

**Submission
No 38**

REVIEW OF THE NSW RECONSTRUCTION AUTHORITY ACT 2022

Organisation: Local Government NSW (LGNSW)

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SUBMISSION

**STATUTORY REVIEW
OF THE NSW
RECONSTRUCTION
AUTHORITY ACT 2022**

May 2024





Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

OVERVIEW OF THE LOCAL GOVERNMENT SECTOR



Local government in NSW employs **55,000 people**



Local government in NSW is responsible for about **90% of the state's roads and bridges**



Local government in NSW looks after more than **\$177 billion** of community assets



NSW councils manage an estimated **4 million tonnes of waste** each year



Local government in NSW spends more than **\$2.2 billion** each year on caring for the environment



NSW councils own and manage more than **600 museums, galleries, theatres and art centres**



NSW has more than **350 council-run libraries** that attract tens of millions of visits each year



NSW has more than **400 public swimming and ocean pools**

INTRODUCTION

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

This submission was endorsed by the LGNSW Board on 12 July 2024.

LGNSW welcomes the opportunity to make a submission in response to the statutory review of the *NSW Reconstruction Authority Act 2022* (RA Act).

The overall objective of the RA Act is to promote community resilience to the impacts of disasters in NSW through disaster prevention, preparedness and adaptation, and recovery and reconstruction following disasters. This is to be achieved under the legislation through the establishment of the NSW Reconstruction Authority (the Authority) to facilitate community resilience to the impact of disasters in NSW through prevention, preparedness and adaptation, and by providing the Authority with the requisite roles, functions and powers to take action in this regard.

The Terms of Reference for the review are for the Joint Select Committee on the NSW Reconstruction Authority to determine whether:

- the policy objectives of the Act remain valid, and
- the terms of the Act remain appropriate for securing the objectives.

As the sphere of government closest to the community, councils have a critical local leadership role to play in planning for, preparing for, responding to, and recovering from large scale emergencies and natural disasters and are uniquely placed to deliver services at the local level. Local government is also legislated to perform certain functions and roles in relation to disaster prevention, preparedness and adaptation, response and recovery, as stated in NSW Reconstruction Authority Regulation 2023.

BACKGROUND

Local government owns and manages \$176 billion in infrastructure assets including local roads, bridges, pedestrian and cycle networks, local water and sewerage utilities, stormwater and water management, buildings and facilities, regional airports and aerodromes, parks, recreation, cultural, family and community services facilities, and a range of other infrastructure vital to local communities and is best placed to plan for and deliver this essential local infrastructure.

Local government is also a significant provider and supporter of essential services to all members of the community. Councils fill the gaps in the provision of essential human services when there are no other providers, particularly in rural and remote areas, and advocate for equitable access to infrastructure and services.

Relevant to their functions in disaster management, mitigation and resilience, councils also play a key role in relation to climate change, biodiversity, economic development, planning and building regulation, housing, waste and recycling and health and safety. All these areas need consideration in disaster mitigation and management.

POLICY POSITION

All councils in NSW play a key role in all aspects of disaster and emergency management at the local and regional level. In addition to statutory or regulatory responsibilities and despite limited means, councils also play a major role in providing support to their communities, volunteers and charities. Issues requiring addressing include allocation of responsibilities for emergency management, adequacy and timeliness of recovery funding and the need for far greater investment in betterment and mitigation works.

LGNSW Policy Platform

[LGNSW's Policy Platform](#) sets out a number of positions on natural disasters and emergency management, that have arisen through past resolutions of LGNSW Annual Conferences. These are:

1. The transfer of emergency management responsibilities to the NSW Government.
2. Prioritisation of the development and implementation of policies and programs to build the resilience of communities so that they can better withstand and recover from natural disasters. This includes a review of building codes and a review of the impact vegetation management in riverbeds has on flood management.

