



Legal preparedness for international disaster response in Australia

Laws, Policies, Planning and Practices

March 2010



International Federation
of Red Cross and Red Crescent Societies

strategy2020

Strategy 2020 voices the collective determination of the International Federation of Red Cross and Red Crescent Societies (IFRC) to move forward in tackling the major challenges that confront humanity in the next decade. Informed by the needs and vulnerabilities of the diverse communities with whom we work, as well as the basic rights and freedoms to which all are entitled, this strategy seeks to benefit all who look to Red Cross Red Crescent to help to build a more humane, dignified, and peaceful world.

Over the next ten years, the collective focus of the IFRC will be on achieving the following strategic aims:

1. Save lives, protect livelihoods, and strengthen recovery from disasters and crises
2. Enable healthy and safe living
3. Promote social inclusion and a culture of non-violence and peace

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In 2009, Australians lived through the worst peace-time disaster in their country's history, as relentless fires swept across the state of Victoria. Albin Weitacher receives help from Red Cross first aider Mohammed Alam at the relief centre in Whittlesea, near the devastated community of Kinglake in north-east Victoria, Australia.

Acknowledgements

This report was written by Michael Eburn, a Senior Lecturer at the School of Law at the University of New England based on his research as part of a programme of study for the degree of Doctor of Philosophy (PhD) at Monash University, Melbourne.

About the IDRL Programme

The International Federation's "International Disaster Response Laws, Rules and Principles" (IDRL) Programme seeks to reduce human vulnerability by promoting legal preparedness for disasters. It works in three areas: (1) collaborating with National Red Cross and Red Crescent Societies and other partners to offer technical assistance to governments on disaster law issues; (2) building the capacity of National Societies and other stakeholders on disaster law; and (3) dissemination, advocacy and research.

All feedback on this report should be addressed to the IDRL Programme: idrl@ifrc.org

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About the International Federation of Red Cross and Red Crescent Societies

The International Federation of Red Cross and Red Crescent Societies (International Federation) promotes the humanitarian activities of National Societies among vulnerable people.

By coordinating international disaster relief and encouraging development support it seeks to prevent and alleviate human suffering.

About the IDRL Programme

When disasters strike, there are times when the resources of an affected country are overwhelmed and international assistance is required. In these situations, it is essential that such assistance can be provided quickly and effectively at the highest possible standards and for the immediate and long-term benefit of affected communities.

The International Federation's International Disaster Response Laws, Rules and Principles (IDRL) Programme seeks to reduce human vulnerability by promoting legal preparedness for disasters through advocacy, technical assistance, training and research. In 2001 the IDRL Programme began investigating how legal frameworks can contribute to the improving the delivery of disaster relief. Information was gathered on existing international and national law as well as case studies and consultations around the globe. In 2003, the 28th International Conference of the Red Cross and Red Crescent (gathering state parties to the Geneva Conventions and the components of the International Red Cross and Red Crescent Movement) called on the International Federation to work collaboratively with partners to develop "guidelines for practical use in international disaster response activities".

In 2006 and 2007, the International Federation and its partners organized a series of high level regional forums, involving over 140 governments and National Societies, and numerous other partners, to provide input into the drafting of a set of guidelines.

In November 2007, the 30th International Conference of the Red Cross and Red Crescent unanimously adopted the Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance (IDRL Guidelines).

Further information can be found at the following site: www.ifrc.org/idrl

About the IDRL Guidelines

The IDRL Guidelines are a set of recommendations to governments on how to prepare their disaster laws and plans to address common regulatory problems in international disaster relief operations. They recommend minimum requirements and quality standards for humanitarian relief providers that governments should insist upon in order for relief providers to receive a number of legal facilities such as expedited visas and customs processes, tax exemptions and legal status.

About This Report

This report is an examination of national laws and policies, as well as regional and international treaties, declarations and agreements, to determine their current and potential impact on international disaster response operations in Australia.

In particular it examines the current legal regime applicable to Australia and the extent to which recommendations of the IDRL Guidelines have been implemented. It covers issues such as: offers and requests for assistance; the entry and facilitation of foreign relief organizations, personnel, relief goods and equipment; the coordination of assistance; and standards of quality and accountability. It is a desk study of relevant law rather than a study of past experience and practice.

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for international disaster response in Australia

Part I
Country Background

Part I – Country Background

Social and political context

Australia is a large island continent lying between the Indian Ocean and the South Pacific Ocean. With a land mass in excess of 7.6 million square kilometres, Australia is only slightly smaller than the continental United States. Despite its large size, Australia has a relatively small population of only 21 million.¹ The population is highly concentrated with 75 per cent of the population living in the southeast corner between Melbourne and Brisbane.²

Australia shares no land boundaries with any other nation; its closest neighbour is Papua New Guinea followed - in order - by Timor-Leste, Indonesia, New Caledonia, Philippines, Brunei and New Zealand.³

Australia is a stable, democratic and wealthy country. In 2008, the CIA Worldfactbook reported:

Australia has an enviable, strong economy with a per capita GDP on par with the four dominant West European economies. Robust business and consumer confidence and high export prices for raw materials and agricultural products are fueling the economy, particularly in mining states. Australia's emphasis on reforms, low inflation, a housing market boom, and growing ties with China have been key factors behind the economy's 16 solid years of expansion.⁴

The current world economic downturn is likely to affect Australia's prospects for economic growth and the Federal Government predicts a budget deficit in 2009 and a significant economic downturn.

Disasters in Australia

Australia has always experienced natural disasters, including floods, severe storms, bushfires and earthquakes. Severe weather poses the greatest cost; severe storms, flood, hail and cyclones have cost the community nearly six times more than bush and urban fires.⁵ Since 1788, disasters on mainland Australia have left in excess of 26,000 people dead, 155,000 injured, 3.6 million affected and 162,000 homeless.⁶

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- 1 Central Intelligence Agency (USA), *The World Factbook: Australia* <<https://www.cia.gov/library/publications/the-world-factbook/geos/as.html>> at 21 January 2009
 - 2 Department of Infrastructure Transport Regional Development and Local Government, *The East Coast Transport Corridor* <http://www.infrastructure.gov.au/rail/trains/high_speed/study/corridor.aspx> at 16 September 2008
 - 3 *Who is Australia's closest international neighbor?* <http://wiki.answers.com/Q/Who_is_Australia%27s_closest_international_neighbor> at 21 January 2009.
 - 4 Central Intelligence Agency (USA), *The World Factbook: Australia* <<https://www.cia.gov/library/publications/the-world-factbook/geos/as.html>> at 21 January 2009.
 - 5 *Disaster Database* <<http://www.ema.gov.au/agd/ema/emaDisasters.nsf>> at 6 March 2009. The database records the combined costs for weather events in excess of \$11 billion while bushfires are recorded to have cost nearly \$2 billion.
 - 6 Ibid

The following table shows the sudden impact natural disasters, that have caused 50 or more deaths since the start of the 20th Century,⁷ excluding the 2009 bushfires in Victoria which occurred as this report was being concluded, and which have killed at least 173 people.

Title	Year	Dead
Port Hedland - Broome Region, WA: Cyclone	1912	173
Broome and NW Coast, WA: Cyclone	1935	141
Coastal North Qld: Cyclone	1911	122
Cape York - Townsville, Qld: Cyclone (incl Storm Surges)	1934	99
Innisfail-Babinda, Qld: Cyclone (incl Storm Surge)	1918	90
Southern Victoria and SA: Bushfires	1983	75
Southern, Vic: Bushfires	1939	71
Darwin, NT: Cyclone Tracy	1974	71
Clermont and Peak Downs, Qld: Floods	1916	65
Hobart and Region, Tasmania: Bushfires	1967	62
SE Victoria (incl Gippsland & Dandenongs): Bushfires	1926	60
Western, Central and Southern Victoria: Bushfires	1943	51

The second table lists the ten most expensive sudden impact natural disasters in dollar terms.⁸ This table also excludes the February 2009 Victorian bushfires, and Queensland and New South Wales floods. The value of the property losses and economic disruption caused by these events is yet to be calculated.

Title	Year	Estimated cost (A\$ million)
Sydney, NSW: Severe Hailstorm (incl Lightning)	1999	\$1,700
NSW east coast storm and flood event	2007	\$1,350
Newcastle, NSW: Earthquake	1989	\$1,124
Darwin, NT: Cyclone Tracy	1974	\$837
Western Sydney, NSW: Severe Hailstorm	1990	\$384
Tropical Cyclone Larry	2006	\$360
Canberra, ACT: Bushfire	2003	\$350
Flash flooding, Mackay QLD	2008	\$342
Brisbane - Ipswich, Qld: Floods	1974	\$328
Southern Victoria and SA; Bushfires	1983	\$324

Australia has well-developed emergency response organizations and management structures that have allowed Australian States and Territories, with Commonwealth assistance, to manage the response to, and recovery from, the disasters that have occurred.⁹ There has been little recorded in the way of international assistance to Australia other than the provision of some fire-fighters to assist in the traditional summer bushfire season.¹⁰

⁸ Ibid

⁹ Council of Australian Governments, *Natural Disasters in Australia: Reforming mitigation, relief and recovery arrangements* (Commonwealth of Australia, Canberra, 2002).

¹⁰ Bruce Esplin, Malcolm Gill and Neal Enright, *Report of the Inquiry into the 2002-2003 Victorian Bushfires* (State Government of Victoria, Melbourne, 2003), 3; Stuart Ellis, Peter Kanowski and Rob Whelan, *Council of Australian Governments National Inquiry on Bushfire Mitigation and Management* (Commonwealth of Australia, Canberra, 2004), 29.

Government and legislative structure

Australia has a federal system of government under a constitutional monarchy. Apart from the Commonwealth Government, Australia has six States¹¹ and two self governing territories.¹²

The Constitution

The Commonwealth or Federal Government is established by the Australian Constitution. The Constitution was written in 1900 and has remained largely unchanged since that time.¹³

The federal legislature

There are two houses of Parliament. The House of Representatives is made up of '150 members elected by popular preferential vote to serve terms of up to three years'.¹⁴ The House of Representatives is known as 'the lower house'.

The 'upper house' or Senate is made up of 76 senators; 12 from each State and two from each of the self-governing territories. 'One-half of state members are elected every three years by popular vote to serve six-year terms while all territory members are elected every three years'.¹⁵

Under the Constitution, the Commonwealth parliament is given restricted legislative authority. The Commonwealth Parliament can only pass laws dealing with subject areas specifically assigned to the Commonwealth in the Constitution.¹⁶

The executive

The executive power of the Commonwealth is vested in the titular Head of State, the Governor-General.¹⁷ The Governor-General is appointed by, and to represent, the Queen of Australia who is the same person as the English monarch,¹⁸ currently 'Elizabeth the Second, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth'.¹⁹

The executive arm of government is made up of the various government departments. The leader of the House of Representatives is the Prime Minister. Other Ministers of State are appointed by the Prime Minister from the members elected to either House.

¹¹ New South Wales, Queensland, South Australia, Tasmania, Victoria, and Western Australia.

¹² The Australian Capital Territory and the Northern Territory.

¹³ Changes to the Constitution require approval of both house of Parliament and approval by the electors in a referendum (*Australian Constitution*, s 128). This difficult process means that only eight changes have been approved since Federation in 1901.

¹⁴ Central Intelligence Agency (USA), *The World Factbook: Australia* <<https://www.cia.gov/library/publications/the-world-factbook/geos/as.html>> at 21 January 2009

¹⁵ Ibid.

¹⁶ *Australian Constitution* s 51.

¹⁷ Ibid, s 61.

¹⁸ Ibid, Preamble [2].

¹⁹ *Royal Style and Titles Act 1973* (Cth).

The judiciary

The judicial arm of the Federal Government consists of the High Court of Australia and such other Federal Courts as are created by the legislature.²⁰

The States and Territories

The six states were self-governing colonies prior to federation and retain their plenary powers to make laws over any subject that is not exclusively vested in the Commonwealth. Where there is an inconsistency between a Commonwealth and a State law, the Commonwealth law prevails.²¹

The Commonwealth has the power to make laws with respect to the territories²² so their powers of self-government were granted by the Commonwealth²³ and are subject to review and modification by the Commonwealth.²⁴

The States and Territories have similar legislative and judicial arrangements to the Commonwealth. Each jurisdiction has its own legislature and judicial system, in each case headed by a Supreme Court. The High Court of Australia sits as the ultimate court of appeal from each State and Territory Supreme Court.

²⁰ *Australian Constitution*, s 71. The Federal courts are the Family Court of Australia (*Family Law Act 1975* (Cth)), the Federal Court of Australia (*Federal Court of Australia Act 1976* (Cth))and the Federal Magistrates Court (*Federal Magistrates Act 1999* (Cth)).

²¹ *Australian Constitution*, s 109.

²² *Ibid*, s 122.

²³ *Australian Capital Territory (Self-Government) Act 1988* (Cth) and *Northern Territory (Self-Government) Act 1978* (Cth).

²⁴ See for example *Euthanasia Laws Act 1997* (Cth).

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Part II

Relevant Laws and Policies

PART II – RELEVANT LAWS AND POLICIES

International and bilateral instruments

Impact upon the initiation and termination of international disaster response

Australia has entered into an agreement with Indonesia to cooperate in ‘facilitating effective and rapid coordination of responses and relief measures in the event of a natural disaster or other such emergency’.²⁵

Australia is party to conventions relating to the rescue of astronauts²⁶ and persons travelling on civil aviation.²⁷ These Conventions require Australia to provide assistance to foreign nationals in the event of accidents or emergencies in Australian territory, but do not generally require Australia to respond to an incident on the territory of another State, though they do require action on the ‘high seas or in any other place not under the jurisdiction of any State’.²⁸

The Convention on Maritime Search and Rescue²⁹ provides that Australia should cooperate in managing search and rescue missions³⁰ for people in distress at sea. The Rescue Coordination Centre is authorized to:

- request international assistance from another rescue coordination centre;
- grant permission for foreign search and rescue teams to enter their territorial waters;
- ‘make the necessary arrangements with the appropriate customs, immigration or other authorities with a view to expediting such entry’;³¹ and,
- provide assistance to another rescue coordination centre, when asked for that assistance.³²

Australia’s Rescue Coordination Centre is managed by the Australian Maritime Safety Authority in Canberra.³³

²⁵ *Agreement between Australia and the Republic of Indonesia on the Framework for Security Cooperation*, opened for signature 13 November 2006, [2008] ATS 3, (entered into force 7 February 2008), [18].

²⁶ *Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space*, opened for signature 22 April 1968, [1986] ATS 8, (entered into force 3 December 1968).

²⁷ *Convention on International Civil Aviation*, opened for signature 7 December 1944, [1957] ATS 5, (entered into force 4 April 1947).

²⁸ *Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space*, opened for signature 22 April 1968, [1986] ATS 8, (entered into force 3 December 1968), [1].

²⁹ *International Convention on Maritime Search and Rescue*, opened for signature 27 April 1979, [1986] ATS 29, (entered into force 22 June 1985).

³⁰ *Ibid.*, [3.1.1].

³¹ *Ibid.*, [3.1.6].

³² *Ibid.*, [3.1.7].

³³ Australian Maritime Safety Authority, *Search and Rescue* <<http://www.amsa.gov.au/Search%5Fand%5FRescue/>> at 13 May 2008.

Australia is a party to the Convention on providing assistance in the event of a nuclear accident.³⁴ This Convention makes provision for providing, and receiving, international assistance. The convention provides that any State that needs assistance to deal with a nuclear accident may call for that assistance,³⁵ specifying the assistance required.³⁶ A party receiving such a request must then consider whether or not it is able to assist.³⁷

Impact upon the import and export of goods and equipment

Australia is party to the *International Convention on the Simplification and Harmonization of Customs Procedures*.³⁸ In accepting annexe J5, Australia agrees to give priority clearance to relief consignments and to allow them to be imported duty free.

The Nuclear Accidents treaty, prima facie, deals with the import of goods and equipment. It provides that the requesting State is to allow the assisting party to import their equipment duty free.³⁹ In ratifying this treaty however, Australia declared that it would not be bound by that particular obligation.⁴⁰ Australia is bound by the provisions that require it to ensure the return of such equipment⁴¹ and to facilitate the transit of equipment involved in responding to a request for assistance.⁴²

Pursuant to the Convention on the Facilitation of International Maritime Traffic⁴³ Australia has agreed to facilitate the 'arrival and departure of vessels engaged in natural disaster relief work'⁴⁴ and 'the entry and clearance of person and cargo arriving' in those vessels.⁴⁵ Similar provisions are found in annex 9 to the Civil Aviation Convention⁴⁶ relating to the entry, departure and transit of relief flights, and the early entry clearance for people and goods arriving on relief flights.⁴⁷

³⁴ *Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency*, opened for signature 26 September 1986, [1987] ATS 15, (entered into force 26 February 1987).

³⁵ *Ibid*, [2(1)].

³⁶ *Ibid*, [2(2)].

³⁷ *Ibid*, [2(3)].

³⁸ *International Convention on the Simplification and Harmonization of Customs Procedures*, opened for signature 18 May 1973, [1975] ATS 12, (entered into force 25 September 1974) as amended by the *Protocol of Amendment to the International Convention on the Simplification and Harmonization of Customs Procedures of 18 May 1973*, opened for signature 26 June 1999, [2006] ATS 22, (entered into force 3 February 2006).

³⁹ *Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency*, opened for signature 26 September 1986, [1987] ATS 15, (entered into force 26 February 1987), [8(3)].

⁴⁰ *Ibid*, [8.9] see also DFAT Treaties Database < <http://www.dfat.gov.au/treaties/index.html> > at 21 February 2008.

⁴¹ *Ibid*, [8(4)].

⁴² *Ibid*, [9].

⁴³ *Convention on Facilitation of International Maritime Traffic*, opened for signature 9 April 1965, [1986] ATS 12, (entered into force 5 March 1967).

⁴⁴ *Ibid*, [5.11].

⁴⁵ *Ibid*, [5.12].

⁴⁶ *Convention on International Civil Aviation*, opened for signature 7 December 1944, [1957] ATS 5, (entered into force 4 April 1947).

⁴⁷ *Ibid*, Annex 9 quoted in David Fisher, *Law and legal issues in international disaster response: a desk study* (International Federation of Red Cross and Red Crescent Societies, Geneva, 2007), 43.

Impact upon quality and accountability

Australia is not party to any treaties dealing with the quality and accountability of aid. It has, however, as part of its *Humanitarian Action Policy*⁴⁸ adopted the *Principles and Good Practice of Humanitarian Donorship*.⁴⁹ This policy relates to Australia sending, not receiving, aid.

