

The hidden wiring of resilience in Australian cities

John Handmer and Elsie Loh
Centre for Risk and Community Safety
RMIT University

Abstract: Resilience and vulnerability are highly contested concepts. In the context of cities they are often seen narrowly in terms of physical infrastructure, demographic data, tangible assets and documented economic flows. These are very important, but there may be more fundamental contributors to vulnerability in cities as large agglomerations of human diversity, wealth creation and almost infinite sources of potential crises. It has been well argued that a variety of networks underlie resilience, and that these are not always obvious. One area of less visible support that has received little attention in studies of vulnerability and resilience is the legal system. Legal systems attempt to regulate behaviour, allocate rights and responsibilities and hold governments accountable. It is acknowledged that legal practices reflect custom as well as political and economic realities, but we argue that they may have considerable impact on the vulnerability and resilience of Australian cities. They do this through laws concerning planning, livelihoods, commercial practice, safety, housing, and administrative review. The role of law in vulnerability is also examined by considering the vulnerability of those with different levels of legal status, such as illegal migrants. The paper sketches out the arguments with some illustrative examples and in doing so draws attention to an area rarely discussed in the context of resilience and cities.

Introduction

In Ken Mitchell's words, cities can be seen as "Crucibles of Hazards" embodying the emergence and transformation of hazards as cities become the focus of overlapping tangible and abstract layers of ideas, ideologies, structures and industry all co-located to some extent in a world of natural phenomena (Mitchell, 1999). There is an assumption in much literature that massive urban areas are becoming more vulnerable to disaster, and that this should be expected due to the increasing mix of industry, people, transport and occupation of hazardous areas (eg. see Mitchell, 1999; Pelling, 2000; Domeisen and Swartz, 1996; Rosenzweig and Solecki, 2001). This may be the case, but cities are also the location of enormous capacities to take preventive action through planning, engineering and building processes, and through the resilience of the people and institutions that make up cities.

People can do many things to reduce their vulnerability and the more they do the more resilient they become in the face of (most) hazards, or to use expressions gaining currency, the greater their coping or adaptive capacity. A case can be made that as a nation Australia has become increasingly resilient, in contrast to the situation in many of our near neighbours (i.e. the Pacific Island Countries) where resilience has arguably declined steadily over the last decade or so. For convenience, resilience is assessed in this context in terms of the conventional macro "outcome" indicators of life expectancy and infant mortality (themselves related to access to health services), as well as employment, education, income and welfare provision (consistent with the United Nations Development Program - Human Development Index, see www.undp.org/hdro/).

Resilience and its obverse vulnerability are highly contested concepts. In the context of cities they are often seen narrowly in terms of physical infrastructure, demographic data, tangible assets and documented economic flows. For example, a city's vulnerability to geophysical hazards is often defined by location and by the quality of its built assets, in particular housing. Similarly, the strength and resilience of its economy may also be considered as this is a key factor to recovery after an event. However, the strength and weakness of cities are also dependent on the population and its governance, in that, to a large extent, it is the legal system in Australia that determines the standard and influences the location of the built environment, as well as regulates commercial and personal relations. It is also the legal system that provides a means of redress when harm has been done. This is not to underplay the role of ideology, cultural influences on behaviour and commercial forces, but ultimately it is the law which enforces the rules governing these factors – although law is itself strongly influenced by the same factors.

This paper outlines the case for the pervasive influence of the law in Australia and its connection with the vulnerability and resilience of cities. It examines in brief a number of areas of law which generally impact positively on people’s livelihoods, health and housing, and one area which undermines resilience. In conclusion, it highlights some of the issues identified and suggests ways forward.

Law and vulnerability

That the legal system is a significant element of vulnerability and resilience is not surprising as upon close examination, it is clear that the law intersects with many factors that are commonly recognised as constituents of resilience and vulnerability. These constituents include general notions such as livelihood, employment, housing, health/disability, gender, ethnicity, age, immigration status and social networks. The constituents of vulnerability are affected by different streams of law as shown in Table 1.

Table 1: Constituents of vulnerability/resilience with examples from Australian law (drawing on Handmer and Monson, 2004).