3. Increased Federal funding and review of the DRFA to expand eligibility of assets and:
 - a. Ensure that repair of damage to road and bridge infrastructure as the result of natural disasters continues to be funded under the DRFA;
 - b. Streamline DRFA processes to help ensure funding is obtained on a timely basis;
 - c. Recognise rehabilitation of significant environmental damage for funding under the DRFA;
 - d. Allow payment of day labour and council equipment costs under the DRFA;
 - e. Fund voluntary buyback schemes.
4. Increased funding for mitigation and betterment measures, both in advance of disasters where the risks are identified and in the recovery stage.
5. Legislate to give councils power of entry to construct and maintain flood mitigation works.
6. Financial support for restoration, remediation and betterment of local community infrastructure that has been severely damaged by natural disasters including climatic conditions and drought.
7. The NSW Government to work with councils to support rebuilding and recovery after natural disasters by streamlining the approvals processes and providing funding and other assistance to review and update local plans.
8. NSW and Federal Government fully fund the clean-up of damaged or destroyed buildings and structures, particularly those that contain asbestos, following natural disasters and establish and operate an Asbestos Emergency Management Flying Squad to provide expert advice to councils.
9. The NSW Government to support cultural burning for fire management on Crown land, National Parks and State Forests (and training and employment of Indigenous people for this task).
10. Streamlining approvals for constructing and maintaining asset protection zones (APZs) or undertaking hazard reduction burns, requiring appropriate APZs for urban settlements that interface with natural areas, and ensuring government managed forested areas maintain fire trails.
11. Appropriate recognition for individual first responders via a local government service award.

12. Urgent implementation and funding of the recommendations of the NSW Bushfire Inquiry.
13. An inquiry into insurance arrangements for natural disaster events to develop a more effective model.
14. Recognition of heatwaves as natural disasters and federal legislation and development of a national urban heat mitigation and adaptation strategy.
15. Funding for councils' Local Emergency Management Officers and permanently embedded Community Recovery Officers.

Recent developments

LGNSW advocates on critical matters for the local government sector and the communities they represent. In the past year, several positive developments have been achieved relevant to disaster resilience, emergency management, the work of the NSW Reconstruction Authority and the ability of the local government sector to sustainability contribute in this area:

- Needs based roads funding to respond to unprecedented damage: Federal Government Roads to Recovery funding is being progressively doubled from \$500 million to \$1 billion each year, and annual Black Spot funding has seen a \$40 million increase.
- The NSW Government has commenced a review of emergency services funding arrangements. Councils are hoping to see a more sustainable funding model introduced that will remove the Emergency Services Levy on councils and insurance policies.
- The Minister for Local Government has initiated a parliamentary inquiry into the ability of councils to fund infrastructure and services. LGNSW has long called for a public inquiry into cost shifting in NSW to address the financial sustainability of local government, and cost shifting for emergency services forms a significant aspect of this.
- The Minister for Local Government has initiated a parliamentary inquiry into the assets, premises and funding of the Rural Fire Service. LGNSW is seeking legislative amendments to make clear that Rural Fire Service mobile assets (the 'Red Fleet') are vested in the Rural Fire Service.
- The second round of the Australian Government's \$200m annual Disaster Ready Fund is now proceeding, after the success of round 1 which delivered millions in funding for council betterment and risk reduction projects.
- The Australian Government's independent inquiry into Disaster Recovery Funding Arrangements is also considering options for betterment, risk reduction and resilience and is expected to issue a final report imminently. The level of

need is vast, and LGNSW will continue to call for greater investment in betterment.

State Disaster Mitigation Plan

One of LGNSW's advocacy priorities is to seek proactive strategies from the NSW and Australian Governments to respond to natural disasters and adapt to climate risks. The sheer scale of disasters in recent years demands a far greater emphasis on resilience and adaptation, to ensure communities are better prepared for future events.

LGNSW commends the NSWRA on the release of NSW's first State Disaster Mitigation Plan following close consultation with key stakeholders including the local government sector. The plan includes a priority action for the NSW Government to investigate options to support resourcing and capability-building in councils by the end of 2024. It also provides further detail on the first Disaster Adaptation Plans that are being developed in partnership with councils.

The new State Disaster Mitigation Plan includes an action to develop a framework for social infrastructure and cohesion with a focus on natural hazard risk, which will detail funding needs.