Impact upon the coordination of international responders

By adopting the Principles of Good Humanitarian Donorship,⁵⁰ Australia is committed to supporting and promoting ‘... the central and unique role of the United Nations in providing leadership and coordination of international humanitarian action...’⁵¹

The United Nations and its Specialized Agencies

Australia has adopted the *Convention on Privileges and Immunities of the United Nations*⁵² and the *Convention on the Privileges and Immunities of the Specialized Agencies*.⁵³

Status of forces agreements

Australia has entered into Status of Forces agreements with six countries.⁵⁴ These deal with issues such as rights of entry, status of personnel, recognition of qualifications and the importation of equipment. All but one of these agreements, are bilateral, that is they apply when Australian forces are visiting over-

⁴⁸ AusAid, *Humanitarian Action Policy* (Australian Government, 2005), 3; 13-14.

⁴⁹ Good Humanitarian Donorship, *Principles and Good Practice of Humanitarian Donorship* <<http://www.goodhumanitariandonorship.org/>> at 25 February 2008.

⁵⁰ Ibid.

⁵¹ Ibid, [10].

⁵² *Resolution relating to the adoption of the General Convention on Privileges and Immunities of the United Nations, and Text of the Convention*, First Session, 31st Plenary Meeting, UN Doc 22(1) (1946).

⁵³ *Convention on the Privileges and Immunities of the Specialized Agencies*, opened for signature 21 November 1947, [1988] ATS 41, (entered into force 10 February 1949); see also *Charter of the United Nations Arts 57 and 63*.

⁵⁴ *Agreement between the Government of the Commonwealth of Australia and the Government of the United States of America concerning the Status of United States Forces in Australia, and Protocol* opened for signature 9 May 1963, [1963] ATS 10, (entered into force 9 May 1963); *Five Power Defence Arrangements: Exchange of Notes constituting an Agreement between the Government of Australia and the Government of Malaysia regarding External Defence and Exchange of Notes constituting an Agreement between the Government of Australia and the Government of the Republic of Singapore regarding External Defence* opened for signature 1 December 1971, [1971] ATS 21, (entered into force 1 November 1971 (Retrospective)); *Agreement between Australia and Papua New Guinea regarding the Status of Forces of each State in the Territory of the other State, and Agreed Minute*, opened for signature 26 January 1977, [1977] ATS 6, (entered into force 26 January 1977); *Exchange of Notes constituting a Status of Forces Agreement between the Government of Australia and the Government of the Republic of Singapore*, opened for signature 10 February 1988, [1988] ATS 6, (entered into force 10 February 1988); *Agreement between the Government of Australia and the Government of Malaysia concerning the Status of Forces*, opened for signature 3 February 1997, [1999] ATS 14, (entered into force 22 July 1999); *Agreement between Australia and the Kyrgyz Republic on the Status of Australian Forces in the Kyrgyz Republic* opened for signature 9 July 2002, [2002] ATS 14 (entered into force 9 July 2002); *Agreement Between the Government of Australia and the Government of New Zealand Concerning the Status of their Forces*, opened for signature 29 October 1998, [2005] ATS 12, (entered into force 27 May 2005); and *Agreement between the Government of Australia and the Government of the Republic of the Philippines Concerning the Status of Visiting Forces of each State in the Territory of the other State*, opened for signature 31 May 2007, [2007] ATNIF 14, (entered into force Not yet in force).

seas, and when the foreign forces are visiting Australia. The agreement with the United States, however, only covers United States forces in Australia.

The FRANZ agreement

The FRANZ Agreement is an agreement of less than treaty status. It is formally known as the 'Joint Statement on Disaster Relief Cooperation in the South Pacific'.⁵⁵ This statement was made by the representatives of France, New Zealand and Australia and commits the three nations to '... maintain pragmatic, flexible arrangements to allow for a speedy response' to a natural disaster. It was further agreed that '... the three countries should exchange information to ensure the best use of their assets and other resources for relief operations after cyclones and other natural disasters in the region.'

Agency agreements

Apart from treaties and the FRANZ agreement entered into by or on behalf of the Commonwealth, various State fire fighting agencies have also entered into agreements to facilitate the delivery of, and receipt of assistance during a major fire event.⁵⁶

Commonwealth emergency arrangements

The Commonwealth's emergency arrangements are set out in the Commonwealth Emergency Management Policy Statement⁵⁷ and Commonwealth emergency response plans, in particular the Commonwealth Government Disaster Response Plan (COMDISPLAN)⁵⁸ and the Australian Government Overseas Disaster Assistance Plan (AUSASSISTPLAN).⁵⁹ These plans detail how the Commonwealth will deal with requests for assistance by the Australian States and Territories (COMDISPLAN) or from other countries (AUSASSISTPLAN). They do not, however, detail what role the Commonwealth will take in disaster response and management.

There is no Commonwealth disaster legislation or any process for the declaration of a national emergency. The Commonwealth arrangements envisage that the management of an emergency on Austral-

⁵⁵ *Joint Statement on Disaster Relief Cooperation in the South Pacific*, Wellington, 22 December 1992.

⁵⁶ See for example *International Agreement between the US Department of the Interior, Bureau of Land Management, US Department of Agriculture, Forest Service for the National Multi Agency Coordination Group for and on behalf of the Government of the United States of America and the Secretary of the Department of Natural Resources & Environment for itself and as agent of the Crown in the Right of Each Australian State and Territory and the Crown in Right of New Zealand*, 2000 reproduced in Rick Sneeuwjagt, *Review of the Australia-New Zealand Fire Fighting Deployment to the United States of America, August-September 2000*, (Department of Conservation and Land Management, Perth, 2000) ; *Wildfire Arrangement between the Department of the Interior and the Department of Agriculture of the United States of America and the Australian Participating Agencies*, 2002.

⁵⁷ *Commonwealth Emergency Management Policy Statement* <<http://www.ema.gov.au/agd/ema/emaInternet.nsf/Page/RWP11A286E12CB5FCA3CA256C480004F92F?OpenDocument>> at 29 May 2008; see also Australian National Audit Office, *Commonwealth Emergency Management Arrangements* (Commonwealth of Australia, Canberra, 2000), Appendix 1.

⁵⁸ Emergency Management Australia, *Commonwealth Government Disaster Response Plan (COMDISPLAN)* (Commonwealth of Australia, Canberra, 2002).

⁵⁹ Emergency Management Australia, *Australian Government Overseas Disaster Assistance Plan (AUSASSISTPLAN)* (Commonwealth of Australia, Canberra, 2002).

ian territory, regardless of its scale, will be a matter for State and Territory authorities.⁶⁰ The Commonwealth's role is to provide Commonwealth resources, primarily the military, to assist the State agencies. The Commonwealth can also take on a role coordinating offers of, or requests for, international assistance.⁶¹ The policy and plans do not envisage a role for the Commonwealth in managing a response regardless of its scale or impact.

Emergency Management Australia

The principal Commonwealth disaster planning, management and response agency is Emergency Management Australia, an administrative unit within the Attorney General's department. Emergency Management Australia assists in maintaining commonwealth disaster response plans and coordinating the response of the Commonwealth Government and its agencies to any occurring hazard event. In particular, this means coordinating the response of Commonwealth assets (e.g. the Department of Defence), in response to requests from the State or Territories for assistance.⁶²

COMDISPLAN

An incident that occurs within a State or Territory is to be managed by the State or Territory government and emergency services in accordance with their legislation and policy. When the effects of the incident are beyond the capacity of the State or Territory to manage, or where resources from the Commonwealth are required, a request is made to the Commonwealth for assistance. The process of the request is set out in COMDISPLAN. Each State and Territory has a nominated officer who is authorized to contact Emergency Management Australia seeking Commonwealth assistance. The request is passed to the Attorney-General for approval. If approved, it is then passed to the relevant Commonwealth agency for ministerial approval and to provide the required assistance.⁶³ Where the resources required to meet the needs of the affected jurisdiction cannot be located in Australia, Emergency Management Australia will liaise with the State or Territory government and the Department of Foreign Affairs and Trade to seek assistance from overseas.⁶⁴

Emergency Management Australia is responsible for recording offers of assistance from overseas, for passing those offers to the affected jurisdiction and advising those making the offer whether their assistance is required.⁶⁵

Where international assistance is forthcoming (whether as a result of a request from Australia or spontaneous donations or the arrival of international organizations), the Department of Foreign Affairs and Trade, and Emergency Management Australia will put in place necessary arrangements to

⁶⁰ *Commonwealth Emergency Management Policy Statement* <http://www.ema.gov.au/agd/ema/emaInternet.nsf/Page/RW_P11A286E12CB5FCA3CA256C480004F92F?OpenDocument> at 29 May 2008; Emergency Management Australia, *Commonwealth Government Disaster Response Plan (COMDISPLAN)* (Commonwealth of Australia, Canberra, 2002), [1.1] and [1.3].

⁶¹ Emergency Management Australia, *Commonwealth Government Disaster Response Plan (COMDISPLAN)* (Commonwealth of Australia, Canberra, 2002) [4.12] and [4.13].

⁶² Emergency Management Australia, *This is EMA* (Commonwealth of Australia, Canberra, 2008).

⁶³ Emergency Management Australia, *Commonwealth Government Disaster Response Plan (COMDISPLAN)* (Commonwealth of Australia, Canberra, 2002), [4.1].

⁶⁴ *Ibid.*, [4.13].

⁶⁵ *Ibid.*, [4.12] and Annex D.

receive the international assistance and work with the State or Territory to move the assistance to the area of need.⁶⁶

AUSASSIST Plan

The key policy document on providing assistance to disaster-affected countries is the AUSASSIST-PLAN⁶⁷ managed by the Australian Agency for International Development, known as AusAID. Although AusAID is the agency responsible for the delivery of international disaster assistance, that assistance is usually managed by Emergency Management Australia as the agent for AusAID.⁶⁸ The AUSASSISTPLAN is concerned with requests for Commonwealth assistance.

Commonwealth Counter-Disaster Task Force

The Commonwealth's peak disaster response body is the Commonwealth Counter-Disaster Task Force.⁶⁹ This is:

*... a senior interdepartmental committee, chaired by the Department of the Prime Minister and Cabinet, comprised of representatives of Australian Government departments and agencies with a significant role to play in the provision of disaster relief or rehabilitation assistance.*⁷⁰

The role of the Counter-Disaster Task Force is to:

- a. provide necessary policy advice on issues referred to it by the Director General, Emergency Management Australia (DGEMA); and
- b. assume coordination of Commonwealth assistance for rehabilitation and to recommend any special intergovernmental arrangements which may be required to assist longer-term recovery.⁷¹

The Task Force may be activated during disaster response and recovery operations in 'support of EMA activities.'⁷²

The Task Force has no legislative basis and cannot authorize government departments to ignore their legislative obligations or authorize Ministers to waive compliance with the law. It is the case that there is no legal provision to allow a single agency, Minister or the Prime Minister to take on the coordination of

⁶⁶ Ibid, [4.14 and Annex E.

⁶⁷ Emergency Management Australia, *Australian Government Overseas Disaster Assistance Plan (AUSASSISTPLAN)* (Commonwealth of Australia, Canberra, 2002)

⁶⁸ Ibid, [1.2] and [1.3].

⁶⁹ Emergency Management Australia, *Australian Emergency Management Arrangements* (6th ed, Commonwealth of Australia, Canberra, 2000), 6

⁷⁰ Emergency Management Australia, *Australian Government Emergency Management Committees and Organisations* <<http://www.ema.gov.au/agd/ema/emaInternet.nsf/Page/RWP3A99D5A22013AA3CCA256C4B001A18F9?OpenDocument>> at 23 June 2008.

⁷¹ Ibid. It should be noted that the reference to the Task Force's role is different on the EMA web site to the role described in the Australian Emergency Manuals Series. The version on the website is assumed to reflect current practice rather than the version published in 2000.

⁷² Ibid.

the Commonwealth response and exercise relevant Ministerial powers or even to make a single declaration of a national emergency that would activate all the relevant Commonwealth emergency provisions.

Model arrangements for leadership during emergencies of national consequence

The Council of Australian Governments does recognize that there can be a national emergency and this is reflected in the Model Arrangements for Leadership During Emergencies of National Consequence. The Prime Minister, the Premiers and Chief Ministers of affected States and Territories may agree that there is an emergency of ‘national consequence’. These are defined as:

*... emergencies that require consideration of national level policy, strategy and public messaging or inter-jurisdictional assistance, where such assistance is not covered by existing arrangements*⁷³

The Model Arrangements provide that

- *the Prime Minister and the affected First Minister(s) will consult as necessary to coordinate the response to, and recovery, from the emergency including in relation to policy, strategy and public messaging, in support of an affected State or Territory;*
- *the Prime Minister and the affected First Minister(s) will consult on, and deliver the key leadership messages to be conveyed to the public;*
- *there will be communication, as appropriate, with all other States and Territories to enable the sharing of key information and public messages across jurisdictions; and*
- *all jurisdictions will coordinate the development of public messages through established public information coordination arrangements.*⁷⁴

State and Territory arrangements

The Australian States and Territories have the primary responsibility for managing the response to any natural disaster, but they do not have responsibility for managing Australia’s international borders or foreign relations. International assistance from other national governments would be expected to accept the authority of the State agency in command of the emergency response and will form part of that State response. Non-government organizations generally insist on remaining independent of Government agencies so in the rare event that non-government assistance arrives in Australia, their response may well be separate from the official response. This may lead to duplication, inefficiency and raise the need for appropriate coordination and control of the response.

The arrangements for disaster response are relatively similar across the Australian jurisdictions. Each State and Territory⁷⁵ has detailed disaster management legislation⁷⁶ that provides for disaster planning

⁷³ Council of Australian Governments, *Australian Emergency Management Arrangements* (Commonwealth of Australia, 2009), Annex A (p 18).

⁷⁴ *Ibid*, p 19.

⁷⁵ And for the sake of convenience, the term ‘State’ should be understood to include the Australian Capital Territory and the Northern Territory.

⁷⁶ *Emergencies Act 2004* (ACT); *State Emergency and Rescue Management Act 1989* (NSW); *Disasters Act 1982* (NT); *Disaster Management Act 2003* (Qld); *Emergency Management Act 2004* (SA); *Emergency Management Act 2006* (Tas); *Emergency Management Act 1986* (Vic); *Emergency Management Act 2005* (WA).

at State, regional and local level.⁷⁷ When events require a coordinated and ongoing response, there is provision for a declaration of a State of Alert, Emergency or Disaster (the terms vary across jurisdictions). Once a formal declaration has been made, the functions and powers to be exercised by the emergency controllers charged with the responsibility of managing the response to a disaster are set out.

When an emergency reaches the level of a State of Disaster or Emergency, a whole of government approach is required. This means that a relevant Minister or the State counter-disaster controller is given broad powers to control access to the disaster site and to commandeer either private- or State-owned resources and direct them to the relief effort.

Legislation in some jurisdictions will affect the ability of international responders to assist.

The Commonwealth

To assist the States and Territories, the Governor-General may exempt a foreign State or a separate entity of a foreign State from liability for personal injury or death if the Minister is satisfied that the foreign State or separate entity is providing counter-disaster assistance to the Australian Government or the government of an Australian State or Territory.⁷⁸ At the time of writing the benefit of this law has been extended to the United States of America, and to any separate entity of the USA, that is providing assistance with respect to bushfire management.⁷⁹

The Australian Capital Territory

The Territory legislation is the only counter-disaster legislation that makes specific reference to international cooperation. It provides that international disaster responders may exercise the functions of the local emergency services and must cooperate with and make their resources available to the local services.⁸⁰ Where international assistance is provided in accordance with a pre-existing 'cooperative agreement,' overseas professional qualifications will be recognized in the Territory without further need for certification or registration.⁸¹

Queensland

The Chair of the State Disaster Management Group or a district disaster coordinator may appoint people who have the 'the necessary expertise or experience' to exercise 'rescue powers'. Rescue powers are, generally speaking, a power to enter premises, if necessary, without consent and using force, and then take steps to search for, and rescue people, and take other measures to reduce the risk of death or injury including directing people to leave the area, requiring people to provide assistance and take and destroy material that may be in the disaster area.⁸² Despite calling these powers 'rescue powers,' they are not limited to traditional rescue (i.e. freeing people who are trapped) but can be extended to allow

⁷⁷ With the exception of the *Emergencies Act 2004* (ACT) as the ACT is too small to have various levels of Government.

⁷⁸ *Foreign States Immunities Act 1985* (Cth) s 42A.

⁷⁹ *Foreign States Immunities Regulations 1987* (Cth) s 2A.

⁸⁰ *Emergencies Act 2004* (ACT) s 64.

⁸¹ *Ibid*, s 180.

⁸² *Disaster Management Act 2003* (Qld), ss 110, 111 and 112.

‘rescue or similar operations’⁸³ and any other activity that is required to help the injured, and protect people and property from danger.⁸⁴

The relevance of this provision in the context of international disaster assistance is that the relevant controller can authorize foreign aid workers; for example, urban search and rescue teams to enjoy legal rights and protections that are applicable to local rescue workers.

South Australia

During a major incident,⁸⁵ a major emergency⁸⁶ or a disaster⁸⁷, the State Coordinator must ‘cause such response and recovery operations to be carried out as he or she thinks appropriate.’⁸⁸ In conducting these operations, the Controller may ‘make use of the gratuitous services of any person’.⁸⁹ In the context of international assistance, that allows the Controller to take advantage of offers of help from foreign organizations provided that help is ‘gratuitous’.

Tasmania

During an emergency, the State Controller is to ‘direct the use of resources for emergency management as he or she considers appropriate’.⁹⁰ It is unclear whether that power allows him or her to direct the use of any resources for the purposes of emergency management, or whether it refers to the Controller directing those resources that are specifically for emergency management. If the former interpretation is correct, that would allow the Controller to take effective control of all resources, which could include the resources provided by international assistance.

The State Controller may authorize people to exercise various emergency powers⁹¹ including the power to enter premises, to ‘excavate land, construct earthworks, erect temporary barriers and other structures and modify or mend any existing structure’ conduct medical examinations and decontamination procedures and to dispose of human or animal bodies.⁹² These provisions are, again, to be of most use if and when urban search and rescue teams are required in Tasmania as they can be appointed as authorized officers⁹³ and then authorized to exercise the emergency powers that are needed to allow them to meet their particular task objectives.

The State Controller is required to consider whether Commonwealth or interstate resources are required in response to an emergency⁹⁴ and if they are, ‘to request those resources.’⁹⁵ Determining whether there is a need for, and requesting international assistance is not specifically mentioned but it can

⁸³ Ibid, s 110.

⁸⁴ Ibid, s 110.

⁸⁵ *Emergency Management Act 2004* (SA), s 22.

⁸⁶ Ibid, s 23.

⁸⁷ Ibid, s 24.

⁸⁸ Ibid, s 25.

⁸⁹ Ibid, s 25(2)(k).

⁹⁰ *Emergency Management Act 2006* (Tas), s 11.

⁹¹ Ibid, ss 31, 40, 41 and Schedule 1.

⁹² Ibid, Schedule 1.

⁹³ Ibid, s 31.

⁹⁴ Ibid, s 11.

⁹⁵ Ibid, s 11(c).

be inferred that the State Controller would have the authority to consider this and to call for such assistance if required.

