of under-insurance in Australia (Carter, 2012). Biggs discusses the benefits and shortcomings of Natural Disaster Relief and Recovery Arrangements (NDRRA) in Australia with those of the National Flood Insurance Program in the USA and explores the changes made to the NDRRA following the 2011 Queensland floods. Biggs also examines a proposal for a national insurance scheme for Australia, which she argues could carry many of the same problems seen in the American system, in particular that it fails to discourage people from living in high-risk areas. Similarly, Carter uses the 2011 floods in Queensland to examine levels of personal insurance and presents some possible measures to increase the levels of insurance in an accessible and affordable way. Carter suggests that insurance companies should be more proactive in community education, and provide incentives to individuals who undertake risk mitigation actions. She also argues that issues be urgently addressed rather than just acknowledged as they are in the many reports into this issue.

The role of the Commonwealth Government in responding to natural disasters is also a contentious one, which is an issue picked up by two papers in this edition: one examines the basis behind and the legal underpinnings (or lack thereof) for Commonwealth intervention, and draws upon the example of the response to Cyclone Tracy in 1974 (McNamara, 2012). The second paper similarly examines Commonwealth powers in the context of the deployment of the Australian Defence Force in the Victorian Bushfires in 2009 (Fetchik, 2012). McNamara discusses how the Commonwealth stepped in to help to rebuild Darwin, and how the legal position at that stage was unclear and fragmented. He discusses the constitutional basis for powers the Commonwealth has regarding responses to natural disasters and attempts by the courts to clarify these powers. He further illustrates how much has changed since that time; however, matters still remain unclear, should such a devastating event take place today. Fetchik approaches this topic from the perspective of the Commonwealth assistance provided to response and recovery in the 2009 Victorian Fires and discusses the uncertain legal position that Australian Defence Force personnel

acting in such roles may face. She illustrates this in the context of the rights afforded to emergency response organisations and discusses whether such protections are afforded to the Australian Defence Force personnel.

I commend the authors, and Michael Eburn who took on the role of Guest Editor, for their work and their contribution to these important debates.

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About the author

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