Constituents	Categories of law	Examples
<i>Governance</i> - Access to redress	Admin and Constitutional law (govt); Civil actions; Human rights law	<i>Administrative Decisions Judicial Review Act 1977 (Cth), Victorian Human Rights Charter 2006 (Vic)</i>
<i>Commerce</i> - Insurance	Commercial law, Corporate law, Insurance law	<i>Insurance Contracts Act 1984 (Cth)</i>
<i>Economics</i> - Livelihood - Safety net	Fair labour and Employment law, Equal opportunity law, Social security	<i>Workplace relations Act 1996 (Cth), Social Security Act 1991 (Cth)</i>
<i>Property</i> - secure title and security in trade	Environmental law, Property law	<i>Property Law Act 1974 (Qld), Environment Protection Act 1993 (SA)</i>
<i>The individual</i> - health - immigration status	Equal opportunity law, Immigration law	<i>Disability Discrimination Act 1992 (Cth), Racial Discrimination Act 1975 (Cth), Sex Discrimination Act 1984 (Cth), Migration Act 1958 (Cth)</i>
<i>Networks/isolation/ connections</i>	Anti-discrimination law, Human rights law	<i>Discrimination Act 1991 (ACT), Equal Opportunity Act 1995 (Vic)</i>
<i>Location</i>	Planning law	<i>Development Act 1993 (SA), Planning and Development Act 2005 (WA)</i>
<i>Buildings and Infrastructure</i>	Building codes and requirements	<i>Building Act 2000 (ACT)</i>

In addition to these specific areas, Australian law has a number of principles which may have helped to reduce vulnerability. These include the concept of unconscionable conduct in commercial dealings, development of certain aspects of law generally referred to as “human rights” law, anti-discriminatory law, and the expansion of administrative law in particular its review functions. Administrative law in particular has been a key area in reducing vulnerability by providing an important avenue for the public to access legal review of decisions made by government bodies. This increased access has made available this means of redress to a greater number of people. Further, the High Court in a number of torts (negligence) cases has recognised the ‘vulnerability’ of plaintiffs as being a factor in imposing upon the defendant a duty to care to ensure that care is taken to avoid causing harm. The High Court drew on the concept of vulnerability as a factor in negligence, holding that more vulnerable people were to be afforded greater protection by the courts (*Kondis v State Transport Authority*, 1984; *Stevens v Brodribb Sawmilling Co.*, 1986; *The Commonwealth v Introvigne*, 1982; *Burnie Port Authority v General Jones*, 1994).

Working against this has been legislation introduced to reduce working conditions (eg. “Work Choices” – see also below discussions), restrict judicial review (eg. section 474 of the *Migration Act 1958* (Cth) made most administrative decisions made under the Act ‘privative clause decisions’. Such decisions are deemed to be ‘final and conclusive’ and cannot be ‘challenged, appealed against, reviewed, quashed or called in question in any court’: see Nicholson, 2004), create classes of people who are effectively outside the law (eg. unlawful non-citizens); a raft of provisions generally constricting courts; and increasing use of the threat of terrorism to alter or remove basic common law rights and protections that people have with respect to the state (*Anti-terrorism Act 2005* (Cth)).

A critical issue relevant to vulnerability/resilience and law is that of equality. There are a number of approaches to resource distribution in societies around the world. Until relatively recently, Australia’s great achievement – in terms of vulnerability – was an emphasis on a reasonably even distribution of the benefits of economic growth. In turn this has had great benefits on a fundamental aspect of vulnerability: that of income flow with ownership of reasonably high quality housing. The absence of strong distributional policies, health care access, and a commitment to full employment leads to societies characterised by great divisions which almost always creates significant groups of vulnerable people (Wisner et al., 2004).