Western Australia

During a declared state of emergency, the State Emergency Coordinator is to take on the task of coordinating the response of all government agencies.⁹⁶ Where authorized by the State emergency management policy, the State Emergency Management Committee or the State Disaster Council, the Coordinator may

- (a) liaise with the Australian Government and other persons, in or outside the State; and
- (b) enter into agreements and arrangements with those persons, to assist the State to manage emergencies.⁹⁷

Persons outside the state would include persons and organizations from outside Australia. Subsection (b) would allow the Coordinator to enter into agreements both before and during an emergency. The section allows the Coordinator and the Western Australian emergency management arrangements to bypass the Commonwealth and the provisions of COMDISPLAN by entering into direct agreements with interstate and international organizations.

Where international assistance is received, the State Emergency Coordinator can appoint incoming team members as authorized officers.⁹⁸ Authorized officers are given extensive emergency powers including the power to demand identification of people,⁹⁹ direct the evacuation of people and animals or restrict the movement out of a disaster area¹⁰⁰ and take control of private property.¹⁰¹ This would extend to incoming aid workers the powers and privileges of the domestic emergency services.

The role of the Australian Red Cross

Australian Red Cross, as part of the International Red Cross and Red Crescent Movement and a member of the International Federation of Red Cross and Red Crescent Societies (International Federation) is actively involved in all Australia's counter disaster arrangements.

Australian Red Cross is not a non-governmental organization and rather has a specific status under international law which is reflected in domestic documents of a binding legal nature.¹⁰² As is noted in the Guidelines Part I (3)(1), and part II (8)(1), national Red Cross and Red Crescent societies are auxiliaries to the public authorities in the humanitarian field. Initially this function was codified in the Geneva Conventions of 1949 and related to assisting the medical services of the armed forces;¹⁰³ however in the early 20th century, National Societies began to move beyond their wartime role and develop other areas of expertise and activities in areas such as improvement of health and national emergencies. This expanded role of National Societies

⁹⁶ *Emergency Management Act 2005* (WA), s 74(1).

⁹⁷ *Ibid*, s 11(3).

⁹⁸ *Ibid*, s 61.

⁹⁹ *Ibid*, s 66.

¹⁰⁰ *Ibid*, s 67.

¹⁰¹ *Ibid*, s 69; see also s 75.

¹⁰² Australian Red Cross National Societies Royal Charter of 1941

¹⁰³ See for example Article 26 of the First Geneva Convention 1949

was recognized in the Covenant of the League of Nations¹⁰⁴ and subsequently by the United Nations, which also contributed to the Federation obtaining observer status with the United Nations in October 1994.¹⁰⁵

This broader auxiliary role has also been recognized by authorities, such as the Australian government, through resolutions at the International Conferences of the Red Cross and Red Crescent Movement. In particular the Australian government has undertaken a range of pledges at international conferences which acknowledge the specific nature of Australian Red Cross action in areas including responses to natural disasters.

Australian Red Cross has a long history in mobilising significant community support in response to situations of emergency and disasters. This mobilisation occurs both through its donation activities and via some 10,000 trained Red Cross volunteers.

Recognising its critical role in emergencies and disasters internationally, and the high level of community expectation of the Red Cross emblem the organisation has made a substantial commitment to the development of capacity and capability in this critically important area during the last few years. This commitment continues, with the emergency services program one of the seven core areas for Red Cross within Australia. In particular, this has seen a substantial increase not only in immediate relief activities, but also through commitment to both household and community resilience and preparedness, and long term recovery.

The specific role and responsibilities of Red Cross vary slightly between States and Territories, however the following key activities are provided in one or more State/Territory jurisdictions:

- Reconnecting Families/National Registration and Inquiry System (NRIS)
- Public Appeal management and coordination
- Personal Support
- Emergency Shelter Management
- Single Incident Support
- Spontaneous Volunteers Management
- Emergency Preparedness
- Community Recovery Information
- Long term recovery programs in affected areas

During the 2009 black Saturday Bushfires in Victoria Red Cross contributed in each of these areas, by:

- providing a wide range of direct support activities in affected communities, and
- enhancing the overall response and recovery effort by providing critical advice to a wide range of forums and agencies, drawing upon our experience and expertise in emergency management within Australia and internationally.

The ongoing commitment continues through a three year recovery program, including a strong volunteer presence in affected communities.

¹⁰⁴ The Covenant of the League of Nations 1919 Article 25

¹⁰⁵ UN General Assembly Resolution 49/2 on of 27 October 1994 on Observer Status of the International Federation of Red Cross and Red Crescent Societies in the General Assembly. This same resolution also recalls “the special functions of the member societies of the International Federation of Red Cross and Red Crescent Societies which are recognized by their respective Governments as auxiliaries to the public authorities in the humanitarian field”.

In addition to the key roles outlined above Red Cross is also the primary agency for the provision of emergency catering in Victoria.¹⁰⁶ Red Cross also provides support for other agencies by supplying personnel to provide first aid and personal support services.¹⁰⁷

Red Cross is the only organisation outside of Government represented in emergency plans and management arrangements in every State and Territory, as well as at the Australian Government and local government levels. This includes representation on key committees responsible for planning and delivery of services in relation to preparedness, response and recovery.

The Red Cross Blood Service also manages the collection and distribution of blood and blood products for transfusion.¹⁰⁸

Conclusion

This part, Part II of the Report, has summarized Australia's international and domestic arrangements with respect to sending and receiving international disaster assistance. The next part will consider the IDRL Guidelines¹⁰⁹ and evaluate Australia's legal preparations for receiving international assistance against the standards set out in those guidelines. In Part IV, a similar analysis will be conducted considering Australia's legal preparations for sending assistance to affected countries.

¹⁰⁶ *Emergency Management Manual Victoria* (State of Victoria, Melbourne, 2007), 7-4.

¹⁰⁷ *Ibid*, 7-4 and 7-13; State Emergency Management Committee, *New South Wales State Disaster Plan (DISPLAN)* (Government of New South Wales, Sydney, 2005), 16; State Emergency Management Committee, *State Emergency Management Plan* (2.0 ed., Government of South Australia, Adelaide, 2008), 52; Tasmanian State Emergency Service, *Tasmanian Emergency Management Plan (Interim Edition)* (5 ed, State of Tasmania, Hobart, 2005), 6; Housing and Community Services ACT Department of Disability, *ACT Community Recovery Plan* (ACT Government, Canberra, 2007), 17; Northern Territory Emergency Services, *Northern Territory All Hazards Emergency Management Arrangements* (Northern Territory Counter Disaster Council, Darwin, 2007), A-2; B-13.

¹⁰⁸ State Emergency Management Committee, *New South Wales State Disaster Plan (DISPLAN)* (Government of New South Wales, Sydney, 2005), 22; State Counter Disaster Organisation, *Queensland State Counter Disaster Plan* (Queensland Government, Brisbane, 2001), 23; State Emergency Management Committee, *State Emergency Management Plan* (2.0 ed, Government of South Australia, Adelaide, 2008), 56; Tasmanian State Emergency Service, *Tasmanian Emergency Management Plan (Interim Edition)* (5 ed, State of Tasmania, Hobart, 2005), 25; Northern Territory Emergency Services, *Northern Territory All Hazards Emergency Management Arrangements* (Northern Territory Counter Disaster Council, Darwin, 2007), B-10.

¹⁰⁹ International Federation of Red Cross and Red Crescent Societies, *Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance* (2007).

Legal preparedness
for international disaster response in Australia

Part III
**Australia's position as
a Potential Recipient of
international assistance
measured against the IDRL
Guidelines**

Part III – Australia’s position as a Potential Recipient of international assistance measured against the IDRL Guidelines

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This part will assess Australia’s legal position against the IDRL Guidelines adopted by the International Red Cross Movement.¹¹⁰

Guideline 1: Purpose and scope

Guideline 2: Definitions

These introductory provisions do not make relevant recommendations and are not discussed further.

Part I: Core Responsibilities

Guideline 3: Responsibilities of affected States

Australia accepts that the core responsibility for disaster response rests with the Australian community and Australian governments, though, it should be noted, not the Commonwealth government. The primary responsibility for disaster response rests with the Australian States and Territories.¹¹¹ As previously noted, the Guidelines specifically mention the role of National Red Cross and Red Crescent Societies as auxiliaries to the public authorities in the humanitarian field, as well as the range of civil society actors have to play in supporting affected States.

The International Federation identified that the delivery of international post-disaster assistance can be delayed due to ‘procedural ambiguities frequently found in domestic legislation and policy on the initiation of international disaster assistance.’¹¹² Such ambiguities continue to exist in Australian law.

The States have comprehensive legislative provisions to provide for the control and coordination of counter-disaster operations but nothing similar exists at the Federal level. There is no clear agency or ‘national focal point’¹¹³ with sole and clear responsibility for managing the Commonwealth’s disaster response or the international response to a disaster in Australia. There are at least eleven Common-

¹¹⁰ *Adoption of the guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance*, Resolution 4, 30th International Conference of the Red Cross and Red Crescent, Document Number 30IC/07/R4 (2007)

¹¹¹ *Commonwealth Emergency Management Policy Statement* <http://www.ema.gov.au/agd/ema/emaInternet.nsf/Page/RW_P11A286E12CB5FCA3CA256C480004F92F?OpenDocument> at 29 May 2008; International Federation of Red Cross and Red Crescent Societies, *Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance* (2007), [3.1].

¹¹² David Fisher, *Law and legal issues in international disaster response: a desk study* (International Federation of Red Cross and Red Crescent Societies, Geneva, 2007), 89.

¹¹³ International Federation of Red Cross and Red Crescent Societies, *Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance* (2007), [8.1].

wealth government departments or agencies (including AusAID and EMA) that have emergency management roles.¹¹⁴

For example, in the event of a national disaster that required incoming international aid agencies to access Sydney airport without charge and outside the curfew times, and to bring in urgently required medications which are based on genetically modified organisms, there would need to be four separate determinations that an ‘emergency’ existed.

The Minister for Health and Aging would need to (1) make an ‘emergency dealing determination’ to allow emergency dealing with a genetically modified organism¹¹⁵ as well as (2) grant an exemption to allow the use of the medicaments that have not gone through the normal registration process.¹¹⁶ (3) The Minister for Infrastructure, Transport, Regional Development and Local Government could give an airport operator notice to provide priority access to the airport for relief flights¹¹⁷ but if, and only if, the defence force is involved in the response to the hazard event so before the Minister can give such notice, (4) The Prime Minister, the Attorney General and/ or the Minister for Defence would need to authorize the use of the defence force in the response.¹¹⁸ Because the incoming aircraft is involved in an emergency response, it would not be required to comply with the Sydney airport curfew, i.e. it could land or take off outside the hours of 6am to 11pm.¹¹⁹

There would need to be further, separate determinations, to ensure social security payments to the affected population,¹²⁰ to allow people to obtain necessary medication without being able to prove their identity with their Medicare card,¹²¹ to allow government agencies to share information so that people can be located, and the missing and dead identified¹²² and to ensure fuel reserves are maintained for the emergency operations.¹²³ There would also be a need for action by the Minister for Immigration to allow foreign aid workers to enter the country, and then further action at the State level to facilitate the recognition of professional qualifications.

Notwithstanding this broad range of agencies involved, there is no equivalent of the Principal Federal Official or Federal Coordinating Officer of the United States¹²⁴ to manage and coordinate the Commonwealth response. The closest would be the Director of Emergency Management Australia but without a clear mandate and legal authority, his or her ability to fulfil that role will depend to a large

¹¹⁴ Emergency Management Australia, *Australian Emergency Management Arrangements* (6th ed, Commonwealth of Australia, Canberra, 2000), 6-7;11-16. In 2000, the Commonwealth agencies and departments were the Commonwealth Counter-Disaster Task Force; Emergency Management Australia; Department of Finance and Administration; Department of Family and Community Services and Centrelink; Department of Health and Aged Care; Agriculture, Fisheries and Forestry – Australia, Australian Defence Force, Australian Geological Survey Organisation, Bureau of Meteorology; Australian Maritime Safety Authority and Australian Agency for International Development (AusAID).

¹¹⁵ *Gene Technology Act 2000* (Cth), s 72B.

¹¹⁶ *Therapeutic Goods Act 1989* (Cth), s 18A.

¹¹⁷ *Airports Act 1996* (Cth), s 250.

¹¹⁸ *Defence Act 1903* (Cth), Part IIIA.

¹¹⁹ *Sydney Airport Curfew Act 1995* (Cth), ss 6, 18, 19.

¹²⁰ *Social Security Act 1991* (Cth) s 36.

¹²¹ *National Health Act 1953* (Cth) s 86E.

¹²² *Privacy Act 1988* (Cth) s 80J.

¹²³ *Liquid Fuel Emergency Act 1984* (Cth) s 16.

¹²⁴ Christine E. Wormuth and Anne Witkowsky, *Managing the Next Domestic Catastrophe: Ready (or Not)?* (Center for Strategic and International Studies, Washington DC, 2008)

extent on personalities. The Director has no statutory authority; must seek approval from the Attorney-General and any other relevant Minister before committing Commonwealth resources to a disaster response; and cannot direct any of the Commonwealth agencies, including Customs, Immigration or Quarantine, on how they are to respond to a catastrophic disaster.

The procedures envisaged in COMDISPLAN for the receipt of international assistance do not cover all eventualities. Affected jurisdictions are not required to go through the Commonwealth agency in seeking international assistance. Arrangements have been made with fire-fighting agencies in the United States, Canada and New Zealand, and fire-fighters have been brought into Australia to provide international assistance to Australia’s domestic fire-fighting agencies without first activating COMDISPLAN.¹²⁵ Legislation in Western Australia¹²⁶ and the Australian Capital Territory¹²⁷ envisage agreements being made between the State and international organizations, while the Northern Territory Counter Disaster plan provides for agreements with organizations from outside the Territory, which could include those based overseas.¹²⁸ These agreements can be made and acted upon without specific reference to the Commonwealth or COMDISPLAN.

There is no right in COMDISPLAN for States and Territories to request international assistance. COMDISPLAN is activated when an affected jurisdiction requests Commonwealth assistance. Such a request can be made where ‘... the total resources (government, community and commercial) of an affected State cannot reasonably cope with the needs of the situation’.¹²⁹ A State cannot (and need not) specifically direct a request for international assistance to the Commonwealth. The request, under COMDISPLAN, is for Commonwealth assistance. The request becomes a request for international assistance when Emergency Management Australia, the Department of Foreign Affairs and Trade, and the affected jurisdiction accept that international assistance is required.¹³⁰ If a State wants to request international assistance, but the Commonwealth takes the view that the necessary assets are available in Australia, it would be open to the Commonwealth to refuse to make the international request, and equally open to the affected jurisdiction to make the request without reference to the Commonwealth. If States and Territories choose to direct their requests for international assistance through Emergency Management Australia, it is more a product of the goodwill between the agencies,¹³¹ rather than any legal requirement.

Apart from no single point of contact for facilitating international assistance, there is no clear criterion on when such assistance should be sought. No State or Territory counter-disaster plan specifically

¹²⁵ These agreements were discussed in Part four, above.

¹²⁶ In Western Australia the Act provides for agreements with persons outside the State, which could include persons or organisations outside Australia; *Emergency Management Act 2005* (WA), s 11(3).

¹²⁷ The ACT legislation specifically refers to assistance from overseas agencies; *Emergencies Act 2004* (ACT), ss 64 and 180.

¹²⁸ Northern Territory Emergency Services, *Northern Territory All Hazards Emergency Management Arrangements* (Northern Territory Counter Disaster Council, Darwin, 2007), [17].

¹²⁹ Emergency Management Australia, *Commonwealth Government Disaster Response Plan (COMDISPLAN)* (Commonwealth of Australia, Canberra, 2002), [1.1].

¹³⁰ *Ibid*, [4.13].

¹³¹ David Templeman and Anthony Bergin, *Taking a punch: Building a more resilient Australia*, (Australian Strategic Policy Institute, Canberra, 2008) <http://www.aspi.org.au/publications/publication_details.aspx?ContentID=165&pubtype=6> at 12 May 2008, 7.

addresses the need for international assistance; instead, each assumes that Commonwealth and inter-state assistance alone will be sufficient.¹³²

Whom the Commonwealth would approach, if asked to find international assistance, is not set out in legislation or COMDISPLAN. Presumably the Commonwealth officers would call upon agencies that they know can meet the needs of the affected State or call upon the offices of the United Nations to assist if the disaster was of such a scale that widespread assistance, rather than particular skills or equipment, were needed. Australia does have Status of Forces agreements that would make it easier for Australia to seek assistance from the military forces of those countries.¹³³ Australia has also agreed to cooperate with Indonesia,¹³⁴ France and New Zealand¹³⁵ on disaster response which may encourage the Commonwealth to seek assistance from those countries, if they can provide the necessary resources.

International non-government organizations may provide assistance to the Australian chapter of their organization without specific reference to the Commonwealth. Governments and non-government organizations can make offers directly to the affected jurisdiction or to entities involved in the disaster response. A foreign non-government organization may be unwilling to accept the medium of the federal or state governments, in which case, it may prefer, and would be free to, approach non-government organizations directly.

Although the International Federation respects state sovereignty, it has been noted that ...

*both common practice and the Movement's governing regulations establish that the various components of the Movement may provide support to the National Red Cross or Red Crescent Society in an affected state when that society requests it (or if it accepts an offer of such support), without a separate approval from the government.*¹³⁶

Australian Red Cross is involved in Australia's counter-disaster arrangements as a participating or sup-

¹³² Northern Territory Emergency Services, *Northern Territory All Hazards Emergency Management Arrangements* (Northern Territory Counter Disaster Council, Darwin, 2007), [5]; *Emergency Management Manual Victoria* (State of Victoria, Melbourne, 2007), [1.12], [3.1], [3.4] and Appendix 4; State Emergency Management Committee, *New South Wales State Disaster Plan (DISPLAN)* (Government of New South Wales, Sydney, 2005), [113(a)], [309] and [510]; State Counter Disaster Organisation, *Queensland State Counter Disaster Plan* (Queensland Government, Brisbane, 2001), Part 1 [3], Part 3 [5], [31] and [32]; Tasmanian State Emergency Service, *Tasmanian Emergency Management Plan (Interim Edition)* (5 ed, State of Tasmania, Hobart, 2005), [4.14].

¹³³ *Agreement between Australia and Papua New Guinea regarding the Status of Forces of each State in the Territory of the other State, and Agreed Minute*, opened for signature 26 January 1977, [1977] ATS 6, (entered into force 26 January 1977); *Agreement between Australia and the Kyrgyz Republic on the Status of Australian Forces in the Kyrgyz Republic* opened for signature 9 July 2002, [2002] ATS 14 (entered into force 9 July 2002); *Agreement between the Government of Australia and the Government of Malaysia concerning the Status of Forces*, opened for signature 3 February 1997, [1999] ATS 14, (entered into force 22 July 1999); *Agreement Between the Government of Australia and the Government of New Zealand Concerning the Status of their Forces*, opened for signature 29 October 1998, [2005] ATS 12, (entered into force 27 May 2005); *Agreement between the Government of the Commonwealth of Australia and the Government of the United States of America concerning the Status of United States Forces in Australia, and Protocol* opened for signature 9 May 1963, [1963] ATS 10, (entered into force 9 May 1963).