The foreshadowed support and assistance for councils is wholly in line with recommendation 11.1 of the Royal Commission into National Natural Disaster Arrangements, which recommends the following:

***Recommendation 11.1:** State and territory governments should take responsibility for the capability and capacity of local governments to which they have delegated their responsibilities in preparing for, responding to, and recovering from natural disasters, to ensure local governments are able to effectively discharge the responsibilities devolved to them.*

COMMENT

In general, the policy objectives and terms of the NSWRA Act remain valid and appropriate. LGNSW has welcomed increased engagement with councils and cooperation with the NSWRA which appears to be functioning well under its establishing Act.

Set out below are a number of considerations relevant to the operations of the NSWRA and its Act.

Representation on the Advisory Board

During the passage of the NSWRA Bill through parliament in 2022, a key concern of LGNSW's was that local government was not proposed to be included on the NSWRA's Advisory Board.

Local government has a critically important role in all facets of recovery, and the failure to include local government was a critical omission. All three spheres of government have vital roles to play in disaster recovery, and the role of the Commonwealth was rightfully recognised through the inclusion of two representatives on the seven-member Advisory Board to be nominated by the Australian Government.

Further, many of the decisions of the NSWRA have direct bearing on local government. These decisions have potentially major financial, operational, planning and policy implications for councils, many of which will go beyond already legislated responsibilities. Given these implications, it would seem self-evident that local government expertise would benefit the Advisory Board and the Authority.

The NSW Reconstruction Authority is largely based on the Queensland model, and in that jurisdiction local government is rightfully represented on the Queensland Reconstruction Authority Board.

In December 2023, the Emergency Services Legislation Amendment Act 2023 amended the NSWRA Act to require that at least one of the members of the NSWRA Advisory Board must be a person who, in the Minister's opinion, has considerable experience in a senior role with a local council.

This is certainly an improvement on previous provisions which specified no requirement for local government involvement on the Advisory Board. However, the position is only required to have experience in local government – they are not nominated by local government but rather by the state government. The NSWRA Act could be strengthened to ensure a truly whole-of-government and intergovernmental approach to recovery by requiring one member of the Advisory Board to be nominated by local government.

Reach and breadth of the powers invested in NSWRA

With respect to reconstruction activity or development work, the Act allows the Minister to make a 'ministerial authorisation' to authorise the undertaking of development without the need for approval or assessment under the *Environmental Planning and Assessment Act 1979* (EP&A Act) in certain areas during a declared state of emergency/disaster declarations.

The Act also states that the NSW RA is:

- to lead the management and coordination of housing and infrastructure renewal and recovery within affected communities', and;
- to carry out rezoning and land use planning, including exercising the functions of local councils for the purpose of land use planning in relation to disasters.'

As key stakeholders, councils would like clarification on the role and responsibility of the NSWRA in the governance of emergency planning, preparedness and recovery. In

particular, councils have identified the need for clarity on the NSWRA's role in placing constraints on development, including in the setting of flood planning levels. Allied to this is the important role of the NSWRA to engage with councils to actively manage mitigation of constraints as appropriate.

Further, the Act provides the NSWRA and the Minister powers to carry out or take over projects and direct or 'step in' to the role of a council in exercising legislative functions – 'provided that it is related to disaster relief and prevention'.

While the legislation is relatively new, the question is whether the Act strikes the right balance between disaster responsiveness and the wide powers conferred upon the NSWRA/Minister. The concern is that the powers conferred may be too far reaching and whether some safeguards should be built in.

While there likely may be situations where this broad reaching power is required following wholesale disaster, there are no checks and balances and no limitations provided in the Act. The situation would be improved if there were some contextual boundaries and clarification of terms provided to what is an otherwise very extensive power.

LGNSW concurs with the views expressed in a letter to the Minister for Planning by the Law Society of NSW, in December 2023, which stated, in part:

Part 5 of the Act allows the Minister, by order published in the Gazette, to declare a project for proposed development a "declared project" (s 39), and to declare part of the State to be a "reconstruction area" (s 40) or "disaster prevention area" (s 41). None of these phrases are substantively defined terms within the Act.

The Act also provides the Minister with the power to specify that other Acts or statutory instruments do not apply in relation to the declared project, reconstruction area or disaster prevention area.

In our view, the scope of power afforded to the Minister in this regard is unnecessarily broad, and, from the perspective of better legislative drafting practices, requires clearer definition.