The pursuit of equality through employment and pay rates was part of the Australian system until recently. When Nugget Coombs was Governor of the Reserve Bank in the 1950s he had the pursuit of full employment inserted into the Bank’s charter, along with minimising inflation – which the Bank was legally required to pursue (see Jones, 2003). The full employment requirement was dropped during the Hawke/Keating government of the late 1980s. The power and legal status of the Union movement combined with centralised wage fixing system and a culture that accepted limited differentials between the average wage and the pay of senior management made the creation of a vulnerable working poor group far less likely than in the US or UK for example (an exception to this picture is the situation of indigenous Australians) (eg. see Shipler, 2004). This started unravelling from the late 1970s. Nevertheless, Australia’s Gini coefficient, which is a rating of inequality between 0 and 100 (with 0 indicating perfect equality and 100 indicating absolute inequality) is currently steady at 35.2 (UNDP, 2006, p.335). This figure is relatively high for a developed country considering Australia is ranked at number 3 on the Human Development Index (HDI) (UNDP, 2006, p.335). Nevertheless, Australia is doing well compared with the United States which has a Gini coefficient of 40.8 (and is ranked 8th on the HDI) compared to Ghana which also has a Gini coefficient of 40.8 but ranked at 136 on the HDI) (UNDP, 2006, p.335, 337).

It is also widely acknowledged that one of the dominant ideologies of the contemporary world – at least for those with power – is economic globalism, and that while this process may have substantial economic benefits, it is nevertheless creating vulnerable communities the world over (eg. see Stiglitz, 2002; Pelling, 2003; Lechner and Boli, 2003).

In the following sections we examine a few of the areas of vulnerability and law in detail: livelihoods; health; and planning and building. We also comment on an area where changes to the law have placed people outside the protection of the law, and in the process may have created a particularly vulnerable group. We do not consider the expansion by the courts, and then its contraction by legislation, of the law of negligence; nor do we examine in detail the recent history of other important areas of law such as the massive growth of administrative law. Neither do we consider the law in jurisdictions outside Australia where the issue of social and economic vulnerability may be addressed more explicitly, even if the outcome is similar. The most notable examples of this are found in the various international human rights treaties, and in the Social Chapter of the EU’s Maastricht Treaty. Some of the issues surrounding law and vulnerability overseas have been examined in Handmer and Monson (2004) and in Handmer, Loh and Choong (2007).

Livelihoods

The ability of people to absorb losses suffered from an exposure to a hazard event through an assured supply of employment, income or other strategies is dependent on the protection provided by existing employment law and social security (as a safety net). If individuals are at risk of having reduced or no

income (as a result of a dismissal) subsequent to an exposure to shock, then their livelihoods are vulnerable. As mentioned previously, the trend in the Australian labour market has been a movement away from full employment toward a rise in prominence of individualized employer-employee relationships (Wooden, 1999). This trend has is having impacts on livelihood security and has placed some Australians in a greater state of vulnerability – regardless of the level of official unemployment. For example, in *AMEP & KI Industrial Union of Employees, Qld v Australian Workers' Union of Employees, Qld 15/08/1997 IRC (Qld) D150/97*, employees were late for work due to flooding. Certain employees were not paid flood payments. Though employees had entered into "Lost Time Payment - Floods and Cyclones" Agreements, the Commission confirmed that they were not entitled to be paid flood payments according to the Agreements. It is recognized by Andrades (1998) that there are genuine negotiating relationships between employers and individual employees, such as in certain (usually highly skilled) industries where there is an undersupply of labour (although such highly skilled labour can increasingly be imported). A more common situation is where,

[t]he balance of power in the workplace favours the employer. There are certain categories of worker who are *particularly vulnerable and/or at risk*. They include the low paid, the unskilled, part-timers, young people, migrants, older people, new starters, Aboriginal workers, workers from the Torres Strait Islands, workers with disabilities, lesbians, gay men, and workers in rural areas.' [emphasis by the authors] (Andrades, 1998, p61).

Since Andrades' observations in 1998, there have been more sweeping changes introduced that have significantly reshaped the landscape of Australia's workplace laws. The *Workplace Relations Amendment (Work Choices) Act 2005* (Cth) ('Work Choices') that made significant amendments to the *Workplace Relations Act 1996* (Cth) was given Royal Assent on 14 December 2005. Work Choices reinforced the shift away from collective arrangements and toward individual employer-employee relationships, with a fundamental aim being to foster individualised arrangements, personal work contracts and Australian Workplace Agreements (AWAs) (Munro, 2006). Despite being aimed at increasing productivity, choice and flexibility in the workplace, Work Choices have made people's jobs less secure and working conditions less favourable. This has in turn made their ability to secure livelihoods less secure. Further, should people lose their jobs or are given less favourable work conditions on their individualised employment contracts (known as AWAs) compared to what was available under previously negotiated collective agreements or Federal/State awards due to these changes, they would become more vulnerable in times of disaster.