¹³⁴ *Agreement between Australia and the Republic of Indonesia on the Framework for Security Cooperation*, opened for signature 13 November 2006, [2008] ATS 3, (entered into force 7 February 2008).

¹³⁵ *Joint Statement on Disaster Relief Cooperation in the South Pacific*, Wellington, 22 December 1992,

¹³⁶ David Fisher, *Law and legal issues in international disaster response: a desk study* (International Federation of Red Cross and Red Crescent Societies, Geneva, 2007), 92.

porting organization.¹³⁷ Where the Red Cross Red Crescent Movement finds itself unable to meet the obligations it has agreed to undertake, it could look to other members of the Movement from overseas to provide further assistance. Other organisations with international connections such as St John Ambulance Australia and the Salvation Army may also be able to call upon overseas branches of their organisation to provide further personnel and resources to meet their State counter-disaster obligations.

This review indicates that although COMDISPLAN envisages that requests for international assistance will be channelled through a single contact point, namely Emergency Management Australia, the reality is that international assistance can be arranged through a number of channels opening the door for confusion and duplication.

Guideline 4: Responsibilities of assisting actors

It is the responsibility of assisting actors to ensure that their personnel comply with the law of the affected country, coordinate with the domestic authorities¹³⁸ and provide aid that is, among other things, required, of suitable quality, is delivered in a culturally sensitive manner and provided by competent personnel.¹³⁹

Coordination

All the States and Territories have in place detailed legislative schemes to put in place a coordinator to manage the response to a disaster within their territory. International agencies that are willing to provide post-disaster assistance would be expected to work with the coordinating authorities and make their services available as part of the overall disaster response. This may conflict with the traditional view of the non-government sector that their members’ actions should be independent of government and based on their own assessment of the relevant community’s needs.

An international agency that refuses to work with the coordinating authorities would not enjoy any legal protection and could well be refused access to a disaster-affected community.

Quality and accountability

As COMDISPLAN and the State Disaster Plans are generally silent on the need for international disaster assistance, there is no requirement that incoming aid agencies be committed to compliance with

¹³⁷ Tasmanian State Emergency Service, *Tasmanian Emergency Management Plan (Interim Edition)* (5 ed, State of Tasmania, Hobart, 2005), Part 3 Organisational Roles; State Counter Disaster Organisation, *Queensland State Counter Disaster Plan* (Queensland Government, Brisbane, 2001), 23, 47; State Emergency Management Committee, *New South Wales State Disaster Plan (DISPLAN)* (Government of New South Wales, Sydney, 2005), 16, 22, 24, 31; *Agreement between Australia and Papua New Guinea regarding the Status of Forces of each State in the Territory of the other State, and Agreed Minute*, opened for signature 26 January 1977, [1977] ATS 6, (entered into force 26 January 1977); Northern Territory Emergency Services, *Northern Territory All Hazards Emergency Management Arrangements* (Northern Territory Counter Disaster Council, Darwin, 2007), [47], Annex A-2; Annex B-10, Annex B-13; *Emergency Management Manual Victoria* (State of Victoria, Melbourne, 2007), 5-9; 5-10; 5-19; 5-20; 5-21; 5-22; 5-26.

¹³⁸ International Federation of Red Cross and Red Crescent Societies, *Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance* (2007), [4.1].

¹³⁹ *Ibid.*, [4.2] and [4.3].

accountability standards such as the Red Cross Red Crescent Code of Conduct,¹⁴⁰ the Sphere Standards¹⁴¹ or the Humanitarian Accountability Project Standard.¹⁴² In the absence of any pre-registration or declared standard, ensuring that incoming aid is of sufficient quality and that aid providers will be accountable will depend on the skill and judgment of those managing the request for aid.

Incoming aid agencies may be held accountable by the normal standards of Australian law. They would be required to comply with regulatory provisions such as the *Corporations Act*¹⁴³ and Australian taxation law. They would be expected to meet standards with respect to any particular work they undertake and to comply with laws relating to employment, anti-discrimination, occupational health and safety, financial disclosure, the provision of goods and services in a good and workmanlike manner and so on.

Failure by aid agencies operating in Australia to comply with Australian laws could see them subject to the normal legal recourse including criminal prosecution and/or civil suits.

The exceptions to these general principles will apply when the foreign agency is working as part of and at the direction of the emergency controller in charge of managing the response to a catastrophic disaster. Each State and Territory, as well as the Commonwealth, has legislation to provide some limited legal protection to people acting under the authority of the State or Territory Government, the controller or pursuant to the terms of the Act.¹⁴⁴ In some cases, the legislation sets up a bar to any claim for compensation;¹⁴⁵ in others, it redirects the claim, making it clear that it is the State or the Crown that is liable for the negligence or improper conduct of an emergency worker or organization taking part in counter-disaster operations.¹⁴⁶

Victoria has the most limited immunity clause, providing protection only to volunteer emergency workers,¹⁴⁷ which could include international volunteers acting on behalf of agencies with authority under the State Disaster plan¹⁴⁸ but would not extend to paid staff, or international agencies acting on their own initiative.

¹⁴⁰ *The Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organisations (NGOs) in Disaster Relief* (International Federation of Red Cross and Red Crescent Societies, Geneva, 1995).

¹⁴¹ *The Sphere Project: Humanitarian Charter and Minimum Standards in Disaster Response* (2004 ed, The Sphere Project, Geneva, 2004).

¹⁴² Humanitarian Accountability Partnership - International, *HAP 2007 Standard in Humanitarian Accountability and Quality Management* <[http://www.hapinternational.org/pool/files/hap-2007-standard\(1\).pdf](http://www.hapinternational.org/pool/files/hap-2007-standard(1).pdf)> at 6 May 2008.

¹⁴³ *Corporations Act 2001* (Cth).

¹⁴⁴ *Foreign States Immunities Act 1985* (Cth) s 42A; *Emergencies Act 2004* (ACT), s 198; *State Emergency and Rescue Management Act 1989* (NSW), s 41; *Disasters Act 1982* (NT), s 42; *Disaster Management Act 2003* (Qld), s 144; *Emergency Management Act 2004* (SA), s 32; *Emergency Management Act 2006* (Tas) ss 55 and 58; *Emergency Management Act 1986* (Vic), s 37 (though this section only applies to volunteer emergency workers, not paid staff); *Emergency Management Act 2005* (WA), s 100.

¹⁴⁵ *Foreign States Immunities Act 1985* (Cth) s 42A; *Emergency Management Act 2005* (WA), s 100; *Disaster Management Act 2003* (Qld), s 144; *Disasters Act 1982* (NT), s 42; *State Emergency and Rescue Management Act 1989* (NSW), s 41.

¹⁴⁶ *Emergency Management Act 2006* (Tas), ss 55 and 58; *Emergency Management Act 2004* (SA), s 32; *Emergencies Act 2004* (ACT), s 198.

¹⁴⁷ *Emergency Management Act 1986* (Vic), s 37.

¹⁴⁸ *Ibid*, s 4.

Guideline 5: Additional responsibilities of all states

These guidelines are discussed below when considering Australia’s legal position as an aid donor, rather than an aid recipient.

Guideline 6: Responsibilities concerning diversion and the intended use of resources

Australia as a recipient of international assistance could be expected to ‘... cooperate to prevent unlawful diversion, misappropriation, or fraud ...’¹⁴⁹ and to use received funds for the purpose for which they were intended¹⁵⁰ and in compliance with Australian law.

Whether the fraud or misappropriation takes place in Australia or overseas, Australia would be expected to apply relevant Australian law. Where the impropriety occurs overseas, Australia could be expected to cooperate by providing relevant evidence, assisting with the investigation and deportation of alleged offenders. Where the fraud or impropriety occurs in Australia, then any person involved would be subject to Australian criminal, trade practices or other law.

Detailing all the relevant legal provisions, including provisions in State law and the Commonwealth Criminal Code¹⁵¹ that may be involved, as well as treaties for international law enforcement cooperation and extradition is beyond the scope of this report. Equally provisions dealing with anti-fraud measures are to be found in criminal and trade practices legislation rather than counter-disaster measures, and thus will not be explored further here.

Part II: Early Warning and Preparedness

Guideline 7: Early warning

The IDRL Guidelines urge States to have in place early warning mechanisms to warn other States about emerging hazards and disasters.¹⁵² The point of such warnings is to ‘minimize transboundary impacts and maximise the effectiveness of any international assistance that may be required.’¹⁵³ Given Australia’s geographic isolation and the fact that there is no land border with any other country, there is little risk of a hazard that develops on Australian territory spreading to even the nearest neighbour, so the need to ‘minimize transboundary effects’ will not be considered further in this report.

Warning other States and the United Nations of an emerging disaster on Australian territory could ‘maximise the effectiveness of any international assistance that may be required’¹⁵⁴ by giving assisting States and organizations timely warning about the need for assistance and the type of assistance that may be required.

¹⁴⁹ International Federation of Red Cross and Red Crescent Societies, *Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance* (2007), [6.1].

¹⁵⁰ *Ibid.*, [6.2].

¹⁵¹ *Criminal Code* (Cth) 1995.

¹⁵² International Federation of Red Cross and Red Crescent Societies, *Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance* (2007), [7.1].

¹⁵³ *Ibid.*

¹⁵⁴ *Ibid.*

The Bureau of Meteorology is required to make weather observations and predictions, and to make warnings with regard to extreme weather events.¹⁵⁵ The Bureau, in conjunction with Geoscience Australia operates the Joint Australian Tsunami Warning Centre¹⁵⁶ which cooperates with international tsunami warning systems such as the International Oceanographic Commission. This is consistent with the Bureau of Meteorology statutory obligation to cooperate with the ‘meteorological service of any other country’¹⁵⁷ but the expected extent, or outcome, of that cooperation is not set out. It follows that Australia does cooperate with international agencies to provide an early warning system to identify hazards in Australia and overseas, but that cooperation is based largely on international and inter-agency relationships and perceived mutual obligation rather than any specific legal requirement.

COMDISPLAN¹⁵⁸ is predicated upon the Commonwealth receiving a request for assistance from an affected State and the Commonwealth agencies, consulting and agreeing with the States, before making a request for international assistance. This process depends on the event occurring and the response being managed by the States until it is agreed that the resources required to meet the disaster are not available in Australia.¹⁵⁹ There is nothing in COMDISPLAN to facilitate a ‘pre-warning’ that a hazard is emerging that may require international assistance.¹⁶⁰

There is no Commonwealth counter-disaster legislation that would empower or require the Commonwealth to give a warning of imminent peril nor is the matter addressed in State and Territory legislation. That does not mean, however, that either the Commonwealth or the States cannot pre-warn potential assisting States or the United Nations. The Commonwealth as part of its normal diplomatic relations, in the exercise of its Constitutional role in managing Australia’s ‘external affairs’¹⁶¹ and in the exercise of the executive power of the Commonwealth¹⁶² can maintain relationships with other States that involves cooperation and information sharing. The Australian States also have relationships with international counterparts¹⁶³ that will also encourage information sharing and pre-warning that assistance may be required.

The absence of any specific provision to authorize a pre-warning that assistance may be required means however that there is no clear ‘trigger’ of when, to whom and how that warning may be given. There is no formal process of cooperation between the States and the Commonwealth to ensure that if a State counter-disaster agency foresees that international assistance will be required, that can be conveyed to, and acted upon, by the Commonwealth to ensure easy access by the assisting State. It may be imagined that the normal process of government cooperation will work in these circumstances. However, the circumstances being contemplated are the presence of a disaster of significant and catastrophic proportion that overwhelms the capacity of the affected State or States. Relying on the normal processes of

¹⁵⁵ *Meteorology Act 1955* (Cth), s 6.

¹⁵⁶ Geoscience Australia and Bureau of Meteorology, *Joint Australian Tsunami Warning Centre* <<http://www.bom.gov.au/tsunami/>> at 16 August 2008.

¹⁵⁷ *Meteorology Act 1955* (Cth), s 6.

¹⁵⁸ Emergency Management Australia, *Commonwealth Government Disaster Response Plan (COMDISPLAN)* (Commonwealth of Australia, Canberra, 2002)

¹⁵⁹ *Ibid*, [4.13.1].

¹⁶⁰ International Federation of Red Cross and Red Crescent Societies, *Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance* (2007), [7.1].

¹⁶¹ *Australian Constitution*, s 51(xxix).

¹⁶² *Ibid*, s 61.

¹⁶³ See for example, *Wildfire Arrangement between the Department of the Interior and the Department of Agriculture of the United States of America and the Australian Participating Agencies*, 2002

government to operate in such a situation may not be consistent with a modern approach to risk and hazard management.

Guideline 8: Legal policy and institutional frameworks

The Australian States and Territories are taking active steps to develop:

*... comprehensive legal, policy, and institutional frameworks and planning for disaster prevention, mitigation, preparedness, relief and recovery which take full account of the auxiliary role of the auxiliary role of their National Red Cross or Red Crescent Society, are inclusive of domestic civil society, and empower communities to enhance their own safety and resilience.*¹⁶⁴

To that extent, they are taking the ‘necessary steps’ to achieve objectives that are consistent with the IDRL Guidelines,¹⁶⁵ save that with the exception of the Australian Capital Territory, the State laws are silent on the question of international assistance.¹⁶⁶

As noted above, at the Commonwealth level Australia’s legal preparedness seems particularly weak. It is clear that Australia does not have ‘comprehensive legal, policy, and institutional frameworks and planning for disaster prevention, mitigation, preparedness, relief and recovery’.¹⁶⁷ There is no clear legal mechanism in place to manage the Commonwealth’s response or define the Commonwealth’s role in the management of a catastrophic disaster. The Commonwealth assumes that it will be ‘business as usual’¹⁶⁸ in the event of a disaster.

The ‘initiation, facilitation, transit and regulation of international disaster relief and initial recovery assistance’¹⁶⁹ rates barely a mention in Australian law save that the Customs legislation provides that such material may be brought in duty free.¹⁷⁰ The initiation of international assistance is limited to the Commonwealth passing on such a request if they form the view that such assistance is required. There is no role in either COMDISPLAN or AUSASSISTPLAN for the United Nations or specific provisions for providing assistance through the offices of the United Nations.

¹⁶⁴ International Federation of Red Cross and Red Crescent Societies, *Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance* (2007), [8.1].

¹⁶⁵ *Ibid*, [8.3].

¹⁶⁶ *Disasters Act 1982* (NT); *Emergency Management Act 1986* (Vic); *State Emergency and Rescue Management Act 1989* (NSW); *Disaster Management Act 2003* (Qld); *Emergency Management Act 2004* (SA); *Emergencies Act 2004* (ACT); *Emergency Management Act 2005* (WA); *Emergency Management Act 2006* (Tas).

¹⁶⁷ International Federation of Red Cross and Red Crescent Societies, *Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance* (2007), [8.1].

¹⁶⁸ Katrien Beeckman, ‘International Response to non-armed conflict disasters: legal challenges encountered in light of the current regulatory framework’ (Paper presented at the Eleventh Annual Humanitarian Conference, Webster University, Geneva, 2-3 March 2006) .

¹⁶⁹ International Federation of Red Cross and Red Crescent Societies, *Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance* (2007), [8.2].

¹⁷⁰ *Customs Act 1901* (Cth).

The Commonwealth does seek to ‘empower communities to enhance their own safety and resilience’¹⁷¹ principally through grants designed to support programmes that advance these aims (such as the Safer Communities Awards, Natural Disaster Mitigation Program, Bushfire Mitigation Program and National Emergency Volunteer Support Fund) and by funding research on programmes that can enhance community resilience (leading to reports such as Guidelines for Emergency Management in Culturally and Linguistically Diverse Communities, Keeping Our Mob Safe: National Emergency Management Strategy for Remote Indigenous Communities and Working Together to Manage Emergencies).¹⁷² These programmes are not generally supported by specific legal mechanism but show a clear commitment by Emergency Management Australia and the Commonwealth to advance community resilience.

The Commonwealth has not formally adopted the IDRL Guidelines so it does not encourage States to specifically ‘take the necessary steps ... to implement the Guidelines’¹⁷³ but it does encourage and require State and Territory governments to take responsibility for emergency management within their jurisdiction and therefore it will be the States and Territories that are responsible for the relevant law that deals with the matters raised in the IDRL Guidelines. Encouragement of the States and Territories comes in the form of financial assistance,¹⁷⁴ the offer of Commonwealth assistance when requested,¹⁷⁵ and the provision of training to State officials provided by the Emergency Management Australia Institute at Mt. Macedon, Victoria.

Guideline 9: Regional and international support for domestic capacity

This guideline is discussed below when considering Australia’s legal position as an aid donor, rather than an aid recipient.

Part III: Initiation and Termination of International Disaster Relief and Initial Recovery Assistance.

Guideline 10: Initiation

Australian law fails to adequately deal with the issues raised in Part III of the IDRL Guidelines. The only relevant assessment to be undertaken before international aid is sought is an assessment that whatever resources requested by a State or Territory are not available in Australia.¹⁷⁶ The various State Acts and counter-disaster plans do not address the questions of what criteria will be used to determine if and when international assistance will be requested. There is no provision in Australian law for joint Australian/UN needs assessment.¹⁷⁷

¹⁷¹ International Federation of Red Cross and Red Crescent Societies, *Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance* (2007), [8.1].

¹⁷² Emergency Management Australia, *Emergency Management Australia; Quick Links* <<http://www.ema.gov.au/>> at 16 August 2008.

¹⁷³ International Federation of Red Cross and Red Crescent Societies, *Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance* (2007), [8.3].

¹⁷⁴ Discussed above.

¹⁷⁵ Emergency Management Australia, *Commonwealth Government Disaster Response Plan (COMDISPLAN)* (Commonwealth of Australia, Canberra, 2002).

¹⁷⁶ Ibid.

¹⁷⁷ International Federation of Red Cross and Red Crescent Societies, *Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance* (2007), [8.2].

COMDISPLAN and State plans do not detail how requests for international assistance should be made, and to whom. It has been noted that Australia and the individual States and Territories are free to seek assistance from States and State agencies as they see fit.

Guideline 11: Initiation of military relief

As an aid donor, Australia is committed to upholding and applying the ‘the 1994 Guidelines on the Use of Military and Civil Defence Assets in Disaster Relief’,¹⁷⁸ known as the ‘Oslo Guidelines’. Notwithstanding this stated commitment, Australian law (being largely silent on when and how international assistance will be requested) does not address the question of *if* and *when* assistance from foreign militaries will be accepted. The IDRL Guidelines recommend that prior to any deployment:

... terms and conditions (including such issues of the duration of deployment, whether they must be armed or may be armed, the use of their national uniforms, and mechanisms for cooperation with civilian actors) are to be agreed by the affected and assisting States.