The safeguards prescribing the circumstances in which the Minister may make such declarations provided in ss 39(2), 40(2) and 41(2) are weak and uncertain. For example, many parts of the State may be directly or indirectly affected by disasters, which may potentially permit the Minister to make declarations under these powers over vast parts of NSW and to exclude the operation of an undefined scope of other laws, for unspecified periods.

Further, the powers may be used in relation to “potential disasters,” to improve an affected community’s “resilience” or for “the betterment of the community”; terms that are either broadly defined, or undefined, in the legislation.¹

Operational considerations; role delineation between levels of government, leadership, coordination and support

The Act includes, as part of the NSWRA’s functions:

- *leading disaster resilience, adaptation and mitigation activities*
- *directing the recovery, planning and rebuilding of affected communities, including repairing and rebuilding land and infrastructure and other development*
- *supporting collaboration and coordination between government agencies, local councils, service providers and communities to improve disaster prevention, preparedness, recovery, reconstruction and adaptation*
- *to provide advice and support to local councils to help maximise the effectiveness of councils’ disaster preparedness and reconstruction programs*
- *to work closely with affected communities to ensure the needs of each community are recognised in the recovery and reconstruction of the community, and to improve the disaster preparedness and resilience of communities.*

Local government has an essential role in all these functions. While councils welcome the assistance and support from the NSWRA, further clarity on how local government would be consulted, engaged, funded or otherwise supported in working with the NSWRA for effective disaster prevention, preparedness, recovery, reconstruction and adaptation would be helpful.

Effective collaboration and coordination depend on the utilisation of evidence-based, up to date, consistent tools and data. Currently, local councils use various disaster information dashboards and to varying degrees, particularly since the advent of disaster apps (e.g., Hazards Near Me). Funding such information systems is also an issue that will further create inequity in accessing and using information systems. This is not just a problem for local government, but also for community service organisations whose funding in disaster resilience and recovery is insecure and generally does not cover costs of information systems. The NSWRA should play a leading role in advising and resourcing consistent data and information systems, and this should be reflected in the Act.

¹ [Letter to Minister for Planning and Public Spaces - Aspects of Part 5 of the NSW Reconstruction Authority Act 2022 \(NSW\) - 4 December 2023.pdf \(lawsociety.com.au\)](#)

As councils navigate the difficult balance of the imposition of more stringent, and hence more costly, building and development standards with the pressure to allow and assist disaster-affected property owners to simply and cheaply rebuild their homes, it would be helpful for the NSWRA to provide guidance for local government.

The recently revised State Emergency Management Plan, recently revised State Recovery Plan and the new State Disaster Mitigation Plan all provide some of this clarity distinguishing roles between state and local government. Disaster Adaptation Plans, once in place, will also help to define working arrangements between governments. LGNSW commends the consultative and collaborative engagement demonstrated by the NSWRA in its development of all of these new and revised plans.

Support and assistance to local government

The Act also provides that one of the NSWRA's functions is:

- *to implement funding schemes to provide financial support in relation to disaster prevention, recovery and reconstruction.*

For local government, funding will be a key challenge in ensuring the objectives of the NSWRA can be achieved.

The State Disaster Mitigation Plan assigns an action for the NSWRA to work with the Office of Local Government to: 'Investigate options to support resourcing and capability-building in local councils'. This action is required to be completed by the end of 2024.

While this action is welcome, associated funding for any options identified will need to be adequate and commensurate with the level of support required, for the objects of the Act to be met. Funding should not be conditional on co-contributions or reimbursement models.

Councils will also require significant assistance in developing and operationalising Disaster Adaptation Plans if these plans are to achieve their objectives. The NSWRA has been engaging closely with local government on the first two Disaster Adaptation Plans, which are under development.

Certainly, funding and assistance for local government is entirely consistent with recommendation 11.1 of the Royal Commission into National Natural Disaster Arrangements², and sensibly reflects the significantly constrained resourcing and emergency management capacity of local government.

² Recommendation 11.1 of the Royal Commission into National Natural Disaster Arrangements: State and territory governments should take responsibility for the capability and capacity of local governments to which they have delegated their responsibilities in preparing for, responding to, and recovering from natural disasters, to ensure local governments are able to effectively discharge the responsibilities devolved to them.