For example, employees could previously rely on collective strength during the bargaining process, including the right to take industrial action (Fetter, 2006). Any agreement reached was also checked by a public agency to ensure that it did not disadvantage them compared to award conditions (Munro, 2006). Under Work Choices, however, these 'protections' are removed. The move from a 'bilateral, collective and protective model towards a more unilateral, individualistic and market-based model' (Fetter, 2006, p.212) has meant that employers can approach individual employees (or job applicants) and offer them an AWA on any terms (down to the statutory minimum). As collective bargaining strength has been lost, an employee could easily feel pressured to accept terms which are greatly unfavourable to them, especially where other employees around them have accepted the same disadvantageous offer.

The changes that have been brought in by Work Choices have also been criticised for removing the 'no disadvantaged test' and limiting the application of 'safety-nets' (particularly putting pressure on employees in less skilled service industries), making it difficult to identify the applicable awards that are binding on employers and introducing exemptions from the unfair termination remedy (leading to employees being less secure) (Munro, 2006).

As observed by Fetter (2006), the amendments that are introduced by Work Choices, despite its aim to implement progressive workplace practices, will significantly worsen the position of many employees, particularly those who are already the most vulnerable. He describes AWAs as:

...highly attractive to employers who wish to reduce employees' entitlements, increase managerial power, or to subvert collective bargaining. The Work Choices Act makes it easier for employers to exploit their

generally superior bargaining power and pressure an employee into signing an AWA, which may potentially deprive the worker of all but the minimum statutory conditions of employment.

While these reforms have been justified on the basis of choice, flexibility and productivity, it is hard to resist the conclusion that AWAs will be used in practice to implement a low-productivity, cost-cutting strategy that will undermine real choice and flexibility for employees. *This threatens particular harm to employees who already face disadvantage in the labour market, including women, young people, casual employees and the low paid.* This is a highly irresponsible policy, marking the death of the protective function of labour law in Australia [emphasis by the authors] (Fetter, 2006, p.223-224).

Writing in the University of NSW Law Journal, Munro (2006) is in agreement about the effects of the Work Choices legislation on the most vulnerable employees, confirming that, 'Work Choices brings about change that will reinforce what is an already deplorable state of affairs for many lower paid employees and dependent workers in quasi-employments.' (Munro, 2006, p.164).

According to the government, however, the changes to our IR laws would provide greater security to business owners, promote flexibility in the labour force, reduce compliance costs for employers and thus ensure a more vibrant economy although there is limited evidence for this view (Donaldson, undated). Whether this would build people's resilience is debatable, as though national economy may grow and the benefits shared, some of the groups already mentioned above are likely to be worse off, leading possibly to entrenchment of the working poor (Smyth, 2005). It is recognised in disaster work that such a result would increase the vulnerability of the affected communities.

It is recognized that whether one is rich or poor, people need external support when faced with a crisis. This support could come from their kin (friends and family), the State or from insurance and a continued supply of income from security of employment would equip one to recover in due time. Where there is no kin or insurance and when there is no income, then one can only rely on the State's welfare (or social security) system. Historically, the Australian welfare system has developed as a response to industrialisation which increased people's dependency on an insecure system of paid labour (Saunders, 2002). The welfare system was required to support workers and their dependents in times of unemployment or sickness and for people who could not rely on traditional and community networks for support. Recently, poverty has been attributed to unemployment, where the people who require welfare consist mainly of working-age households where nobody has a full-time job (Saunders, 2002). This recognition further emphasises the importance of employment law in impacting people's vulnerability.

Finally, the ability of vulnerable groups to be 'visible' such as through unions or advocacy groups will also impact on the amount of protection they will receive from the law, as Parliament enacts legislation and the actions taken by Parliament are inevitably politically-driven.