Australia has no standing agreements with foreign forces to deal with these issues. The Status of Forces agreements are silent on the role that international forces may play in domestic disaster relief and their cooperation with State agencies. Issues such as whether medical staff from foreign forces could provide medical care to Australian civilians or engineers could provide professional services are not dealt with in any Status of Forces agreements or in the *Defence (Visiting Forces) Act 1963* (Cth).

Guideline 12: Termination

Australian law is virtually silent on when foreign assistance will be terminated, on what notice should be given to foreign actors providing assistance on Australian territory and how foreign assistance will be phased out.¹⁷⁹

The only relevant provision provides that prior to the departure of international relief teams ‘... EMA will liaise with State authorities to arrange debriefing.’¹⁸⁰

Part IV: Eligibility for legal facilities

Guideline 13: Facilities for assisting States

There are no specific provisions in Australian law to grant legal facilities to assisting States.¹⁸¹

¹⁷⁸ Good Humanitarian Donorship, *Principles and Good Practice of Humanitarian Donorship* <<http://www.goodhumanitariandonorship.org/>> at 25 February 2008, [20].

¹⁷⁹ International Federation of Red Cross and Red Crescent Societies, *Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance* (2007), [12].

¹⁸⁰ Emergency Management Australia, *Commonwealth Government Disaster Response Plan (COMDISPLAN)* (Commonwealth of Australia, Canberra, 2002), Appendix E [11].

¹⁸¹ International Federation of Red Cross and Red Crescent Societies, *Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance* (2007), [13].

Guideline 14: Facilities for assisting humanitarian organizations

There is no provision in Australian law that identifies ‘criteria for assisting humanitarian organizations’¹⁸² to determine which or what types of organizations will be permitted to provide post-disaster relief to Australia. There is therefore no requirement that organizations seeking to operate in Australia demonstrate a ‘willingness and capacity’¹⁸³ to act in accordance with the humanitarian principles of neutrality, humanity and impartiality. This is consistent with the fact that Australian law and policy is based on the assumption that such assistance will not be required in Australia.

A key recommendation is:

*Determination of eligibility by the State ... should be possible in advance of a disaster, or as soon as possible after its onset. Applicable procedures ... might include the use of a national roster, bilateral agreements or reliance upon international or regional systems of accreditation...*¹⁸⁴

Again Australia has no such process where organizations that wish to provide assistance can be ‘pre-registered’ or ‘pre-approved’ for entry into Australia.

Guideline 15: Facilities for other assisting actors

There are no specific provisions in Australian law to grant legal facilities to other assisting actors such as private corporations.¹⁸⁵

Part V: Legal facilities for entry and operations

Guideline 16: Personnel

States are encouraged to grant visas, preferably without cost, to waive or expedite the process to obtain visas and permits, recognize foreign qualifications and facilitate freedom of access to the disaster area.¹⁸⁶

Visas

COMDISPLAN assumes that all incoming relief personnel will need to comply with normal entry requirements and therefore, must have appropriate visas for entry into Australia. Persons travelling on New Zealand passports are permitted to enter Australia without obtaining a visa prior to their departure for Australia and are granted a ‘special category visa’ on the presentation of their New Zealand passport.¹⁸⁷

¹⁸² Ibid, [14.2].

¹⁸³ Ibid.

¹⁸⁴ Ibid, [14.4].

¹⁸⁵ Ibid, [15].

¹⁸⁶ Ibid, [16.1].

¹⁸⁷ *Migration Act 1958* (Cth), ss 32 and 42(2A).

For citizens of other countries, there is a great number of different types of visas that may be granted to allow people to travel to and remain in Australia.¹⁸⁸ For the purpose of facilitating the receipt of international disaster assistance, the Minister may grant a ‘Special Purpose Visa’.¹⁸⁹

A number of special purpose visas have been granted. Members (including civilian members) of the armed forces of countries where Australia has a status of forces agreement, members of the armed forces of the Asia-Pacific region and of the Commonwealth and members of foreign navies have, as a class, been granted special purpose visas.¹⁹⁰ Members of these forces may enter Australia without an individually issued visa provided they carry their identity papers and movement orders and in the case of navy crews, provided the ship on which they travel has appropriate authority to enter Australia.¹⁹¹

To facilitate international assistance, the Minister could declare, in writing, that a person or a class of people are taken to have been granted a special purpose visa.¹⁹² This would allow the Minister to grant a special purpose visa to named members of an international assistance team or to people who fall within a descriptive class; for example, people travelling with endorsement from the United Nations as part of the international assistance team provided by a particular country or non-government organization.

Without a Special Purpose Visa, aid workers coming to Australia to provide post-disaster assistance would be required to comply with normal migration requirements and to obtain, before they travel, an appropriate visa to allow travel to, and entry into, Australia. There are a number of visas that individuals could apply for, depending on their circumstances. Identifying which visa is required or for which visa the applicant would be eligible is a matter of specialist knowledge and would depend on the circumstances in each case, and thus, cannot be explored in detail here. It is clear however that the process can take some time and would need to be completed before arrival.

Recognition of professional qualifications

The recognition of professional qualifications would generally be a matter for State law, rather than Commonwealth law. Legislation in the Australian Capital Territory provides that where foreign assistance is provided in accordance with a cooperative agreement, overseas professional qualifications will be recognized in the Territory without further need for certification or registration.¹⁹³

Other States and Territories do not have such far-reaching legislation. Where a person requires a licence to perform a particular trade or profession, reference would need to be made to each relevant State or Territory Act to determine if and when foreign professionals can practise that trade or profession even in the face of a disaster.

It is beyond the scope of this report to identify the procedures that could be used to facilitate the provision of post-disaster assistance by all manner of relevant trades and professional workers. In order to identify the complexity that may arise, the following discussion will consider whether or not overseas medical practitioners may be allowed to practise medicine in the post-disaster situation.

¹⁸⁸ Ibid, s 29.

¹⁸⁹ Ibid, s 33.

¹⁹⁰ *Migration Regulations 1994* (Cth), cl 2.40.

¹⁹¹ Ibid, cl 1.03.

¹⁹² *Migration Act 1958* (Cth), s 33(2).

¹⁹³ *Emergencies Act 2004* (ACT), s 180.

Medical practitioners

Medical practitioners must be registered in the State or Territory in which they wish to practise their profession. If an incoming doctor is registered in New Zealand or one Australian State or Territory, then he or she will be able to work in another Australian jurisdiction; i.e. once registered in one jurisdiction, he or she can practise in all.¹⁹⁴ This right to practise across jurisdictions is not, however, automatic; it requires registered professionals to notify the registration authorities in each jurisdiction in which they want to practise and then be registered in that jurisdiction.¹⁹⁵ This process takes time.¹⁹⁶

This process requires that the professional be actually registered in the first jurisdiction. In the case of New South Wales, for example, the mutual recognition principles would apply and would allow an incoming doctor who was given conditional registration¹⁹⁷ to seek equivalent registration in, say, Victoria. The mutual recognition principles¹⁹⁸ would not, however, apply if the requirements for registration were dispensed with; so, for example, a doctor who is allowed to practise in the Australian Capital Territory on the basis of being exempt from the need to register¹⁹⁹ cannot rely on the mutual recognition principles to seek registration in another State or Territory as they are not registered in the Territory, as required by the Commonwealth law.²⁰⁰

Special event provisions have been enacted to allow overseas registered medical practitioners to practise at proclaimed special events such as the Olympic Games. These Acts allow a doctor who is a member of a team or delegation that is travelling to Australia to take part in the proclaimed special event to provide medical services to the other members of the team or delegation.²⁰¹ Because the right to practise is limited to a right to provide medical care to members of the doctor's own team or delegation, these Acts would have little practical use in a post-disaster situation even if such a situation could be declared a 'special event' within the meaning of the Act.

Given that a medical practitioner registered in one jurisdiction can seek registration in another, it is now appropriate to consider how an incoming medical practitioner might be registered in each of the Australian jurisdictions. How these provisions might be used to facilitate the receipt of international assistance will be identified. The discussion will identify the approaches adopted by the Australian States and Territories.

¹⁹⁴ *Mutual Recognition Act 1992* (Cth); *Trans-Tasman Mutual Recognition Act 1997* (Cth).

¹⁹⁵ *Mutual Recognition Act 1992* (Cth), ss 17 and 19.

¹⁹⁶ This reflects the current law and practice. It is anticipated that in July 2010 there will be a national registration scheme that will mean a doctor is registered once only and then allowed to practice across Australia. The details of that scheme are still being worked out. See Health Workforce Australia, *National Registration and Accreditation Scheme* <<http://www.nhwt.gov.au/natreg.asp>> at 29 January 2009. This scheme may have implications for medical and other health professionals but not other professionals requiring local registration.

¹⁹⁷ *Medical Practice Act 1992* (NSW), s 7.

¹⁹⁸ *Mutual Recognition Act 1992* (Cth), s 17; *Trans-Tasman Mutual Recognition Act 1997* (Cth), s 16.

¹⁹⁹ *Emergencies Act 2004* (ACT), s 180.

²⁰⁰ *Mutual Recognition Act 1992* (Cth), ss 17 and 19; *Trans-Tasman Mutual Recognition Act 1997* (Cth), ss 16 and 18.

²⁰¹ *Health Professionals (Special Events Exemption) Act 1997* (NSW); see also *Health Practitioners (Special Events Exemptions) Act 1998* (Qld); *Health Professionals (Special Events Exemptions) Act 2000* (ACT); *Health Professionals (Special Events Exemptions) Act 2000* (SA); *Health Professionals (Special Events Exemption) Act 1998* (Tas); *Health Practitioners (Special Events Exemption) Act 1999* (Vic); *Health Professionals (Special Events Exemption) Act 2000* (WA).

The Australian Capital Territory

Where international assistance is being provided to the Territory under a ‘cooperative agreement’ professional qualifications are accepted without the need for further certification or registration.²⁰² This would apply to a health professional who was deployed as part of a team that was subject to a pre-existing agreement.

Where the *Emergencies Act* does not apply, the Minister for Health²⁰³ may waive registration requirements for incoming health professionals if in the Minister’s opinion, it is ‘in the public interest to do so’.²⁰⁴

New South Wales, Northern Territory, Queensland and Tasmania

New South Wales legislation provides that a ‘recognised foreign’ doctor may give ‘... medical or surgical advice, service, attendance or operation ... in an emergency’²⁰⁵ as if they were registered in New South Wales. On the surface, this would appear to allow a foreign doctor, deployed as part of an international response team to practise in New South Wales. Unfortunately the term ‘recognised foreign practitioner’ is defined as a medical practitioner from another Australian State or Territory or New Zealand²⁰⁶ and so will not cover international doctors generally. A similar provision applies in Queensland, again limited to interstate rather than foreign doctors.²⁰⁷

In New South Wales, the Northern Territory, Queensland and Tasmania, a foreign doctor who has not meet the standard criteria for registration (that is having completed an approved degree or otherwise demonstrated their competence by having passed the Australian Medical Council examinations²⁰⁸) may be conditionally registered if his or her registration ‘is in the public interest’.²⁰⁹

The registration board in each State may think it is in the public interest to provide conditional registration to doctors who are coming to Australia as part of an international disaster response effort.

In New South Wales, the Minister for Emergency Services²¹⁰ may direct a government department, which would include the Medical Board,²¹¹ to act under its legislation. In Queensland, the Chair of the State Disaster Management Group or a district disaster coordinator can give directions about how

²⁰² *Emergencies Act 2004* (ACT), s 180.

²⁰³ *Administrative Arrangements 2008 (No 1)* (ACT).

²⁰⁴ *Health Professionals Act 2004* (ACT), s 130. The term ‘health professional’ includes a chiropractor, a dental hygienist, a dental prosthetist, a dental technician, a dental therapist, a dentist, an enrolled nurse, a medical practitioner, a medical radiation scientist, a midwife, a nurse, an optometrist, an osteopath, a pharmacist, a physiotherapist, a podiatrist, a psychologist and a veterinary surgeon; *Health Professionals Act 2004* (ACT), s 14.

²⁰⁵ *Medical Practice Act 1992* (NSW), s 112.

²⁰⁶ *Ibid.*

²⁰⁷ *Medical Practitioners Registration Act 2001* (Qld), s 270.

²⁰⁸ See *Medical Practice Act 1992* (NSW), s 4; *Medical Practitioners Registration Act 1996* (Tas), ss 3 and 19.

²⁰⁹ *Medical Practice Act 1992* (NSW), s 7(1)(G); *Health Practitioners Act 2004* (NT), s 20(4); *Medical Practitioners Registration Act 2001* (Qld), s 137 and *Medical Practitioners Registration Act 1996* (Tas), s 21(2)(f).

²¹⁰ Parliamentary Counsels Office, *Table of Public Acts* <<http://www.legislation.nsw.gov.au/lif/publicac.pdf>> at 23 June 2008, 56.

²¹¹ *State Emergency and Rescue Management Act 1989* (NSW), s 3; which defines a government agency to include ‘a public authority, being a body (whether incorporated or not) established by or under an Act for a public purpose’. It is submitted that the Medical Board would meet this definition.

powers under another Act are to be exercised.²¹² In these States, it follows that during a declared disaster, a direction can be given to the relevant medical registration board to direct it to accept that there is an area where the public interest would be served by, say, registering medical practitioners who are travelling with a foreign aid contingent to allow them to practise medicine.

South Australia

It is an offence for a person who is not a registered medical practitioner to provide medical treatment in South Australia.²¹³ The Governor may make a proclamation exempting a person from that offence, in effect, allowing him or her to practise medicine if, in the Governor's opinion 'good reason exists for doing so in the particular circumstances of the case'.²¹⁴ The exemption may be subject to conditions²¹⁵ which could limit the time or physical location in which an incoming foreign doctor is allowed to practise. Although expressed as the Governor's opinion, by convention the Governor would only exercise this power on the advice of the relevant Minister.

Victoria

The Victorian provisions apply to all health practitioners, including medical practitioners. Under these general provisions, a foreign health practitioner can be registered if the relevant health registration board²¹⁶

*... is satisfied that, in order to meet an identified need for a health practitioner, it is necessary for a person having qualifications and training in the nature of the applicant's to practise as a health practitioner in Victoria.*²¹⁷

²¹² *Disaster Management Act 2003* (Qld) s 9. 'Disaster situation' means where a state of disaster has been formally declared under s 64(1) or s 69; see Schedule 2 (Dictionary).

²¹³ *Medical Practice Act 2004* (SA), s 43.

²¹⁴ *Ibid*, s 43(4).

²¹⁵ *Ibid*, s 43(5).

²¹⁶ That is '(a) the Chinese Medicine Registration Board of Victoria established under Part 6 of the *Chinese Medicine Registration Act 2000*; (b) the Chiropractors Registration Board of Victoria established under Part 6 of the *Chiropractors Registration Act 1996*; (c) the Dental Practice Board of Victoria established under Part 6 of the *Dental Practice Act 1999*; (d) the Medical Practitioners Board of Victoria established under Part 6 of the *Medical Practice Act 1994*; (e) the Medical Radiation Practitioners Board of Victoria established under section 165 of ... [the *Health Professions Registration Act 2005*]; (f) the Nurses Board of Victoria established under Part 6 of the *Nurses Act 1993*; (g) the Optometrists Registration Board of Victoria established under Part 6 of the *Optometrists Registration Act 1996*; (h) the Osteopaths Registration Board of Victoria established under Part 6 of the *Osteopaths Registration Act 1996*; (i) the Pharmacy Board of Victoria established under Part 7 of the *Pharmacy Practice Act 2004*; (j) the Physiotherapists Registration Board of Victoria established under Part 6 of the *Physiotherapists Registration Act 1998*; (k) the Podiatrists Registration Board of Victoria established under Part 6 of the *Podiatrists Registration Act 1997*; (l) the Psychologists Registration Board of Victoria established under Part 6 of the *Psychologists Registration Act 2000*'. *Health Professions Registration Act 2005* (Vic), Schedule 1.

²¹⁷ *Ibid*, s 7(1)(c).

Further, in Victoria, the Minister for Police and Emergency Services²¹⁸ as Coordinator in Chief²¹⁹ may waive the requirement for registration if compliance by the Medical Board with the *Health Professions Registration Act* would hinder the counter disaster operations.²²⁰

Western Australia

In Western Australia a person may be registered where

*... registration of the applicant would enable an unmet area of need to be met and the applicant has suitable qualifications and experience to practise medicine in that area of need,*²²¹

The term ‘unmet area of need’ means ‘an area of need determined by the Minister’.²²² Again, a catastrophic disaster that exceeds the capacity of the Australian and interstate agencies would, by definition, create an ‘unmet area of need’. During a declared state of emergency, the State Emergency Coordinator can ‘direct any public authority to do or refrain from doing any act, or to perform or refrain from performing any function’.²²³ The definition of ‘public body’ would not include the Minister for Health²²⁴ so the Coordinator could direct the registration board to register incoming health professionals but only after the Minister for Health has declared the existence of an ‘unmet area of need’.

Conclusion with respect the recognition of foreign medical qualifications

Incoming medical practitioners may well face considerable hurdles, as may the disaster-affected States, in getting qualifications recognized. There would need to be consensus between the Minister for Health and the Minister in charge of the counter-disaster operations that the incoming doctors were required in the public interest or to meet an unmet need and that the proposed doctors were suitably qualified to warrant their registration. Once registered in one jurisdiction, the doctor would need to register in other jurisdictions if their practice were to take them across State boundaries.

The review of the legislative schemes indicates that the barriers to registration can be met but there can be no doubt that complying with these provisions may cause a delay in the critical first hours of the disaster. The Australian Capital Territory has the clearest legislation indicating that foreign qualifications are to be recognized, provided the aid is delivered under a cooperative agreement.

It has also been shown that in most State and Territories, either the Minister or the Counter Disaster Controller has the power to direct various authorities to do or refrain from doing certain things. It has been argued that in some cases, this would allow the person acting under the State Counter-Disaster legislation to direct the agency acting under the relevant health or medical registration legislation to register incoming doctors to allow them to practise their profession in Australia. While the law can be interpreted as enabling such as direction, it is possible that such a direction could be resisted. Health

²¹⁸ John Brumby, *Administration of Acts - General Order* <[http://www.dpc.vic.gov.au/CA256D800027B102/Lookup/GeneralOrderSupplement8August2007/\\$file/General%20Order%208%20August%202007.pdf](http://www.dpc.vic.gov.au/CA256D800027B102/Lookup/GeneralOrderSupplement8August2007/$file/General%20Order%208%20August%202007.pdf)> at 23 June 2008.

²¹⁹ *Emergency Management Act 1986* (Vic), s 5.

²²⁰ *Ibid*, s 24(2).

²²¹ *Medical Practitioners Act 2008* (WA), s 34(2)(4).

²²² That is the Minister for Health.

²²³ *Emergency Management Act 2005* (WA), s 74(2)(a).

²²⁴ *Ibid*, s 3.