Example: Community Recovery Officers

One timely example of required financial support relates to the instigation and cessation of funding for Community Recovery Officers.

For many councils, the promotion of community resilience has been undertaken by Community Recovery Officers. These roles were established following the 2019 NSW Bushfires in the then disaster-declared LGAs and were co-funded by the State and Federal Governments. The officers are embedded in councils and are responsible for the development of a range of recovery initiatives alongside community groups and stakeholders, ensuring community recovery needs are understood and that recovery information, events and activities can be tailored to meet local needs.

Subsequent disasters including severe flooding saw a new round of Community Recovery Officers embedded in councils.

Unfortunately, funding for many of these positions has now ceased, despite recovery being a long and drawn-out process for many communities. In other areas following successive disasters, Community Recovery Officers have been re-engaged. This 'stop start' process is both ineffective and inefficient in building long term community resilience.

To attempt to fill this gap, one council plans to include community capacity building for resilience outcomes in the Community Development Officer role, with up to 10% of Resilience work transitioning to that role at the end of the Community Recovery Officer's contract. Whether this model is sustainable remains to be determined, given the severe financial sustainability constraints councils face, and the trend for more frequent and severe natural disasters and other environmental, financial and housing pressures facing communities.

Councils are not funded to promote community resilience and disaster recovery and therefore must be supported by other spheres of government.

There will also be occasions where Disaster Recovery Funding Arrangements (DRFA) are not fit for purpose in assisting local governments to recover from disasters. For example, multiple councils have raised concerns at extensive delays and unnecessary red tape holding up DRFA for the repair or replacement of critical community infrastructure.

LGNSW has also heard concerns about inflexible eligibility requirements of DRFA. One small rural council has highlighted an example of a flood in a remote area causing more than \$1 million in significant damage to road infrastructure. In this example, the State Emergency Service was not required to be involved due to there being no threat to life or property apart from the roads (and the roads to the flooded area being flooded and largely inaccessible in any case). In this instance, it would have been a waste of emergency services volunteers' time if they were deployed with no ability to practically assist.

However, in order for a disaster to be eligible for funding under the DRFA it must require a *coordinated multi-agency response*. In this instance, despite the significant road damage, the council was not eligible for DRFA funding as a multi-agency response was not needed or practical. The council's remoteness and lack of access for emergency services was effectively working against the ability of the council to receive funding support under the DRFA.

Councils would welcome partnering with the NSWRA and the NSW Government more broadly in joint advocacy to the federal government seeking improvements to such policies and processes. This advocacy, building on the NSWRA's expertise and evidence base, should be considered among the functions of the NSWRA. Where advocacy for change at the federal level is unsuccessful, the NSWRA should consider alternative mechanisms to assist councils and communities to recover from disasters.

Summary of Recommendations

1. The NSWRA Act could be strengthened to ensure a truly whole-of-government and intergovernmental approach to recovery by requiring one member of the Advisory Board to be nominated by local government.
2. Define terms used in the Act; in particular in relation to planning and associated powers, such as 'declared project', 'reconstruction area', 'disaster prevention area', and so on.
3. Clarify and define the scope and safeguards of powers invested in The Authority with respect to disaster management and recovery and community betterment.
4. The Act could state in broad terms how local government would be consulted, engaged, funded and otherwise supported for effective disaster prevention, preparedness, recovery, reconstruction and adaptation.
5. Specifically, the Act could state that the NSWRA leads in advising and resourcing consistent emergency data and information systems across local government, emergency management and relevant community organisations, and across NSW.
6. Include in the Act, words that describe that funding schemes are to be adequate and commensurate with need, e.g., "*to implement funding schemes to provide **adequate** financial support **commensurate with need**, in relation to disaster prevention, recovery and reconstruction.*"
7. Specifically, fund and embed permanent ongoing disaster recovery officer positions in all local councils, with levels and number of positions appropriate for the area.
8. Advocacy to the Australian Government in relation to relevant policies and processes and the alignment of NSW and federal policies should be considered

among the functions of the NSWRA. Where advocacy for change at the federal level is unsuccessful, the NSWRA should consider alternative mechanisms to assist councils and communities to recover from disasters.

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For further information on this submission, please email policy@lgsw.org.au.