Health

The capacity of people to cope with injury or loss as a result of a hazard is greatly influenced by the general health of people affected. Health is therefore a vital component of resilience (Cannon 2000). Good health is also fundamental in determining people's capacity to recover from a disaster (National Rural Health Alliance 2004) – and is a key factor underlying the large differences in rural between city life expectancy. Lack of access or inequality in access to health care, including emergency healthcare, in both a day-to-day setting and also during a disaster, would lead to a greater level of vulnerability.

It is recognised that when health care services fail to reach a particular locality or group of people, that not only will that locality or group be poorly served, but the whole community will suffer (Worthington, 2001). Though most Australians have access to a modern and relatively efficient healthcare system, there is a minority who have access to a lesser quality of health care (if any at all). Due to geographical as well as socioeconomic reasons, Indigenous people and people in rural areas have particular difficulty accessing the healthcare system (AIHW, 2006; Alston, 2007). Nevertheless, it is found that Australian Medicare, 'by and large...fulfils a social need' (in particular urban health needs) and the reason for this can be attributed to:

Australian social values [which] have a greater tolerance for a redistributive ethic than, for example, the US. It would appear that Australian public policy has helped create a climate that is responsive to social needs, while remaining opposed to fostering attitudes of dependence, by choosing to keep welfare benefits low (Worthington, 2001, p.50).

Australia's first universal health insurance system, Medibank, was introduced on the basis of major legal changes made during the early 1970s by the Whitlam government and is, as such, a significant legal contribution to resilience. Attempts were made to wind back the universal coverage in 1981 but this proved to be highly unfavourable to the public, with reports of instances of debt and hardship as a result – reinforcing the importance of health cover in resilience (Scotton, 2000). In 1982, the Labour government, under Hawke, reaffirmed the policy of universal coverage under the title of Medicare, which helped him secure a substantial victory to government. Legislation was passed in September 1983 and Medicare was in operation by October 1984 (Scotton, 2000). Medicare has since provided Australians with near 'universal' health coverage (with some gaps as highlighted above).

Though Australians can generally access healthcare, there is actually no legal guarantee to healthcare as such. Nevertheless, there are laws in place which ensures that all Australians cannot be discriminated against in their endeavour to access health services. Examples of these laws include the *Commonwealth Racial Discrimination Act 1975*, *Sex Discrimination Act 1984* and *Disability Discrimination Act 1992*. These acts prohibit the discrimination of Australians on the grounds of race, gender or disability in the provision of goods and services, which would include in the provision of health services. Therefore, though these acts do not provide an individual with a right to healthcare, it does prohibit healthcare providers from refusing to provide services to Australians on these grounds.

Housing and planning

Planning law is especially relevant in terms of ensuring that buildings (such as residential housing, hospitals, schools, etc.) are not built on land that is hazardous because of floods, fires or contamination for example. They also ensure that existing buildings in these areas are not used for purposes that may be dangerous. An example of the way planning law could prevent potential disasters is evident in *Hackett v Hawkesbury City Council* [2006] NSWLEC 503 where an appeal against a refusal for a development consent by the local council was considered. The application related to the use of an existing dwelling as a tourist facility. The proposal was to use the dwelling as tourist accommodation that would lodge up to six people approximately 25-30 weeks per year. As the dwelling was close to the riverbank and the floor levels in the dwelling was 9.4m below the designated flood level, the Land and Environment Court of NSW held that the location of the proposed development was inappropriate because it would expose potential occupants to an unacceptable level of risk.

Laws related to building and housing (such as building codes) are also important to ensure that buildings and homes are built according to required standards that will increase their chances of withstanding various hazards (such as bushfires, floods and wind) and ensure health and safety (relating to sanitation and water supply) – these help protect people and their wealth. For example, regulation 802 of the *Building Regulations 2006* (Vic) ('the Building Regulations') prescribes when land is in an area liable to flooding. Sub-regulation 802(3) and (5) go on to require that '[t]he report and consent of the relevant council must be obtained to an application for a building permit if the site is on an allotment that is in an area liable to flooding' and that '[t]he relevant council must not give its consent under sub-regulation (3) if it is of the opinion that there is likely to be a danger to the life, health or safety of the occupants of the building due to flooding of the site.' Similar considerations are required under the same Regulations for bushfire prone areas. Regulation 804 of the Building Regulations sets out that the council may determine what areas are 'designated bushfire prone areas' and that a building surveyor may accept a site assessment that has been made for the purpose of determining risk as part of an application for a planning permit to determine the construction requirements that are applicable to the building. As in other States and Territories, the Building Code of Australia ("BCA") has been adopted into State building laws under regulation 109 of the Building Regulations in Victoria, though in a slightly modified form. The BCA is the national technical document which sets up the standards for building work and which accordingly sets out the technical requirements to be met when building in areas liable to flooding and bushfire prone areas (as well as other potentially hazardous areas).