Registration boards are established to ensure the protection of the community by ensuring only competent practitioners are registered. To this end, procedures are in place to accredit training programmes and to test the skills of foreign trained doctors. Health Registration Boards are likely to resist being told by the Police Commissioner or the Minister for Police and Emergency Services that certain people are to be registered as health professionals, even if the need, following a catastrophic disaster, is dire. In some health Acts, where the Board is subject to the direction and control of the relevant Minister (i.e. the Minister for Health), the Minister cannot direct the Board to register particular people. The Minister's role is limited to giving directions as to policy and procedure, and not on particular applications.²²⁵ Boards are not likely to be familiar with, or willing to allow a non-medical authority to direct who is to be registered as a medical practitioner.

The difficulties that have been raised for incoming doctors are likely to be met by all incoming trade and professional workers.

Guideline 17: Goods and equipment

Quarantine

COMDISPLAN assumes that the entry of goods, equipment and rescue dogs '... will be subject to normal Australian border control arrangements'.²²⁶ Relief workers must have appropriate visas issued before departure from their home country.²²⁷ Incoming emergency workers must comply with all quarantine requirements.²²⁸

The Australian Quarantine and Inspection Service ('Quarantine'), in collaboration with Emergency Management Australia, has produced Guidelines for Urban Search & Rescue Taskforces Entering or Re-entering Australia.²²⁹ These guidelines explain the quarantine requirements with particular regard to the equipment, a search and rescue team is likely to carry but do not make special provision for Quarantine clearance. For example, the guidelines confirm that the Inspection Service will require 48 hours' notice, and an application in writing, before permission can be given for an urban search and rescue team to arrive at an air or seaport that is not proclaimed as a first port of entry.²³⁰ This means that urban search and rescue teams will have to arrive at an international airport and then travel to the scene of a disaster rather than arrive at the airport closest to the scene.

Teams may import 'Human Therapeutics' (that is 'commercially prepared and packaged capsules tablets, vials for injection, liquid, powder, ointments, etc'²³¹) but only for personal use by members of the

²²⁵ *Medical Practitioners Act 2008* (WA), s 14; *Medical Practitioners Registration Act 2001* (Qld), s 36

²²⁶ Emergency Management Australia, *Commonwealth Government Disaster Response Plan (COMDISPLAN)* (Commonwealth of Australia, Canberra, 2002), Annex E [3].

²²⁷ *Ibid*, Annex E [5].

²²⁸ *Ibid*, Annex E [6] and [7].

²²⁹ Australian Quarantine and Inspection Service, *Australian Quarantine Guidelines: Urban Search & Rescue Taskforces Entering or Re-entering Australia* (Commonwealth of Australia, Canberra, 2005)

²³⁰ *Ibid*, 12.

²³¹ *Ibid*, 6.

team.²³² They do not cover therapeutic drugs that the team may wish to use in the course of treating people as part of their rescue mission.²³³

A critical part of an urban search and rescue team is rescue dogs that are trained to detect trapped people. Under Australian quarantine arrangements, dogs must be vaccinated and given other veterinary treatment up to 12 months before coming to Australia²³⁴ and the dog must serve 30 days in quarantine.²³⁵ It can be expected that urban search and rescue dogs will be given the best veterinary health care and so can comply with the requirements regarding vaccination; however, requiring the dogs to spend 30 days in quarantine guarantees that they will not be able to contribute to a rescue mission in the immediate aftermath of an earthquake or building collapse.

The Quarantine guidelines do not represent special procedures or rules; they simply provide guidance for incoming urban search and rescue teams to prepare for the necessary Quarantine inspections and therefore, facilitate the granting of import clearance. While that is important and will help speed up the process by ensuring that the teams are prepared for Quarantine inspection and can assist the inspectors, it again shows that Australia does not anticipate that any special rules or provisions will apply to incoming rescuers.

Customs

Australia is a signatory to the *International Convention on the Simplification and Harmonization of Customs Procedures*,²³⁶ the *Convention on the Facilitation of International Maritime Traffic*²³⁷ and the *Chicago Convention on Civil Aviation*.²³⁸ These conventions impose obligations on Australia to facilitate the importation of relief consignments. Such consignments are to be imported ‘duty free’. For the purposes of the *Customs Act 1901* (Cth) goods that are ‘reasonably required for disaster relief’²³⁹ are ‘special clearance goods’²⁴⁰ and subject to special procedures. First, the importer may seek permission to import the goods at any time that includes before they arrive in Australia.²⁴¹ Permission may be granted subject to conditions.²⁴² Second, provision is made allowing importers to obtain permission to

²³² Ibid, 33.

²³³ The INSARAG guidelines provide that a Urban Search and Rescue team should include medical, nursing and paramedic members who are able to ‘... provide advanced life support for the team (including dogs), other assigned personnel and victims encountered. Confined space medical operations. Basic veterinary care [and] Camp hygiene’. Office for the Coordination of Humanitarian Affairs, *INSARAG Guidelines and Methodology* (United Nations, Geneva, 2007), 95.

²³⁴ Australian Quarantine and Inspection Service, *Australian Quarantine Guidelines: Urban Search & Rescue Taskforces Entering or Re-entering Australia* (Commonwealth of Australia, Canberra, 2005), 26-28.

²³⁵ Ibid, 28.

²³⁶ *International Convention on the Simplification and Harmonization of Customs Procedures*, opened for signature 18 May 1973, 950 UNTS, (entered into force 25 September 1974).

²³⁷ *Convention on Facilitation of International Maritime Traffic*, opened for signature 9 April 1965, [1986] ATS 12, (entered into force 5 March 1967).

²³⁸ *Convention on International Civil Aviation*, opened for signature 7 December 1944, [1957] ATS 5, (entered into force 4 April 1947)

²³⁹ *Customs Act 1901* (Cth), s 70.

²⁴⁰ Ibid

²⁴¹ Ibid, s 70(2).

²⁴² Ibid, s 70(5).

deliver imported goods outside business hours where the relevant goods are ‘perishable food’.²⁴³ Those provisions do not apply to disaster relief consignments that are not ‘perishable food’.²⁴⁴

Draft Guidelines to facilitate the customs clearance of equipment imported by an incoming urban search and rescue team were drafted in 2005²⁴⁵ but have never been adopted or implemented.²⁴⁶ Even if they were adopted, the Guidelines would not apply to other incoming aid such as medical teams, reconstruction teams or disaster assessment teams. As with the Quarantine guidelines, the Draft Customs guidelines are to assist incoming and outgoing aid teams to comply with Customs requirements but make it clear that there will be no special dispensation or relaxation of customs rules.

In the absence of specific legislative provisions, there is no power vested in the Minister to waive or relax customs procedures to facilitate the receipt of international post-disaster assistance. The Minister may give binding directions to the Customs Service ‘with respect to the general policy to be pursued in relation to the administration of the Australian Customs Service’²⁴⁷ but that would not extend to being able to direct the Customs Service to waive or ignore provisions of the relevant ‘law of Customs’.²⁴⁸ It has been noted that in some State legislation, the relevant Minister or Counter-Disaster Controller has the power to order a government department to exercise, or not exercise certain powers²⁴⁹ and in Victoria, the Minister may suspend the operation of Acts or Regulations that are creating an impediment to disaster relief.²⁵⁰ Without a similar provision in Commonwealth law, it can be expected that Customs, Immigration and the Australian Quarantine and Inspection Service will continue to apply the law set out in their governing legislation without the power to make special provision to waive requirements that are imposed by the legislation and subordinate regulations.

Guideline 18: Special goods and equipment

The first recommendation is that affected States should recognize and permit the operation of foreign registered vehicles. That is not a significant issue in Australia where, given the absence of international land borders, no-one can drive into Australia in any event. Assisting organizations may want to bring vehicles into Australia by plane or boat and there they may be subject to the normal rules regarding the importation of motor vehicles. To import the vehicle duty free, the importer needs

.... one of the following:

- a *Carnet De Passages en Douanes* issued by an overseas organization which has a reciprocal arrangement with the Australian Automobile Association, or
- a cash or bank security, equal to the amount of duty and GST [Goods and Services Tax] and, where applicable, LCT [Luxury Car Tax] otherwise payable.²⁵¹

²⁴³ Ibid, ss 70(1)(c) and 70(3).

²⁴⁴ Ibid, ss 70(1)(a) and 70(3).

²⁴⁵ Australian Customs Service, *Customs Guidelines and Recommendations for Emergency Management Australia and Urban Search and Rescue Teams* (Commonwealth of Australia, Canberra, 2005)

²⁴⁶ Personal Communication, Customs Policy Division, 11 May 2008.

²⁴⁷ *Customs Administration Act 1985* (Cth), s 4A.

²⁴⁸ Ibid, s 3; *Customs Act 1901* (Cth), s 4B.

²⁴⁹ *State Emergency and Rescue Management Act 1989* (NSW), s 36; *Disaster Management Act 2003* (Qld), s 9(4)(b); *Emergency Management Act 2005* (WA), s 74(2)(a).

²⁵⁰ *Emergency Management Act 1986* (Vic), s 24(2).

²⁵¹ Australian Customs Service, *Importing a motor vehicle* <<http://www.customs.gov.au/site/page.cfm?u=4371>> at 26 August 2008.

Registration of vehicles is a matter of the Australian States and Territories but generally speaking, they will recognize foreign driver licenses²⁵² and registration.²⁵³

With respect to radio communications, the Australian Communications Media Authority can exempt emergency organizations, from various provisions of the *Radiocommunications Act 1992* (Cth) that would otherwise require them to have a licence and meet certain standards.²⁵⁴ How far that exemption can be taken and whether it extends to devices such as telephones, satellite phones and satellite data communication is beyond the scope of this report as telecommunications law is a large and specialized field. What can be observed is that Australia is not a signatory to the *Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations*²⁵⁵ and no Australian disaster or emergency management legislation makes particular mention of the emergency use of telecommunications devices.

Medicines that are to be imported into Australia must be registered or listed with the Therapeutic Goods Administration.²⁵⁶ The requirements for registration can be waived by the Minister in order to allow therapeutic goods to be imported so that they be ‘made available urgently in Australia in order to deal with an actual threat to public health caused by an emergency that has occurred.’²⁵⁷ The exemption may be granted subject to conditions, and the goods imported must still meet Australian standards²⁵⁸ and unused goods must be disposed of.²⁵⁹

Guideline 19: Transport

The IDRL Guidelines provide that States should facilitate air, sea and land transport of relief supplies. Australia is a signatory to the *International Convention on the Simplification and Harmonization of Customs Procedures*,²⁶⁰ the *Convention on the Facilitation of International Maritime Traffic*²⁶¹ and the *Chicago Convention on Civil Aviation*.²⁶² These conventions impose obligations on Australia to facilitate the importation of relief consignments. Such consignments are to be imported ‘duty free’.

The *Airports Act* allows the Minister to direct the operator of an airport to provide airport services for ‘defence-related purposes and for emergency or disaster relief.’²⁶³ Regrettably, the definition of a ‘defence related purpose’ includes ‘the management of an emergency or a disaster (whether natural or

²⁵² See, for example, *Road Transport (Driver Licensing) Regulation 1999* (NSW), s 55.

²⁵³ See, for example, *Road Transport (Vehicle Registration) Regulation 2007* (NSW), Schedule 1.

²⁵⁴ *Radiocommunications Act 1992* (Cth), s 27.

²⁵⁵ *Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations*, opened for signature 18 June 1998 (entered into force 8 January 2005); ReliefWeb, *List of Signatories to The Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations* at 26 August 2008.

²⁵⁶ *Therapeutic Goods Act 1989* (Cth).

²⁵⁷ *Ibid*, s 18A.

²⁵⁸ *Ibid*, s 30F.

²⁵⁹ *Ibid*, s 30G.

²⁶⁰ *International Convention on the Simplification and Harmonization of Customs Procedures*, opened for signature 18 May 1973, 950 UNTS, (entered into force 25 September 1974).

²⁶¹ *Convention on Facilitation of International Maritime Traffic*, opened for signature 9 April 1965, [1986] ATS 12, (entered into force 5 March 1967).

²⁶² *Convention on International Civil Aviation*, opened for signature 7 December 1944, [1957] ATS 5, (entered into force 4 April 1947)

²⁶³ *Airports Act 1996* (Cth), s 250.

otherwise), where that management involves the Australian Defence Force.²⁶⁴ It follows that the Minister cannot make such a direction to facilitate the arrival of an aircraft operated by an international or domestic organization unless and until the Australian Defence Force is involved in the counter-disaster operation. This would appear to be contrary to the Oslo Guidelines²⁶⁵ and Guideline 11²⁶⁶ restricting the use of military assets to a last resort after civilian alternatives have been considered.

Generally speaking, movement around Australia by people lawfully entitled to be in Australia is unrestricted. Emergency or disaster legislation would not grant any right to an individual or group to gain access to a disaster-affected area or to seek assistance in obtaining transport. If an agency charged with managing a response to a disaster wanted to provide transport assistance to an international aid organization, it could do so as part of their management of the response but there is no legal obligation to do so.

Emergency legislation does grant relevant disaster managers the power to exclude people from disaster sites or declared emergency areas.²⁶⁷ The effect of this is that incoming international aid workers can expect to have free access to an area around a disaster site but may find access to the areas of most need restricted by the orders of the relevant counter-disaster controller. To avoid this situation, international aid workers would need to ensure that they are working in cooperation with, and with the permission of, the relevant controller and have the necessary permission to enter the area. Where no order for evacuation or exclusion has been made, then the normal right of free passage would allow anyone to enter the disaster zone as needed.

Guideline 20: Temporary domestic legal status

It will be assumed that aid is being delivered by organizations that are formally established in another country and wish to operate in Australia as part of a disaster relief effort. The discussion will not cover unincorporated associations such as a group of volunteers who, hearing of a disaster, wish to travel to Australia 'to help'.

It is also assumed that foreign agencies seeking to come into Australia to provide post-disaster assistance are charitable in nature, and will be accepted by the Australian authorities as a charity²⁶⁸ rather than as a for-profit corporation.

The Commonwealth has the legislative power to make laws with respect to 'foreign corporations'.²⁶⁹ Under Commonwealth law, a foreign corporation can generally carry on business in Australia without

²⁶⁴ Ibid.

²⁶⁵ *Guidelines on the Use of Foreign Military and Civil Defence Assets in Disaster Relief - Oslo Guidelines (Updated November 2006; Revision 1.1 November 2007)* <<http://ochaonline.un.org/OchaLinkClick.aspx?link=ocha&docId=1084542>> at 25 February 2008.

²⁶⁶ International Federation of Red Cross and Red Crescent Societies, *Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance* (2007), [11].

²⁶⁷ *Emergencies Act 2004* (ACT), s 163; *State Emergency and Rescue Management Act 1989* (NSW), s 37; *Disasters Act 1982* (NT), s 37; *Disaster Management Act 2003* (Qld), s 77; *Emergency Management Act 2004* (SA), s 25; *Emergency Management Act 2006* (Tas), ss 40, 41 and Schedule 1; *Emergency Management Act 1986* (Vic), s 24; *Emergency Management Act 2005* (WA), s 67.

²⁶⁸ Dino Dal Pont, *Charity Law in Australian and New Zealand* (Oxford University Press, Melbourne, 2000).

²⁶⁹ *Australian Constitution*, s 51(xx).

the need to reincorporate²⁷⁰ but must go through a registration processes with the Australian Securities and Investment Commission.²⁷¹ The question to be addressed here is how a foreign, not-for-profit charitable corporation may establish an office in Australia during the response to a catastrophic disaster.

In order to register, the appropriate application must be lodged along with various documents confirming the status of the corporation in its home country²⁷² and identifying the name of a local agent.²⁷³ The registered foreign corporation would then need to comply with the requirements under the *Corporations Act* with respect to maintaining accounts and filing annual returns.

Once registered, a foreign corporation obtains legal status and can sue and be sued,²⁷⁴ can hold property (including land²⁷⁵) and enter into contracts. Once registered, the corporation would also be entitled to open a bank account and enter into contracts of employment subject to the normal provisions of Australian law.

Guideline 21: Taxation

Once registered a foreign not-for-profit aid agency may wish to seek tax exemptions. This would require a further process of endorsement with the Australian Taxation Office that the agency is a charity.²⁷⁶ Endorsement is also required if the entity were to be accepted as a ‘deductible gift recipient’ that could then receive tax deductible donations from Australian taxpayers.²⁷⁷

Guideline 22: Security

Guideline 23: Extended hours

Guideline 24: Costs

There is nothing in Australia’s emergency management arrangements that deal with these issues for the receipt of assistance. It could be expected that security will be dealt with in accordance with Australian law so that State and Territory police services, supported by the Australian Federal Police will ensure that disaster sites are kept secure and the laws protecting individuals and property are enforced.²⁷⁸

²⁷⁰ H A J Ford, Austin R P and Ramsay I M, *Ford’s Principles of Corporations Law* (11th ed, Lexis/Nexis Butterworths, Sydney, 2003), 142.

²⁷¹ *Corporations Act 2001* (Cth), Part 5B.2 Division 2.

²⁷² *Ibid.*

²⁷³ *Ibid.*, s 601CF.

²⁷⁴ Australian Securities and Investment Commission, *Foreign Companies* <<http://www.asic.gov.au/asic/asic.nsf/byheadline/Foreign+Companies?opendocument>> at 20 June 2008.

²⁷⁵ *Corporations Act 2001* (Cth), s 601CY.

²⁷⁶ Australian Taxation Office, *Is your organisation income tax exempt?: Endorsement* <<http://www.ato.gov.au/nonprofit/content.asp?doc=/content/8555.htm&page=2&pc=&mnu=28532&mfp=001/004&st=&cy=>> at 20 June 2008

²⁷⁷ Australian Taxation Office, *Tax deductible donations* <<http://www.ato.gov.au/nonprofit/content.asp?doc=/content/66281.htm&mnu=28533&mfp=001/004>> at 20 June 2008.

²⁷⁸ *Defence Act 1903* (Cth), Part 3AAA.

Given the absence of discussion in Australia's emergency arrangements on receiving aid, there is nothing in the relevant law and policy on extended hours of operation for Commonwealth agencies or how costs in individual cases will be met.

Conclusion

This review of the law in Australia has demonstrated that many problems identified by the International Federation will be encountered if a catastrophic disaster were to occur in Australia. When it comes to receiving international assistance, Emergency Management Australia is intended to act as a single contact point but that is not required by law, so States and Territories can and do arrange international assistance without reference to Emergency Management Australia.

By definition a catastrophic disaster will have an impact on more than one jurisdiction or be otherwise of such significance as to take on national implications. Notwithstanding this, the presence of the eight Australian State and Territory jurisdictions, as well as the Commonwealth, means that incoming aid agencies will need to negotiate a number of hurdles to obtain access to the disaster area within Australia.

