

**Submission
No 62**

REVIEW OF THE NSW RECONSTRUCTION AUTHORITY ACT 2022

Organisation: Riverina Eastern Regional Organisation of Councils

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REROC

RIVERINA EASTERN REGIONAL
ORGANISATION OF COUNCILS

Response

Review of the *NSW*

Reconstruction Authority Act (2022)

Contact:

[Redacted contact information]

www.reroc.com.au

Response

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Riverina Eastern Regional Organisation of Councils

Introduction

Our Member Councils welcome the opportunity to respond to the Joint Select Committee’s Review of the Reconstruction Authority Act (“the Act”).

The Riverina Eastern Regional Organisation of Councils (REROC) represents eight Member Councils, Bland, Coolamon, Cootamundra-Gundagai, Greater Hume, Junee, Lockhart, Temora and Goldenfields Water. Our Member Councils provide a wide range of services and facilities to their communities



With the exception of the 2019/20 bushfires that impacted on the south-eastern corner of Greater Hume Shire, our Region has not experienced a major flood or bushfire in the last 5 years. However, our Region has consistently been impacted by major rainfalls that have significantly impacted on roads and other infrastructure. Our Member Councils have also had to manage the major impacts on local road infrastructure when traffic is diverted from major highways and regional roads because of flooding.

These impacts have resulted in most of our Member Councils applying for Disaster Recovery Funding Arrangements (DRFA) to repair roads, bridges and other infrastructure. This process has been less than satisfactory for most of our Member Councils and we believe that there should be a greater, more pro-active role that RA plays in resolving matters relating to funding for repairs of infrastructure damaged through heavy rainfalls and flooding.

In our Region, we have had one council decide not to progress a claim for DRFA funds because of the onerous reporting and auditing requirements demanded by Transport for NSW which ultimately led to the council's decision that the time taken in fulfilling the growing list of requests for more information could not be justified given the funding that was on offer.

Other REROC Member Councils understand that many councils have reported similar issues and we understand that around NSW many councils are encountering the same reporting and auditing demands that are resulting in delays in repairs leading to roads and bridges being further damaged. We understand that what regularly occurs are opposing views on the manner in which repairs should be undertaken including arguments about how many millimetres of aggregate should be used. Where there is no resolution, which is often the case, the repairs can drag out over months or even years.

We strongly believe there is a role for RA to play as an ombudsman in dealing with impasses that occur in relation to reporting and auditing DRFA claims. While this role is not specifically in the Act, we believe that there is scope for the inclusion of the activity under s10(b)(iii) and ask that it be specifically addressed and recommended by the Review.

REROC has, over the last 12 months, been working with the Reconstruction Authority on a project funded through the Disaster Risk Reduction Fund. The project has worked collaboratively with other regional organisations of councils with the goal of improving the disaster preparedness of the communities our Member Councils represent.

Our Members provide the following responses to the Inquiry's Terms of Reference.

Policy objectives of the Act remain valid

The primary object of the Act is:

to promote community resilience to the impact of disasters in New South Wales through—

(a) disaster prevention, preparedness and adaptation,

and

(b) recovery and reconstruction following disasters.

Our Members note that the primary objective reflects the Minister's Second Reading speech supporting the Bill, with then Minister, Hon Anthony Roberts MP stating:

The primary object of the bill, and therefore the primary object of the NSW Reconstruction Authority, is to promote community resilience to the impacts of disasters in New South Wales

through disaster prevention, preparedness and adaptation, and recovery and reconstruction following disasters.

Our Members note that the Authority's role does not lie in disaster response which is quite properly left to the Emergency Services. Our Members agree that the primary objective for the Reconstruction Authority ("the Authority") should focus on prevention, preparedness and recovery and reconstruction.