Unfortunately, there is criticism that land-use planning by local government has been more reactive than proactive, being led more by the types of planning applications that are received (usually from large developers) than by the implementation of well-thought-out plans. In relation to the building laws, there is also a push in the housing industry to build with less in the way of cost and materials, with limited advantages to the consumer in terms of safety, although the result may be less expensive housing. There is also often a gap between what is on paper and what occurs in practice. There still is much development in hazardous locations albeit that these buildings are protected to some extent by building regulations, and through warnings and emergency planning.

Creating vulnerability

There are many ways in which vulnerable groups are created, for example: through illegality; by the process of economic globalism; the collapse of single industry towns; or by the withdrawal of essential services from rural areas. Here the issue of refugees is considered. Though there is an increasingly number of migrants (including refugees) settling in regional areas, there remains a large proportion remaining in our major cities (Birrell and Rapson, 2002). Australian immigration laws as they currently stand have a tendency to create vulnerable groups. There are two types of refugees in Australia - those with permanent residency and those with a three-year temporary visa. There are also asylum seekers who are waiting for their claims to be considered by the Department of Immigration (in order to be recognized as refugees) on temporary bridging visas. Lastly, there is the most vulnerable group of people who are unlawful non-citizens, being those who remain in Australia illegally.

It is only the refugee with permanent residency who has 'full' rights under the current law and who is permitted full participation in society, in the same way as any other Australian permanent resident or citizen. Permanent resident refugees, therefore, would be able to engage in work (livelihood activities), form stronger social networks (through family reunion which is where overseas family members are given humanitarian visas on a priority basis to travel to Australia to be reunited with them) as well as access to healthcare and social benefits. As they have permission to work and obtain income, they are also able to appropriate for themselves adequate housing, better health care (through private health insurance) and to meet their own basic consumption needs. Due to their ability to participate more freely with society, they have more opportunities to engage the law to ensure that, for example, their human rights are not breached and that they are not discriminated against as they engage with the society (eg. at the workplace, in the provision of goods and services by others, and so on).

In October 1999, temporary protection visas were introduced for unauthorised arrivals (those that applied for protection after arriving to Australia). Even if found to be genuine refugees, these 'unauthorised' persons would only have temporary protection (for three years) and will have to reapply (and prove once again) their claim at the end of the three years. These temporary refugee visa holders are not eligible for many social programs, and do not have a right to return to Australia should they travel overseas which will significantly impact on their ability to cope in and respond effectively to a disaster (Goodwin-Gill, 2001).

Asylum seekers may or may not have a bridging visa, therefore they may or may not be in immigration detention depending on various factors, such as to verify documents and identity. If they have entered into Australia on a valid visa and passport and have applied for a Protection visa within 45 days of arriving in Australia, they will get a bridging A visa which will entitle them to work, to Medicare and to study in Australia while their refugee claim is being determined. If they have applied for a Protection visa after 45 days then they will be granted a bridging E visa (BVE) without any of these entitlements. Not only will these BVE visa holders not be entitled to any social benefits or healthcare from the government to help them during their stay in Australia, they are not allowed to work to be able to meet their own consumption and medical needs. These visa holders are the most vulnerable in society, as if their claims are true, not only have they undergone persecution and hardship (which is the reason for the flight to Australia) and are often separated from family and any social network, it is illegal for them to earn a living so they cannot meet their basic needs, suffer from discrimination because of their immigration status, and are fully dependent on the informal support provided by community groups and churches to have their needs met.