An example of the legal complexity can be seen with the example of a foreign aid organization that wants to establish a health service; it would need to:

- Register with the Australian Securities and Investment Commission to establish its corporate headquarters;
- Register with the tax office to ensure its charitable status for tax purposes;
- Register its medical staff with the relevant State health registration authority to ensure that they can legally practise medicine; and
- Negotiate with the Department of Immigration and Citizenship to obtain appropriate visas for incoming relief workers and with Australian Customs with respect to bringing in drugs and their tools of trade.

All this would take significant time if the response required was the immediate establishment of emergency medical facilities to provide care to the injured, rather than long-term health services.

When it comes to providing assistance, foreign aid agencies will find it easiest to work if they operate in the Australian Capital Territory under a pre-existing cooperative agreement.²⁷⁹

This analysis has shown is that Australia lacks a 'comprehensive legal, policy, and institutional frameworks and planning for disaster prevention, mitigation, preparedness, relief and recovery'.²⁸⁰ While Australian law has sufficient flexibility and discretion vested in relevant Ministers to deal with many issues that may arise, there is no comprehensive Commonwealth emergency management legislation, the Commonwealth Disaster Plan envisages that the Commonwealth's role will be reactive, to provide support to the States rather than take a significant leadership role. Australia's disaster arrangements are largely silent on when and how international assistance may be sought and the assumption in key planning documents and customs and immigration legislation is that the normal rules will continue to apply.

²⁷⁹ *Emergencies Act 2004* (ACT), s 180.

²⁸⁰ International Federation of Red Cross and Red Crescent Societies, *Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance* (2007), [8.1].

This complex interplay of law, and the fact that the legal position is not integrated into a single piece of legislation, means there is ample room for complication, duplication and confusion at a time when such confusion must be avoided. In particular, it shows that Australia does not have a clearly defined ‘national focal point to liaise between international and government actors at all levels’²⁸¹ (though Emergency Management Australia could fill that role). Furthermore, the complexity and the absence of reference to the Commonwealth’s own response to a disaster means that Australia does not

*... make available to [potential] assisting actors adequate information about domestic laws and regulations of particular relevance to the entry and operations of disaster relief or initial recovery assistance.*²⁸²

Having reviewed Australian law from the perspective of Australia as a recipient of aid, it is now appropriate to review Australian law from the perspective of Australia as donor.

²⁸¹ Ibid, [8.2]

²⁸² Ibid, [10.3]

Legal preparedness
for international disaster response in Australia

Part IV

Australia's position as an International Responder or Donor, measured against the IDRL Guidelines

Part IV - Australia’s position as an International Responder or Donor, measured against the IDRL Guidelines

Part III of this report considered Australia’s legal preparedness to receive international disaster assistance measured against the recommendations in the International Federation’s guidelines.²⁸³ This Part will conduct a similar review of Australian law that has an impact upon Australia’s ability to send disaster assistance to a neighbouring country. Most of the relevant law will be the law of the host or receiving country and it will be up to that country to determine issues regarding customs, quarantine, visas, the recognition of Australian qualifications and access to the disaster-affected area. Notwithstanding this, there is some Australian law and policy that will facilitate the delivery of aid from Australia to disaster-affected countries. The IDRL Guidelines themselves deal with the responsibilities of both the assisted and the assisting States so it is relevant to measure Australian law as an international aid donor, against the IDRL Guidelines.

Part I: Core responsibilities

Guideline 4: Responsibilities of assisting actors

Australian law and policy recognize that international aid cannot be delivered without the consent of the affected States²⁸⁴ and assumes that all Australian post-disaster assistance will be provided following a request from the affected country directed to the Australian representative ‘in country’.²⁸⁵

In the AUSASSISTPLAN, the Commonwealth gives specific recognition to the principle that the domestic agency in charge of the response will set the priorities for Australian aid. AusAID will determine priorities if and only if none are set by the receiving country.²⁸⁶ In this way, AusAID recognizes the primary right of the affected country to manage the receipt of international assistance as it wishes.

The priority of the Australian response is to ‘alleviate distress or preserve life and property’ (reflecting the principle of humanity and impartiality; the priority is not, for example, to save Australians but to maximize the relief of suffering) and ‘the effectiveness of the response to requests must be regularly assessed’²⁸⁷ (again, ensuring accountability, but how that is done is not prescribed). The Australian agencies must work together and ‘the open sharing of accurate information and its consolidation in regular situation reports is to be a high priority’²⁸⁸ thereby reducing duplication and inefficiency.

²⁸³ Ibid

²⁸⁴ Emergency Management Australia, *Australian Government Overseas Disaster Assistance Plan (AUSASSISTPLAN)* (Commonwealth of Australia, Canberra, 2002); AusAid, *Responding to Emergencies* <<http://www.ausaid.gov.au/human/emergencies.cfm>> at 20 January 2008.

²⁸⁵ Emergency Management Australia, *Australian Government Overseas Disaster Assistance Plan (AUSASSISTPLAN)* (Commonwealth of Australia, Canberra, 2002).

²⁸⁶ Ibid, [4.1(f)].

²⁸⁷ Ibid, [4.1(e)].

²⁸⁸ Ibid.

Guideline 5: Additional responsibilities of all States

Australian assistance is largely provided by direct funding to humanitarian organizations that provide the actual relief services. In these circumstances the IDRL Guidelines urge Australia to ‘encourage’ the assisting non-government organizations to ‘act in a manner consistent with’ the IDRL Guidelines.²⁸⁹

Australian policy makes a significant contribution in the area of ensuring that aid is delivered in a way that is appropriate, accountable and generally delivered in accordance with the tenor of the IDRL Guidelines. This has been achieved by a process of accreditation for approved non-government organizations.²⁹⁰

Only accredited non-government organizations receive AusAID funding to conduct relief or development operations. To obtain AusAID accreditation, non-government organizations must commit themselves to the Australian Council for International Development Code of Conduct.²⁹¹ Where they are involved in operations involving humanitarian post-disaster relief, they must also commit themselves to adhering to the Red Cross Red Crescent Code of Conduct.²⁹² Organizations are also encouraged to ‘familiarize themselves’²⁹³ with the Sphere Project’s Minimum Standards.²⁹⁴

Although

*... there is currently no formal requirement for agencies to formally adopt Sphere, there is general agreement among humanitarian agencies on the core principles outlined in the document and a commitment to incorporate Sphere standards in agency policy and practice.*²⁹⁵

The criteria for accreditation requires a non-government organization to demonstrate its track record in managing development projects,²⁹⁶ to demonstrate that it has a philosophy that is consistent with Australian policy that takes into account ‘cross cutting issues such as gender, environment and human rights’ and does not use funds for ‘evangelical, welfare or partisan political purposes.’²⁹⁷ Non-government organizations must demonstrate that they have in place processes to monitor their ‘in country’ activities, and are able to rate and report on the effectiveness of their programmes.²⁹⁸ These provisions ensure that Australian non-government organizations are not attempting to deliver

²⁸⁹ International Federation of Red Cross and Red Crescent Societies, *Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance* (2007), [5.1].

²⁹⁰ AusAid, *Accreditation Non-Government Organisations* <http://www.ausaid.gov.au/ngos/pdfs/accreditation_policy.pdf> at 19 July 2008

²⁹¹ *Ibid*, 1.

²⁹² *Ibid*, 2; see also *The Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief* <<http://www.ifrc.org/publicat/conduct/code.asp>> at 7 February 2008.

²⁹³ AusAid, *Accreditation Non-Government Organisations* <http://www.ausaid.gov.au/ngos/pdfs/accreditation_policy.pdf> at 19 July 2008, 2.

²⁹⁴ *The Sphere Project: Humanitarian Charter and Minimum Standards in Disaster Response* (2004 ed, The Sphere Project, Geneva, 2004).

²⁹⁵ AusAid, *Accreditation Non-Government Organisations* <http://www.ausaid.gov.au/ngos/pdfs/accreditation_policy.pdf> at 19 July 2008, 2.

²⁹⁶ AusAid, *Base AusAID NGO Accreditation Criteria Table – May 2008* <http://www.ausaid.gov.au/ngos/pdfs/criteria_table_base.pdf> at 19 July 2008, [B1].

²⁹⁷ *Ibid*, [B2].

²⁹⁸ *Ibid*, [B4].

projects that are beyond their capacity and that they have in place a process of self-assessment and accountability to their recipient community to ensure that their projects are ethical and comply with the Fundamental Principles of ‘humanity, neutrality, impartiality and independence.’²⁹⁹

There are some aspects of the accreditation standard that may be perceived to impinge on the neutrality and independence of non-government organizations. One criterion that must be met is that an organization seeking accreditation must show that it has the capacity to deliver aid projects that meet the contractual obligations to AusAID. Some of the suggested ‘verifiers’ that can be used to demonstrate this capacity are:

- Written policies and clauses in partnership agreements covering counter-terrorism ...
- Evidence that the strategies identified in the Counter Terrorism Policy are being followed. ...
- Evidence of appropriate checks in relation to employment/contracting of individuals³⁰⁰

Requiring Australian non-government organizations operating in a foreign country to give effect to Australian policies on counter-terrorism may cause some foreign governments or non-government organizations themselves to feel they are compromised in their ability to provide humanitarian aid that is truly neutral and based on need alone.

Subject to this criticism, the process of accreditation does mean that a foreign government seeking international post-disaster assistance could have reasonable confidence that aid provided by Australia through an accredited non-government organization will be appropriate and more importantly, delivered in an appropriate and accountable way. This may help foreign governments, if faced with a flood of foreign non-government organizations wishing to access their disaster-affected population to determine who should be given legal recognition and legal facilities to allow them to operate in their country. In effect, Australia has taken on the role of assessing and accrediting potential disaster relief providers before an actual disaster, so that the disaster-affected country does not need to do this after the event.

The AusAID accreditation process applies only to non-government organizations but does not address the issue of accountability standards where assistance is provided by government agencies. Australia may send aid in the form of military forces or domestic civil defence organizations³⁰¹ and aid can be sent directly from State and Territory governments. Notwithstanding the Commonwealth’s responsibility for Australia’s foreign affairs, there is no relevant law to ensure that aid that is sent other than by accredited non-government organizations, meets the principles set out in the IDRL Guidelines.

²⁹⁹ United Nations General Assembly, *2005 World Summit Outcome*, GA Res 1/60, UN GAOR, 60th sess, UN Doc A/RES/60/1 (2005),

³⁰⁰ AusAid, *Base AusAID NGO Accreditation Criteria Table – May 2008* <http://www.ausaid.gov.au/ngos/pdfs/criteria_table_base.pdf> at 19 July 2008, [B3].

³⁰¹ For example, State based ambulance and fire services – see *Specialist skills in disaster situations* <<http://www.asnsw.health.nsw.gov.au/what/countdisaster.html>> at 16 December 2005; *South-East Asian Tsunami: NSWFB Deployment* <<http://www.nswfb.nsw.gov.au/incidents/history/tsunami04/index.php>> at 2 November 2005; NSW Rural Fire Service, ‘NSW Firefighting Force Heading for USA’, RFS Press Release <http://www.rfs.nsw.gov.au/dsp_more_info.cfm?CON_ID=1497&CAT_ID=601> .

The next recommendation is that States should:

*... actively encourage members of the public interested in contributing to the international disaster relief or initial recovery to make financial donations where possible or otherwise donate only those types of relief goods expressly requested by the affected State.*³⁰²

When it comes to donations, the Australian public are free to donate money or goods as they wish and to deliver those goods by any means they see fit. There are practical and Constitutional difficulties in trying to regulate such behaviour but it is possible for the Commonwealth to encourage such relief donations through the tax system and by establishing rules that encourage community organizations to collect financial rather than in-kind donations, e.g. by making cash donations tax deductible but not allow deductions for the value of 'in kind' donations.

Guideline 6: Responsibilities concerning diversion and the intended use of resources

The process of accreditation for Australian non-government organizations is, to a large part, designed to ensure that the organizations have in place sufficient audit and accountability mechanisms to ensure that aid is delivered in a way that is intended. This will benefit the Australian government and members of the Australian public who wish to donate funds to relief appeals run by accredited non-government organizations. Non-government organizations that are not accredited and deliver an aid programme outside the Australian government programme would be subject to the normal criminal and civil law to make sure they are accountable to their donors. Organizations can expect to be prosecuted for fraud, obtaining benefits by deception³⁰³ or engaging in misleading or deceptive conduct³⁰⁴ if donations are not used for the purpose for which they were collected.

The process of accreditation will also act as a significant incentive for Australian non-government organizations to comply with domestic law and the Red Cross Red Crescent Code of Conduct³⁰⁵ when operating 'in country', as failure to do so could justify a loss of accreditation. If a non-government organization is granted necessary legal facilities and permission to operate in part because of their accreditation by the Australian government, loss of that status may make operating in-country difficult or impossible. The process of accreditation could therefore be a significant motivator to ensure non-government organizations comply with their obligations both in Australia and in the country in which they are operating.

Part II: Early warning and preparedness

Guideline 7: Early warning

There are no formal processes in place for Australia to be warned of impending disasters that may lead to a call for Australian assistance. The AUSASSISTPLAN envisages that affected governments will approach Australian diplomatic missions after an event has occurred and the need for assistance has

³⁰² International Federation of Red Cross and Red Crescent Societies, *Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance* (2007), [5.2]

³⁰³ See for example the *Criminal Code* (Cth) Part 7.3.

³⁰⁴ See for example the *Trade Practices Act 1974* (Cth) s 52.

³⁰⁵ *The Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief* <<http://www.ifrc.org/publicat/conduct/code.asp>> at 7 February 2008

become apparent.³⁰⁶ Notwithstanding this, ‘EMA continuously monitors hazards and events in the Australian region of interest which may cause disasters’³⁰⁷ and AUSASSISTPLAN can be activated when ‘it is apparent that Australian assistance may be required’.³⁰⁸

It is open to Emergency Management Australia, AusAID and the Australian government generally to obtain intelligence that assistance may be required by any number of normal diplomatic and intelligence gathering means. To that end Australia maintains diplomatic relations with the other nations of the world and the United Nations, and information regarding potential or pending disasters can be passed between nations using those traditional channels. How Australia manages those relations is not a matter governed by law and is therefore outside the scope of this Report. Looking at Australian law, there is, however, little that would address this issue.

Guideline 8: Legal policy and institutional frameworks

It was noted in Part II that Australia, at the Commonwealth level, does not have the recommended comprehensive legal and policy framework. This is true when considering Australia’s position on receiving international aid, and also true when considering Australia’s readiness to send aid. The AUSASSISTPLAN does provide many details of how the Commonwealth will respond to requests for assistance but it is not comprehensive and fails to deal with many issues identified as problematic in the delivery of international aid. From a domestic legal point of view, one problematic area is that there is no clear provision dealing with the legal relationships between the Commonwealth and State and non-government organizations deployed as part of the Australian response. The Commonwealth says that the response is an Australian response and so all levels of government can be involved and this can involve State, Territory and non-government organizations.³⁰⁹ If staff from those organizations are deployed however, certain questions are not addressed, such as:

- Who is liable for any misfeasance or negligence?
- Who will be responsible for the care of aid workers injured while on deployment?
- Do the staff represent their agency or the Commonwealth of Austral

Guideline 9: Regional and international support for domestic capacity

Donor States are urged to ‘support developing States, domestic civil society actors and National Red Cross and Red Crescent Societies to build their capacities’³¹⁰ and to ‘adequately implement legal, policy and institutional frameworks to facilitate international relief and initial recovery assistance.’³¹¹

³⁰⁶ Emergency Management Australia, *Australian Government Overseas Disaster Assistance Plan (AUSASSISTPLAN)* (Commonwealth of Australia, Canberra, 2002), [3.3] and [5.1.2].

³⁰⁷ *Ibid.*, [5.2.1].

³⁰⁸ *Ibid.*, [5.2.2].

³⁰⁹ Emergency Management Australia, *National Emergency Management Coordination Centre (NEMCC) Standard Operating Procedures (SOPS)* (Commonwealth of Australia, Canberra, 2002), [11.5.1].

³¹⁰ International Federation of Red Cross and Red Crescent Societies, *Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance* (2007), ¶9.1

³¹¹ *Ibid.*, ¶9.2

In relation to this guideline, the Australian government made a specific pledge at the 2007 International Conference³¹² stating that it would continue to cooperate with building the capacity of National Societies in the Pacific region in order to reduce the vulnerability of communities to disasters and degradation.

Australia is a significant donor to developing countries, to aid and relief agencies and the United Nations including the Office for the Coordination of Humanitarian Affairs (OCHA). This Report is concerned with Australian law that deals with sending and receiving immediate post-disaster assistance rather than more general aid, and so, further consideration of this particular guideline will not take place here.

Part III: Initiation and termination of international disaster relief and initial recovery assistance.

Guideline 10: Initiation

The AUSASSISTPLAN provides a clear process and point of contact for foreign States seeking Australian assistance. Australian diplomatic missions are to receive and forward requests for Australian assistance and to assist with the coordination of Australia's response when 'in country'.³¹³ Although the Australian response may be made up of Commonwealth or non-government agencies, the responsibility for liaising with the disaster management agencies of the affected country lies with the Australian diplomatic mission and AusAID, thereby ensuring there is no duplication between Australian responders.³¹⁴

The absence of a legislative obligation and the creation of working relationships between agencies mean that not all requests for Australian assistance either need to, or do go through, the AUSASSISTPLAN. The Plan specifically provides that it is not to apply to 'search and rescue operations [or] emergency or medical evacuation outside disaster periods'³¹⁵ suggesting that assistance in these times is managed by other Federal or State agencies. Australia has sent fire-fighters from State agencies to assist their international counterparts based on agreements between agencies representing the United

³¹² 30th International Conference of the Red Cross and Red Crescent, Geneva, 2007, Pledge P273 on 'Continued strong collaboration between Australia, New Zealand, Papua New Guinea and the respective National Societies in support of responses to disaster and disease', Government of Australia, Government of New Zealand, Government of Papua New Guinea, Australian Red Cross, Cook Islands Red Cross, Fiji Red Cross, New Zealand Red Cross, Samoa Red Cross, Solomon Islands Red Cross, Tonga Red Cross, Vanuatu Red Cross and Tuvalu Red Cross Society (observer), available at http://www.icrc.org/applic/p130e.nsf/va_navPage/PBP?openDocument&CollapseView.

³¹³ Emergency Management Australia, *Australian Government Overseas Disaster Assistance Plan (AUSASSISTPLAN)* (Commonwealth of Australia, Canberra, 2002), [3.1] - [3.4], [5.9].

³¹⁴ Ibid, [4.1(d)].

³¹⁵ Ibid, [1.5].

States and agencies representing the Australian States and Territories rather than Australia as a nation State.³¹⁶

Australian aid can be sent directly by non-government organizations to their counterparts in disaster-affected countries. For example, the Australian Red Cross can send aid to a member of the Red Cross and Red Crescent Movement in another country without the need to involve the Australian government.³¹⁷ People may also form *ad hoc* non-government organizations and collect money or relief supplies or travel to the disaster-affected area on their own initiative. There is no need to wait for a request, or get permission from the Australian government. Whether they are allowed into the disaster-affected country would be a matter for the affected country. Notwithstanding that such *ad hoc* groups operate without the sanction of the Australian government, Australia will still have diplomatic responsibility for people travelling, as it does for any Australian that chooses to travel overseas.