The Act's definition of a disaster at s6 includes:

- (a) natural disasters, including, for example, bushfires, coastal hazards, cyclones, earthquakes, floods, heatwaves, landslides, severe thunderstorms, tornadoes and tsunamis,*
- (b) hazards caused by natural disasters including air pollution, water and soil contamination and water insecurity,*
- (c) other emergencies in relation to which the Minister has requested assistance from the Authority,*
- (d) other emergencies in relation to which—*
 - (i) a public authority, including a Minister other than the Minister administering this Act, has requested assistance from the Authority, and*
 - (ii) the Authority has agreed to provide assistance,*
- (e) events, incidents or matters, or classes of events, incidents or matters, prescribed by the regulations.*

Our Members note that droughts are not included as a natural disaster, nor are they included in the list with water insecurity. Given that climate change predictions indicate that the State is likely to suffer from longer, harsher droughts our Members believe that s6 of the Act should be amended to include droughts under natural disasters.

Section 4 of the Act states that the primary object is to be achieved by—

- a) establishing the NSW Reconstruction Authority to facilitate community resilience to the impact of disasters in New South Wales through prevention, preparedness and adaptation, and*
- b) providing for the functions and powers of the NSW Reconstruction Authority, including functions and powers to—*
 - (i) facilitate the protection, recovery and reconstruction of affected communities, and*
 - (ii) mitigate against the impact of potential disasters on communities, and*
 - (iii) improve the resilience and adaptability of affected communities in relation to potential disasters, including, for example, by the betterment of affected communities, and*
- c) providing for the exercise of functions by the chief executive officer of the NSW Reconstruction Authority, subject to the Minister's control and direction, including ensuring the Authority exercises its functions effectively and efficiently.*

We note that the Authority does not appear to have a role in co-ordinating on-ground activities between the Commonwealth, emergency services, other State and Federal agencies, local government and community organisations. Our Members believe that there is a general expectation that the Authority will play this role particularly during the recovery phase to ensure that there is no duplication of service delivery and that recovery is delivered as efficiently and effectively as possible. Therefore, we recommend that s4(b) be amended to include a further sub-clause as follows:

"co-ordinate on-ground recovery activities to deliver efficient and effective outcomes to affected communities"

In addition, our Members recommend that a further “*function and power*” sub-clause be added as follows:

“collaborate with the Commonwealth, emergency services, other State and Federal agencies, local government and community organisations to achieve the primary objective”.

We believe that it is imperative that collaboration be at the core of the activities the Authority undertakes. It would ensure that the most efficient and effective approach is taken in relation to the delivery of disaster preparedness and recovery activities. There are many players in the preparedness and recovery phases of a disaster, all working to achieve positive outcomes for affected communities. Without effective collaboration there is a strong possibility of duplication of effort leading to wasted resources and time.

While collaboration may be “understood” to be part of the facilitation, mitigation and improvement functions and powers and we note it is included in s10(c)(i) of the Act our Members strongly believe that it should be stated in Section 4, making it clear that this is an expected pathway for the Authority to take.

Section 10 of Act lays out the Functions of the Authority as follows:

- (a) disaster prevention and preparedness, including—*
 - (i) identifying, assessing and managing the risks from disasters, and*
 - (ii) leading disaster resilience, adaptation and mitigation activities, and*
 - (iii) building community capacity and resilience to disasters, and*
 - (iv) developing and implementing methodologies for disaster resilience, adaptation and mitigation activities,*
- (b) reconstruction and recovery following disasters and other emergencies, including—*
 - (i) assisting the Minister administering the State Emergency and Rescue Management Act 1989 and the State Emergency Recovery Controller to exercise the Minister’s and Controller’s functions in relation to recovery under that Act, and*
 - (ii) facilitating, coordinating and directing the recovery, planning and rebuilding of affected communities, including repairing and rebuilding land and infrastructure and other development, and*
 - (iii) balancing constraints to enable a focused, timely and expedited recovery of affected communities,*
- (c) information provision and exchange and community engagement, including—*
 - (i) supporting collaboration and coordination between government agencies, local councils, service providers and communities to improve disaster prevention, preparedness, recovery, reconstruction and adaptation, and*
 - (ii) increasing the flow of information and enabling community participation to support the development of strategies for disaster prevention, preparedness, recovery, reconstruction and adaptation,*
- (d) to coordinate the development and implementation of whole-of-government policies for—*
 - (i) managing the risk of disasters in the State, and*
 - (ii) ensuring communities can recover, reconstruct and adapt effectively and efficiently following disasters, and*
 - (iii) improving the preparedness and resilience of communities for potential disasters,*
- (e) to prepare and implement a State disaster mitigation plan for disasters in the State,*