Unlawful non-citizens are people in Australia who are not citizens or hold any permanent or temporary visas to legally reside in Australia. These people are therefore often in hiding from immigration officers and are afraid of coming to the attention of any public authority. This makes them an extremely vulnerable group of people as not only do they not rely on any legal or government protection (such as the police) or aid (Centrelink), they avoid these. The fear of being deported keeps them locked in this state of vulnerability.

Conclusion

The law provides underpins the functioning of our society. It reflects at least part of that society - the part with power and influence. In Australia however, the law mediates between social groups providing some protection for the less powerful and more vulnerable, through for example, specific laws on employment security, anti-discrimination, workers compensation and tenancy. Through its role in planning and risk management it also reduces exposure to hazards and mitigates their consequences. By protecting employees the law can strengthen the resilience of the people who are the most vulnerable, such as the lower paid, the unskilled, part-timers, migrants, people with disabilities, etc. Further, laws that govern building and the location of housing and facilities can have a significant impact on the exposure of these buildings to hazards and their ability to withstand these hazards. The law can also impact on resilience more generally through expanded access to healthcare, our legal system (eg. judicial review), livelihoods, etc. Anti-discrimination laws and laws ensuring universal access to healthcare can ensure that Australians have equal access services.

Law has a particularly significant role in supporting resilience in our cities as the majority of Australians live and work in cities and what affects Australians as a group will be felt most in the cities. Rural and especially remote areas generally have less access to all types of services, including legal services (such as legal advice, courts, lawyers, etc.) (AIHW, 2004; DHAC, 2001). As a result, people in rural areas often have difficulty accessing the law, due to the geographical distance as well as lack of access and knowledge of the legal issues - people may not even realize they have a legal issue or right that is enforceable.

The law supports resilience but it can and is also used to undermine resilience of at least some groups such as through increasing restrictions on the bargaining power of labour (through for example the Work Choices legislation), and also by not only defining one's legal status in our country (through our immigration laws), but also to what one can access (healthcare, work rights, social security) depending on one's status. This highlights that the law is to a large extent, subservient to politics. Parliament, as controlled by a particular government/ political party, is the mechanism by which bills are introduced and laws are passed, which in turn affect the resilience of cities and the people in these cities. Workchoices and Medicare/Medibank are contrasting examples of these types of laws. Courts themselves become part of this process through their interpretation and application of the common law, the Constitution and the laws made by Parliament.

We have sketched out a case for the view that the law is key to reducing vulnerability and enhancing resilience in Australian cities, but as the interactions between law and resilience have been largely ignored in the literature, the paper is necessarily indicative. More work is needed on conceptualizing the links between law and resilience; on the specifics of what laws and legal practices enhance or undermine resilience; and on the details of how this works in practice. Advances in knowledge here are most likely to come from detailed examples of the impact on resilience of laws and legal practices.

Bibliography

- Alston, M. (2007) Globalisation, rural restructuring and health service delivery in Australia: policy failure and the role of social work? *Health and Social Care in the Community* 15(3), pp. 195-202.
- Andrades, C. (1998) The myth of choice, *Alternative Law Journal* 23(2), pp. 61-77.
- Australian Institute of Health and Welfare (AIHW) (2006) *Australia's health 2006*. AIHW cat. no. AUS 73. AIHW, Canberra.
- Australian Institute of Health and Welfare (AIHW) (2004) *Rural, regional and remote health: a guide to remoteness classifications*. AIHW cat. no. PHE 53. AIHW, Canberra.