Guideline 11: Initiation of military relief

The decision to use the Australian Defence Force is made by the Director of Emergency Management Australia once the request for Australian assistance has been approved.³¹⁸

There is nothing in AUSASSISTPLAN or in the standard operating procedures of the National Emergency Management Coordinating Centre³¹⁹ that urges or requires any agency to consider whether civilian alternatives are to be preferred or issues of the terms and length of the deployment, the use of uniforms and the like.³²⁰

The key feature of the use of the Australian defence force as part of an international response contingent is set out in the National Emergency Management Coordinating Centre (“NEMCC”) standard operating procedures where it says:

*In meeting requests for assistance from overseas countries, staff should keep in mind that it is an Australian response. The NEMCC can call on the full range of Commonwealth, State and Territory government and commercial resources to achieve the most effective and economical response.*³²¹

³¹⁶ Rick Sneeuwjaagt, *Review of the Australia-New Zealand Fire Fighting Deployment to the United States of America, August-September 2000*, (Department of Conservation and Land Management, Perth, 2000); *International Agreement between the US Department of the Interior, Bureau of Land Management, US Department of Agriculture, Forest Service for the National Multi Agency Coordination Group for and on behalf of the Government of the United States of America and the Secretary of the Department of Natural Resources & Environment for itself and as agent of the Crown in the Right of Each Australian State and Territory and the Crown in Right of New Zealand*, 2000; *Wildfire Arrangement between the Department of the Interior and the Department of Agriculture of the United States of America and the Australian Participating Agencies*, 2002.

³¹⁷ Emergency Management Australia, *Australian Government Overseas Disaster Assistance Plan (AUSASSISTPLAN)* (Commonwealth of Australia, Canberra, 2002), [3.2].

³¹⁸ *Defence Instruction (General) OPS 01-3 Policy and Procedures for Department of Defence Response to Overseas Disasters*, 1993

³¹⁹ Emergency Management Australia, *National Emergency Management Coordination Centre (NEMCC) Standard Operating Procedures (SOPS)* (Commonwealth of Australia, Canberra, 2002).

³²⁰ International Federation of Red Cross and Red Crescent Societies, *Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance* (2007), [11].

³²¹ Emergency Management Australia, *National Emergency Management Coordination Centre (NEMCC) Standard Operating Procedures (SOPS)* (Commonwealth of Australia, Canberra, 2002), [11.5.1].

The implication is that, despite Australia's stated commitment to the Oslo Guidelines,³²² and the recommendation in the IDRL Guidelines³²³ the Australian military is just one Commonwealth asset that can and will be called upon as the need arises without any provision saying that special thought ought to be given to the use of the defence force or that the option of all civilian alternatives should be considered before the defence force is asked to respond.

Despite the assertion that military forces should be used as a last resort, the reality is that if Australia wants to provide an urgent, rapid response of people into a disaster-affected area, it must rely on the military to provide that capability. Emergency Management Australia points out:

*The ADF [Australian Defence Force] capacity for quick reaction, the special skills and training of its personnel and its capacity to be self supporting in a disaster environment, mean that there may be considerable reliance on the ADF during an Australian Government response to an overseas relief operation.*³²⁴

There is no doubt that when it comes to delivering international aid, Australia relies on its military forces to provide a prompt response. The military have been used to provide logistic support in terms of transporting relief supplies and relief workers, as well as providing direct assistance in the form of medical and reconstruction teams, delivering clean water and undertaking evacuations.³²⁵ In the last five years, the Australian Defence Force has taken part in overseas natural disaster relief in Iran, Niue, Vanuatu,³²⁶ Sumatra,³²⁷ Pakistan³²⁸ and the Solomon Islands.³²⁹

Although civil defence organizations have been used to provide international assistance overseas,³³⁰ Australia has not seriously considered, or developed, a civilian alternative that can match the capacity of its defence force to quickly deploy large numbers of trained people who are capable of supporting themselves in the field and capable of delivering large payloads of relief supplies in heavy lift aircraft, ships and helicopters.

³²² *Guidelines on the Use of Foreign Military and Civil Defence Assets in Disaster Relief - Oslo Guidelines (Updated November 2006; Revision 1.1 November 2007)* <<http://ochaonline.un.org/OchaLinkClick.aspx?link=ocha&docId=1084542>> at 25 February 2008.

³²³ International Federation of Red Cross and Red Crescent Societies, *Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance* (2007)

³²⁴ Emergency Management Australia, *Australian Government Overseas Disaster Assistance Plan (AUSASSISTPLAN)* (Commonwealth of Australia, Canberra, 2002), [5.6.1].

³²⁵ *Operation Sumatra Assist* <<http://www.defence.gov.au/optsunamiassist/default.htm>> at 25 February 2008; *Op Papua New Guinea Assist* <<http://www.defence.gov.au/oppngassist/gallery.htm>> at 25 February 2008; *Department of Defence Media Release: Australian Defence Chief Fosters Bilateral Regional Relationships* <<http://www.defence.gov.au/media/2000/113050600.doc>> at 25 February 2008;

³²⁶ Australian Defence Force, *Defence Annual Report 2003-2004* (Commonwealth of Australia, Canberra, 2004), 85

³²⁷ Australian Defence Force, *Defence Annual Report 2004-2005* (Commonwealth of Australia, Canberra, 2005), 149.

³²⁸ Australian Defence Force, *Defence Annual Report 2005-2006* (Commonwealth of Australia, Canberra, 2006), 95.

³²⁹ Australian Defence Force, *Defence Annual Report 2006-2007* (Commonwealth of Australia, Canberra, 2007), 57.

³³⁰ NSW Rural Fire Service, 'NSW Firefighting Force Heading for USA', RFS Press Release <http://www.rfs.nsw.gov.au/dsp_more_info.cfm?CON_ID=1497&CAT_ID=601> ; *South-East Asian Tsunami: NSWFB Deployment* <<http://www.nswfb.nsw.gov.au/incidents/history/tsunami04/index.php>> at 2 November 2005; *Specialist skills in disaster situations* <<http://www.asnw.health.nsw.gov.au/what/countdisaster.html>> at 16 December 2005.

Guideline 12: Termination

The rapid termination of international assistance can leave the assisted State vulnerable and projects incomplete. As a result, the IDRL Guidelines recommend that the termination of assistance should be negotiated between the affected and the assisting State.³³¹

The only reference to the termination of the Australian relief effort is in the AUSASSISTPLAN where it says ‘[a]t a time mutually agreed between AusAID, EMA and the HOM [Head of Mission], the response phase will be terminated ...’. There is no reference to there being mutual agreement or consultation with the government of the affected State. The AUSASSISTPLAN does recognize that the Australian response may continue as ‘reconstruction tasks’ and the responsibility for the management of those tasks moves from Emergency Management Australia to AusAID. In essence, this is a shift from immediate disaster relief to longer term recovery operations but the AUSASSISTPLAN is silent on how and when that changeover is to be managed, how and when Australian resources will be withdrawn, and the role of the affected government in that decision-making process.

Part IV: Eligibility for legal facilities

Guideline 13: Facilities for assisting States

There is no specific provision in Australian law to require that before Australian aid is delivered, Australia or Australian agencies are granted the legal facilities recommended in the IDRL Guidelines.

Guideline 14: Facilities for assisting humanitarian organizations

Determining who is eligible for legal standing to operate within the disaster-affected State is a matter for that State. Australian law and policy impose no requirement that before Australian agencies provide assistance, necessary legal standing must be granted to allow Australians to operate in the affected country or to give legal recognition to Australian qualifications.

The most significant step taken by Australia is the process of accreditation of non-government organizations. There is no international process of accreditation³³² so the Australian system could give some comfort to disaster-affected States. Australian aid policy does not require that accredited non-government organizations are granted legal facilities, but a country seeking assistance from Australia can be confident that accredited non-government organizations will be creditable, competent and accountable. Accordingly, an affected State that wants to pre-determine the criteria to be met by agencies seeking legal facilities to operate in the affected country³³³ can adopt the criterion that a humanitarian organization is accredited by AusAID. This policy would facilitate the delivery of Australian aid through AusAID’s accredited partner organizations.

³³¹ International Federation of Red Cross and Red Crescent Societies, *Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance* (2007), [12].

³³² David Fisher, *Law and legal issues in international disaster response: a desk study* (International Federation of Red Cross and Red Crescent Societies, Geneva, 2007), 147; J Telford, J Cosgrave and R Houghton, *Joint Evaluation of the international response to the Indian Ocean tsunami: Synthesis Report* (Tsunami Evaluation Coalition, London, 2006), 120.

³³³ International Federation of Red Cross and Red Crescent Societies, *Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance* (2007), [14.2].

Guideline 15: Facilities for other assisting actors

There is no specific provision in Australian law to require that before Australian aid is delivered by the Australian private sector, either on their own initiative or at the request of the Australian government, that corporate entities are granted the legal facilities recommended in the IDRL Guidelines.

Part V: Legal facilities for entry and operations

Guideline 16: Personnel

In Part II the fact that Australia has Status of Forces agreements with a number of countries³³⁴ was discussed. These agreements mean that Australian Defence Force personnel are able to enter the territories of those countries with relative ease, and can be relied upon to enter and work in disaster relief operations in accordance with the terms of those agreements.

For other aid workers, Australia recognizes the need for relief workers to obtain the necessary permits and visas. Emergency Management Australia agrees to assist agencies to obtain any necessary permission to export relief supplies from Australia³³⁵ and to import them into the affected country³³⁶ and to obtain any necessary visa or permits.³³⁷ There is no suggestion that such requirements will, or should be, waived for Australian aid or government agencies.

Guideline 17: Goods and equipment

The AUSASSISTPLAN provides detailed instructions on the packaging of relief goods to ensure that aid delivered on behalf of Australia is appropriate, required, easily identified (in English) and usable. Relief goods from Australia must contain the words 'Gift of Australia', a unique request number,³³⁸ a brief description of package contents, contact details of the intended recipient and special handling

³³⁴ Agreement between Australia and Papua New Guinea regarding the Status of Forces of each State in the Territory of the other State, and Agreed Minute, opened for signature 26 January 1977, [1977] ATS 6, (entered into force 26 January 1977); Agreement between Australia and the Kyrgyz Republic on the Status of Australian Forces in the Kyrgyz Republic opened for signature 9 July 2002, [2002] ATS 14 (entered into force 9 July 2002); Agreement between the Government of Australia and the Government of Malaysia concerning the Status of Forces, opened for signature 3 February 1997, [1999] ATS 14, (entered into force 22 July 1999); Agreement Between the Government of Australia and the Government of New Zealand Concerning the Status of their Forces, opened for signature 29 October 1998, [2005] ATS 12, (entered into force 27 May 2005); Agreement between the Government of Australia and the Government of the Republic of the Philippines Concerning the Status of Visiting Forces of each State in the Territory of the other State, opened for signature 31 May 2007, [2007] ATNIF 14, (entered into force Not yet in force); Exchange of Notes constituting a Status of Forces Agreement between the Government of Australia and the Government of the Republic of Singapore, opened for signature 10 February 1988, [1988] ATS 6, (entered into force 10 February 1988); as was noted in Part 4, there is also a status of forces agreement with the United States but it only applies to United States forces in Australia, not Australian forces in the United States; Agreement between the Government of the Commonwealth of Australia and the Government of the United States of America concerning the Status of United States Forces in Australia, and Protocol opened for signature 9 May 1963, [1963] ATS 10, (entered into force 9 May 1963).

³³⁵ Emergency Management Australia, *Australian Government Overseas Disaster Assistance Plan (AUSASSISTPLAN)* (Commonwealth of Australia, Canberra, 2002), [6.7], [6.8] and [6.9].

³³⁶ Ibid, [6.3.1].

³³⁷ Ibid, [6.3.2] and [6.3.3].

³³⁸ Allocated by the National Emergency Coordination Centre.

instructions.³³⁹ Labels should be colour-coded in accordance with Red Cross recommendations³⁴⁰ and dangerous goods labelled in accordance with Australian and international transport requirements.³⁴¹ There is no requirement that the labelling be in the language of the affected State.³⁴²

Emergency Management Australia undertakes to facilitate obtaining the necessary permission required to land Australian aid in the affected country.³⁴³ EMA will also provide instructions if visas are required and to attempt to gain permission for people who do not hold valid passports to enter the disaster-affected country.³⁴⁴

Guideline 18: Special goods and equipment

AUSASSISTPLAN does not require that affected countries recognize and accept the registration of Australian vehicles, boats or aircraft.

The plan does require that any special handling and storage instructions be marked on packages containing goods that require special handling, and this is likely to include medicines. The plan does not, however, specify the matters raised in the IDRL Guidelines³⁴⁵ such as the need to ensure the goods are transported and maintained so as to preserve their quality, must have more than 12 months before their expiry date, and must be labelled in the language of the recipient state.³⁴⁶

Guideline 19: Transport

The Commonwealth undertakes transport of essential personnel to the disaster-affected country but only if their entry is pre-approved and confirmed that the transport of the personnel is take priority over transport of relief supplies. Where commercial transport for personnel is available, that is to be used in preference to transport designated for relief supplies.³⁴⁷

Australian policy assumes that the Commonwealth will transport stores to assist the affected government. There is nothing in the policy to say that Australia will only transport the goods to the affected country, leaving it to the domestic agencies to transport the relief supplies to the disaster site; nor does the policy specify whether or how Australia will transport goods around the disaster site. Where Australian relief supplies will be delivered, to the national border or to the disaster site, would depend upon the request received and the availability of logistic resources to transport the supplies.

³³⁹ Emergency Management Australia, *Australian Government Overseas Disaster Assistance Plan (AUSASSISTPLAN)* (Commonwealth of Australia, Canberra, 2002), [6.5].

³⁴⁰ Ibid, [6.5.2].

³⁴¹ Ibid

³⁴² Ibid, [6.5].

³⁴³ Ibid, [6.8] and [6.9].

³⁴⁴ Ibid, [6.3].

³⁴⁵ International Federation of Red Cross and Red Crescent Societies, *Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance* (2007), [18.3].

³⁴⁶ Ibid.

³⁴⁷ Emergency Management Australia, *Australian Government Overseas Disaster Assistance Plan (AUSASSISTPLAN)* (Commonwealth of Australia, Canberra, 2002), [6.13].

Part IV – Australia’s position as an International Responder or Donor, measured against the IDRL Guidelines

Guideline 20: Temporary domestic legal status

These matters are not addressed in Australian law and policy and appropriately as they are matters for the affected Country.

One area of policy that may be relevant in this context is the process of accreditation of non-government organizations by AusAID discussed in more detail above.³⁴⁸ As part of the accreditation process, non-government organizations must show that they have a sound legal structure, in particular that they are incorporated entities ‘... with identified office holders, with a documented structure of responsibilities and appropriate systems to ensure accountability...’³⁴⁹ It is likely that Australian organizations that have gone through the accreditation process in Australia, and therefore have an unambiguous legal entity, will find it easier to be accepted in a foreign country than an ad hoc non-government organization that has sprung up in response to the particular crises.

Guideline 21: Taxation

Guideline 22: Security

Guideline 23: Extended hours

These matters are not specifically addressed in Australian law and policy.

Guideline 24: Costs

The costs of providing international assistance are met by the Australian government as part of Australia’s international aid programme.³⁵⁰

Conclusion

Australia’s response to international relief is managed under the AUSASSISTPLAN which is not supported by legislation. Notwithstanding the limited scope for Australian law to govern operations overseas, it has been shown that AusAID in particular, has taken steps to ensure that Australian non-government organizations, that access AusAID funding, have quality assurance and accountability mechanisms in place. These accreditation provisions will give some confidence to receiving countries that Australian accredited non-government organizations are appropriate entities to allow into their country. The accreditation process provides one clear criterion that an affected State could use to determine which Australian humanitarian organizations should be granted the recommended legal facilities to allow them to operate in the disaster-affected State.

³⁴⁸ See the discussion under *Guideline 5: Additional Responsibilities of all States* at p 4 and ff, above.

³⁴⁹ AusAid, *Base AusAID NGO Accreditation Criteria Table – May 2008* <http://www.ausaid.gov.au/ngos/pdfs/criteria_table_base.pdf> at 19 July 2008, [A2].

³⁵⁰ Emergency Management Australia, *Australian Government Overseas Disaster Assistance Plan (AUSASSISTPLAN)* (Commonwealth of Australia, Canberra, 2002), [7.1.1]; Emergency Management Australia, *National Emergency Management Coordination Centre (NEMCC) Standard Operating Procedures (SOPS)* (Commonwealth of Australia, Canberra, 2002), [11.4.1].

ANNEX A – ACRONYMS

AusAID	Australian Agency for International Development.
AUSASSISTPLAN	Australian Government Overseas Disaster Assistance Plan
COMDISPLAN	Commonwealth Government Disaster Response Plan
EMA	Emergency Management Australia
IDRL	International disaster response laws, rules and principles.
IDRL Guidelines	<i>Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance</i> adopted at the 30th International Conference of the Red Cross and Red Crescent Movement, 2007.
International Federation	International Federation of Red Cross and Red Crescent Societies
NEMCC	National Emergency Management Coordinating Centre

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The Fundamental Principles of the International Red Cross and Red Crescent Movement

Humanity

The International Red Cross and Red Crescent Movement, born of a desire to bring assistance without discrimination to the wounded on the battlefield, endeavours, in its international and national capacity, to prevent and alleviate human suffering wherever it may be found. Its purpose is to protect life and health and to ensure respect for the human being. It promotes mutual understanding, friendship, cooperation and lasting peace amongst all peoples.

Impartiality

It makes no discrimination as to nationality, race, religious beliefs, class or political opinions. It endeavours to relieve the suffering of individuals, being guided solely by their needs, and to give priority to the most urgent cases of distress.

Neutrality

In order to enjoy the confidence of all, the Movement may not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature.

Independence

The Movement is independent. The National Societies, while auxiliaries in the humanitarian services of their governments and subject to the laws of their respective countries, must always maintain their autonomy so that they may be able at all times to act in accordance with the principles of the Movement.

Voluntary service

It is a voluntary relief movement not prompted in any manner by desire for gain.

Unity

There can be only one Red Cross or Red Crescent Society in any one country. It must be open to all. It must carry on its humanitarian work throughout its territory.

Universality

The International Red Cross and Red Crescent Movement, in which all societies have equal status and share equal responsibilities and duties in helping each other, is worldwide.

Legal preparedness for international disaster response in Australia

A publication from the International Federation of Red Cross and Red Crescent Societies (IFRC)

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The International Federation of Red Cross and Red Crescent Societies promotes the humanitarian activities of National Societies among vulnerable people.

By coordinating international disaster relief and encouraging development support it seeks to prevent and alleviate human suffering.

The International Federation, the National Societies and the International Committee of the Red Cross together constitute the International Red Cross and Red Crescent Movement.