



FEDERATION
OF COMMUNITY LEGAL CENTRES VIC

INQUIRY INTO THE 2022 FLOOD EVENT IN VICTORIA

SUBMISSION TO LEGISLATIVE COUNCIL ENVIRONMENT AND PLANNING
COMMITTEE
FLOOD 2022 INQUIRY

June 2023

ABOUT THE FEDERATION

The Federation is the peak body for Victoria's 47 Community Legal Centres (CLCs). Our members are at the forefront of helping those facing economic, cultural, climatic, or social disadvantage and whose life circumstances are severely affected by their legal problem.

For 50 years CLCs have been part of a powerful movement for social change, reshaping how people access justice, creating stronger more equitable laws, and more accountable government and democracy. We want a community that is fair, inclusive and thriving: where every person belongs and can learn, grow, heal, participate and be heard.

The CLC sector plays an important role in providing advice and representation to clients impacted by climate change and extreme weather events. CLCs deliver a range of innovative programs, including early intervention initiatives and justice partnerships with the community, health and social sectors.

We pursue our vision of a fair, inclusive, thriving community through challenging injustice, defending rights and building the power and resilience of our members and communities. As an influential advocate, our voice is distinct and courageous: we are not afraid to challenge government, big business, or other powerful actors to ensure equality and fairness for all.

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ACKNOWLEDGEMENT OF COUNTRY



The Federation of Community Legal Centres acknowledges the Traditional Custodians of the lands across Victoria and note that this document was developed on the lands of the Wurundjeri people of the Kulin Nation.

We recognise that the over-representation of Aboriginal and Torres Strait Islander families and children in the justice system, many of whom have experienced family violence, is in part a devastating consequence of colonisation, intergenerational trauma and ongoing experiences of systemic racism.

We pay our respects to the strength and resilience of Aboriginal and Torres Strait Islander peoples and cultures and to all Elders past, present and emerging and recognise their unceded sovereignty.

FOREWORD

The Federation of Community Legal Centres Victoria (Federation) welcomes the opportunity to participate in the Legislative Council Planning and Environment Committee's Inquiry into the 2022 Flood Event in Victoria (Inquiry).

The Federation has been increasingly engaged in disaster response and climate justice work. The community legal sector plays an important role in providing advice and representation to clients impacted by climate change and extreme weather events as well as working with communities to strengthen their preparedness and resilience.

The Federation has taken the opportunity of this Inquiry to address issues that communities and Community Legal Centres faced during and in the aftermath of the 2022 floods in Victoria that relate to the following terms of reference of the Inquiry:

1. Causes and contributors
2. Adequacy and effectiveness of early warning systems
3. Maintenance and effectiveness of flood mitigation strategies
4. The flood event as a whole and its impact in different catchments areas
5. Implications for future planning decisions
6. Other related matters.

The focus of the Federation's submission is on issues that impact access to justice and human rights for flood affected communities.

Our submission focuses on:

- Floods and legal needs
- Early and preventative intervention
- Systemic climate justice in flood impacted regions.

Climate and disaster justice are becoming increasingly relevant to conversations and policy around how we can ensure that Victorians are prepared for, adapted to and have capacity to respond to climate change impacts.

As a partner in Disaster Legal Help Victoria (DLHV) the Federation also engaged in support and response to the 2022 Victorian floods for the entire legal sector. We support the submission from DLHV to this Inquiry.

SECTION 1: SUMMARY OF RECOMMENDATIONS

Ensure Victorian communities are resilient to the impacts of climate change and disasters with the following actions:

