

Law's contribution to emergency and disaster management



Dr Michael Eburn

ANU College of Law and

The Fenner School of Environment and Society,

Australian National University, Canberra.

In this talk I will...

- Reflect on our findings looking at law and it's impact on Australian emergency and in particular, bushfire, management.
- Consider implications for the wider DRR community.

Our project is 1/3 of a combined suite

- Australian National University, Canberra:
 - Mainstreaming fire and emergency management law and policy.
- University of Canberra:
 - Land use planning for hazard mitigation.
- RMIT University, Melbourne:
 - Community engagement and understanding ‘shared responsibility’.

Our project set out to look at

1. Perceived inconsistencies;
2. The litigation experience; and
3. The role of government in fire management.

We have identified:

- There is ‘mainstreaming’ of emergency/disaster management into law, but it is of variable strength.
- Australian law does balance, or provide the means to balance competing interests in particular environment v hazard reduction.
- Litigation is an overrated concern.

Three critical issues

1. There is no clear measure of success.
2. Shortcomings when relying on the legal process to identify relevant lessons from previous events; and
3. How can law be used to facilitate policy goals of ‘shared responsibility’ and ‘resilient communities’?

See McLennan, B. and Eburn, M., 2012. Exposing hidden value trade-offs; sharing wildfire management responsibility between government and citizens. *International Journal of Wildland Fire*, submitted for publication.

Output

- 34 publications and conference presentations.
- Continued interest within the fire and emergency services sector.
- Culminating in joint project outputs in 2013.

Why it was important

- People worry about the law:
 - Will I be sued?
 - Will I be prosecuted?
 - Does the law allow best practice or will the ‘greenies’ get in the way?
- How does law help, or hinder, the development of ‘resilient communities’ and ‘shared responsibility’?

The role of law

- Many lawyers express surprise that disaster (or emergency) management law exists as an area of study.
- BUT law is relevant at all stages of:
 - Prevent;
 - Prepare;
 - Respond; and
 - Recover.

Prevent

- Natural hazards are not disasters until they impact upon vulnerable populations.
- Law can reduce vulnerability eg
 - Land use planning and building regulation;
 - Secure systems of recording land tenure.

Preparation and response

- Ensure arrangements are in place to allow emergency response and to empower agencies to take necessary steps.
- Identify:
 - Who's in charge?
 - Who is required or authorised to act?
 - Who is responsible for pre-planning?

Emergency powers

- May step on basic rights and freedoms so set out in advance:

- What they are?

- Exercised on whose authority:

The 'fire captain's' own initiative (eg *Fire and Rescue Services Act 2004* (UK) s 44) or a formal declaration (eg *Civil Contingencies Act 2004* (UK) ss 20 and 21)?

- By who?

- For how long?

- What are the consequences for disobedience?

Recovery

- Social support?
- Financial support?
- Do we rebuild or rebuild better?
‘COMMUNITIES wiped out by Victoria's bushfires will be rebuilt "brick by brick", Prime Minister Kevin Rudd has vowed ...’

The Age, 11 February 2009 <<http://www.theage.com.au/national/well-rebuild-brick-by-brick-20090210-83k9.html#ixzz2EMJnFNUC>>

International aspects

- Disasters as a human rights issue
 - Right to life;
 - Right to adequate housing; etc
- International law can impose obligations on nation states to prepare for and respond to disasters.

International norms

- The Hyogo Framework for Action;
- The IFRC Disaster Law project and the ‘Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance’;
- The Sphere project and other standards.
- The Responsibility to Protect (“R2P”).

But law is just a tool...

- It may take others to identify the problem that needs a legal solution.
- Law is popular with:
 - Governments and
 - Emergency service personnel.
- But, passing a law doesn't ensure:
 - Compliance;
 - Enforcement; or
 - That the rules are appropriate.

It's not so much the letter of the law...

- Respect for the 'rule of law';
 - Are the road markings there to direct traffic, or for decoration?
- Relationships between the judicial and other arms of government.
- The culture of the legal profession.
- The 'meta-law'?

Governments v governance

- Top down v local.
- ‘... governance embodies a non-hierarchically organized structure encompassing state and non-state actors bringing about collectively binding policies without superior authority.’

Renn, O., Klinke, A., & van Asselt, M., 2011. Coping with complexity, uncertainty and ambiguity in risk governance: a synthesis. *AMBIO: A Journal of the Human Environment*, 40(2). 231-246.

Law as a tool to adjust rights

- Litigation...

- Helps resolve complex issues;
- May force action – or reaction.

See Handmer, J., Loh, E. and Choong, W., 2007. Using Law to Reduce Vulnerability to Natural Disasters. *Georgetown Journal on Poverty Law & Policy*, XIV(1). 13-38.

- But it is also...

- Slow, expensive, retrospective, reactive and traumatic.

See Eburn, M., 2008. Litigation for failure to warn of natural hazards and community resilience. *The Australian Journal of Emergency Management*, 23(2). 9-13.

Law as a tool for learning lessons

- The Australian model –
 1. Hold a quasi judicial inquiry into the last disaster to see why we haven't 'learned the lessons' from the one before that;
 2. Sack the chief officer; and
 3. Hope for better luck next time.
- Is litigation, or a quasi-judicial proceeding, appropriate or helpful?

Law can be used to advance private interests at the expense of the common good

- Consider:
 - *Byron Shire v Vaughan* [2009] NSWLEC 88.
 - *Newcastle City Council v Pepperwood Ridge* (2004) 132 LGERA 388.

To return to the start, we identified:

- There is ‘mainstreaming’ of emergency/disaster management into Australian law, but it is of variable strength.
- Australian law does balance competing interests in particular environment v hazard reduction.
- Litigation is an overrated concern.

Three critical issues

1. There is no clear measure of success.
2. Shortcomings when relying on the legal process to identify relevant lessons from previous events; and
3. How can law be used to facilitate policy goals of ‘shared responsibility’ and ‘resilient communities’?

See McLennan, B. and Eburn, M., 2012. Exposing hidden value trade-offs; sharing wildfire management responsibility between government and citizens. *International Journal of Wildland Fire*, submitted for publication.

The broader implications

- Law is a tool, rarely the problem, or the solution.
- The letter of the law can be changed where there is the will to do it. What's harder to change is the 'meta-law'.
- Laws needs to be 'tailor made' to fit the identified problem taking into account local processes, culture and authorities.

Questions? Comments?

Thank you for your attention.

Dr Michael Eburn

ANU College of Law and
Fenner School of Environment and Society
The Australian National University
CANBERRA ACT 0200
AUSTRALIA

E: michael.eburn@anu.edu.au

P: + 61 2 6125 6424