- Birrell, B. and Rapson, V. (2002) Two Australias: Migrant Settlement at the End of the 20th Century, *People and Place* 10(1), pp. 10-28.
- Burnie Port Authority v General Jones Pty Ltd* [1994] HCA 13.
- Cannon, T. (2000) Vulnerability analysis and disasters, in: D.J. Parker (Ed) *Floods* (London: Routledge).
- Department of Health and Aged Care and National Key Centre for Social Applications of Geographic Information Systems (DHAC) (2001) *Measuring remoteness: Accessibility / Remoteness Index of Australia* (ARIA). Occasional Papers: New Series No. 14, DHAC, Canberra.
- Domeisen, N. and Swartz, S. (1996) Cities at risk, *World Health* 49(6), pp. 20-21.
- Donaldson, C. (undated) Employers applaud IR changes, *Human Resources* [online], Accessed 15 May 2007, <http://www.humanresourcesmagazine.com.au/articles/21/0c030b21.asp>
- Fetter, J. (2006) Work Choices and Australian Workplace Agreements, *Australian Journal of Labour Law*, 19, pp. 210-224.
- Goodwin-Gill, G. (2001) Article 31 of the 1951 Convention Relating to the Status of Refugees: non-penalization, detention, and protection, *United Nations High Commissioner for Refugees* [online], Accessed 15 May 2007, <http://www.unhcr.org/publ/PUBL/419c778d4.pdf>
- Handmer, J., Loh, E. and Choong, W. (2007) Using law to address and define vulnerability to natural disasters, *Georgetown Journal on Poverty Law and Policy*, 14(1), pp. 13-38.
- Handmer, J. and Monson, R. (2004) Does a rights based approach make a difference? The role of public law in vulnerability reduction. *International Journal of Mass Emergencies and Disasters*, 22(3), pp. 43-59.
- Jones, E. (2003) Nugget Coombs and his place in the post-war order, *The Drawing Board: An Australian Review of Public Affairs*, 4(1), pp. 23-44.
- Kondis v State Transport Authority* (formerly Victorian Railways Board) [1984] HCA 61.
- Lechner, F.L. and Boli, J. (Eds.) (2003) *The Globalization Reader* (Massachusetts: Blackwell Publishing).
- Mitchell, J. (Ed.) (1999) *Crucibles of Hazard: Mega-Cities and Disasters in Transition* (New York: UN University Press).
- Munro, P. (2006) Changes to the Australian industrial relations system, *UNSW Law Journal*, 29(1), pp. 128-165.
- National Rural Health Alliance (NRHA) (2004) *Rural communities and disaster recovery*. [online], Accessed 24 June 2007, <http://nrha.ruralhealth.org.au/cms/uploads/publications/rural%20communities%20and%20disaster%20recovery.pdf>
- Nicholson, J. (2004) Legislative attempts to reduce challenges to decisions under the Migration Act 1958: Research Note no. 15 2004–05, *Parliamentary Library*, [online], Accessed on 11 July 2007, <http://www.aph.gov.au/library/pubs/rn/2004-05/05rn15.htm>
- Pelling, M. (2000) *The Vulnerability of Cities: Natural Disaster and Social Resilience* (London: Earthscan Publications)
- Pelling, M. (ed.) (2003) *Natural Disaster and Development in a Globalizing World* (London: Routledge).
- Rosenzweig, C. and Solecki, W.D. (2001) Climate Change and a Global City, *Environment*, 43(3), pp 8-18.
- Saunders, P. (2002) What's the future of welfare?, *Australian Social Policy* 2001-2002, pp. 21-42.
- Scotton, R.B. (2000) Medibank: From conception to delivery and beyond, *The Medical Journal of Australia*, 173, pp. 9-11.
- Shipler, D. (2004) *The Working Poor: Invisible in America* (New York: Knopf).
- Smyth, P. (2005) How will the IR changes affect our society, *The Age* [online], Accessed 11 July 2007, <http://www.theage.com.au/news/Opinion/How-will-the-IR-changes-affect-our-society/2005/06/09/1118123955154.html>
- Stiglitz, J.E. (2002) *Globalization and its discontents* (London: Penguin).
- Stevens v Brodribb Sawmilling Co. Pty Ltd; Gray v Brodribb Sawmilling Co. Pty Ltd* [1986] HCA 1.
- The Commonwealth v Introvigne* [1982] HCA 40.
- United Nations Development Programme (UNDP) (2006) *Human Development Report 2006: Beyond Scarcity – Power, poverty and the global water crisis* (New York: Palgrave Macmillan).
- Wisner, B., Blaikie, P., Cannon, T. and Davis, I. (2004) *At Risk: Natural hazards, people's vulnerability and disasters* (London: Routledge).
- Wooden, M. (1999) Individual Agreement-making in Australian Workplaces: Incidence, Trends and Features, *Journal of Industrial Relations*, 41(3), pp. 417-445.
- Worthington, R. (2001) *Healthcare and distributive justice: a jurisprudential account on healthcare distribution* (PHD submitted to State University of New York).