(f) to provide advice and support to local councils to help maximise the effectiveness of councils' disaster preparedness and reconstruction programs,

(g) to provide advice and assistance to local councils and relevant strategic planning authorities under the Environmental Planning and Assessment Act 1979 to ensure strategic plans prepared under that Act, Division 3.1 and the State disaster mitigation plan align,

(h) to lead the management and coordination of housing and infrastructure renewal and recovery within affected communities,

(i) to work closely with affected communities to ensure the needs of each community are recognised in the recovery and reconstruction of the community, and to improve the disaster preparedness and resilience of communities,

(j) to lead public education on disaster risks and certain disaster preparations,

(k) to carry out research, and provide advice, proposals, recommendations and reports to the Minister, about—

(i) disaster prevention and preparedness, and

(ii) recovery and reconstruction following disasters,

(l) to enter into joint ventures, project delivery agreements and other arrangements with landowners, developers, State and Commonwealth government agencies and local councils in relation to disaster prevention, recovery and reconstruction,

(m) to implement funding schemes to provide financial support in relation to disaster prevention, recovery and reconstruction,

(n) to carry out rezoning and land use planning, including exercising the functions of local councils for the purpose of land use planning in relation to disasters,

(o) to carry out flood modelling and the determination of flood planning levels, particularly in relation to high risk catchments,

(p) to assist with the development of flood plans,

(q) to monitor the cumulative impact of disasters on the State, including by collecting and storing data about the impact, or likely impact, of disasters across the State,

(r) to exercise other functions conferred or imposed on the Authority by or under this Act or another Act,

(s) to do anything supplementary, incidental or consequential on the exercise of the Authority's functions under paragraphs (a)–(r).

In relation to the Authority's functions our Members recommend the following amendments:

- Section 10(c)(i) replacing the phrase “supporting collaboration” to “leading collaboration”. In matters relating to disaster preparedness and recovery the Authority is the State's lead agency and therefore should be expected to lead collaboration not merely support it.
- Section 10(q) amended to include a requirement that the Authority share the data that is collected with State and Commonwealth government agencies and local councils in relation to disaster prevention, recovery and reconstruction.

The terms of the Act remain appropriate for securing the objectives

In the main our Members believe that the terms of the Act are appropriate for securing the Primary Objective. However, our Members recommend the following amendments:

- Section 26(2A) – our Members welcome the requirement that at least one member of the RA Advisory Board be “...a be a person who, in the Minister’s opinion, has considerable experience in a senior role with a local council.”

However, given the grassroots involvement that councils have in preparedness, recovery and reconstruction that a second person drawn from local government should be included on the Advisory Board. We are recommending that the person be drawn from a Council that has experienced a major disaster within the last 5 years.

- Section 59 – permits the Authority to make decisions in relation to its functions pertaining declared projects, reconstruction areas and disaster prevention areas without consulting with anyone. As the actions to be taken primarily relate to the manner in which land is being treated or solutions applied, we believe that every decision should be made after consultation with the local council. The Act should be amended to reflect this.
- Sections 84 and 85 – permits the charging of fees where the Authority:
 - (a) supplies a service, product, commodity or publication,
 - (b) gives an approval or other permission,
 - (c) gives information,
 - (d) receives an application for an approval or other permission,
 - (e) issues a certificate, direction or other requirements,
 - (f) another thing in the exercise of functions under this Act, at the request of a person or body or for the benefit of a person or body.

Our Members are keen to ensure that the charging of fees does not work against the need for collaboration to prepare, recover and build resilience to disasters, nor inhibit local government’s capacity to build preparedness at a local level. Our Members recommend the amendment of Section 85 to specifically exclude Local Government from the liability to pay fees.

In making this recommendation we note that s76 of the Act makes it an offence for a relevant entity to withhold requested information from the Authority. Therefore, we believe it is both fair and reasonable that Local Government should not be charged when council asks the Authority for information.

Conclusion

Our Members welcome the opportunity to provide this feedback to the Review. We acknowledge the important work that the Authority does within the State and the important work that Local Government does in support.

While our Members agree that the Act is fit for purpose, they strongly support the recommendations that have been made for amendments.