1. Upskill Community Legal Centres (CLCs) in emerging areas of legal need such as planning law and provide additional support for CLCs to provide community legal education in climate and disaster justice.
2. Equip CLCs and their communities to engage in equitable and collaborative climate change adaptation before disasters as well as resource increased outreach during the response and recovery.
3. Provide funding and resources to local place-based and statewide CLCs to ensure basic needs of impacted communities are addressed.
4. Increase community engagement and involvement in risk assessment of hazards and climate change impacts.
5. Involve members of the community in decision making about risk mitigation as soon as risk is observed as probable.
6. Invest in collaborative community resilience initiatives prior to the advent of predicted climate change impacts.
7. Invest in culturally safe messaging of risks and opportunities for preparedness including ensuring local organisations have the resources and capacity to respond to community needs.
8. Develop a Climate Justice Framework for Victoria to supplement the *Climate Change Act 2017* (Vic) and the Victorian Climate Change Adaptation Plan so that climate change mitigation and adaptation are reconciled with human rights.
9. Incorporate consideration for climate justice and human rights across all disaster preparation, response, and recovery policies in Victoria.
10. Commence consultation with communities on planned relocation and principles of self-determination to be incorporated into the proposed Climate Justice Framework for Victoria.

SECTION 2: FLOODS AND LEGAL NEED

Climate and Disaster Justice

Climate and disaster justice in Victoria is a priority for the Federation of Community Legal Centres (the Federation) and Victorian Community Legal Centres (CLCs). Climate justice views the acceleration of environmental changes through a human rights lens and strives to address these inequities. Disaster justice focuses on the role of governing structures in creating and perpetuating risks, inequalities and injustices that are magnified by natural hazards.

Together, climate and disaster justice promote sustainable and just solutions to the challenges posed by climate change and disasters. They ensure that all affected individuals and communities have access to the resources and support they need through all phases of prevention, preparation, response and recovery. This includes addressing legal needs and access to justice. It is through this lens that the Federation views the impacts of the 2022 floods upon Victorian communities.

The legal needs related to climate and disaster justice can be complex. Some of the high-level policy and legal needs in these areas include:

- **Access to justice:** Communities affected by climate change and disasters may face barriers in accessing justice, such as lack of information, resources, and legal representation.
- **Human rights protections:** Climate change and disasters can have significant impacts on human rights, including the right to life, health, housing, and water. Legal and policy strategies aimed at protecting and promoting human rights in the context of climate change and disasters are essential in preventing certain communities from being disproportionately affected or discriminated against.
- **Liability and accountability:** Holding decision makers accountable for actions that determine the level of risk mitigation and subsequent impacts of extreme weather is crucial to ensuring that they take responsibility for their decisions.
- **Planning and environmental protections:** Addressing the root causes of climate change and disasters requires strong environmental protections and equitable planning, land and hazard risk management laws and policies.

Overall, addressing the legal needs related to climate justice and disaster justice requires a comprehensive and integrated approach that considers the social, economic, and environmental factors that contribute to harms resulting from climate change impacts and disasters.

Risk of Litigation and Human Rights Considerations

The Federation is concerned about the risk of expensive and time-consuming litigation in relation to floods and climate disaster impacts, as well as potential breaches of human rights. The area of liabilities and obligations at law in relation to climate impacts and disasters is emerging, uncertain and constantly evolving. Acknowledging this legal uncertainty, the Federation wishes to raise awareness that both the legal needs and the evolving legal obligations of government authorities and the private sector are risks in themselves, now and in the future.

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Civil and Administrative Liability

The acceleration of climate change and extreme weather is devastating for the communities that experience them and creates legal risk for local government and statutory authorities.

Where governments unreasonably fail to consider the likely impacts of climate change, this failure may cause or contribute to harm against individuals, rendering them liable under a cause of action in negligence or nuisance.¹ In particular, where councils do not exercise the powers open to them in relation to identifying flood-prone land, they may be exposed to civil liability to property owners who have built on land that has subsequently flooded.² Further, where a development is approved when the risk of harm is foreseeable, the likelihood of an action being brought is high. The landscape of statutory exemptions for local government authorities in relation to acts or omissions causing harm is subject to change. The indemnity of these authorities is unknown when faced with potential cases of negligence, nuisance, breaches of statutory duty and other suits in the future.

Former High Court Justice Robert French has observed this trend, warning Australian governments, large businesses and regulators of an influx of landmark legal cases that are already being seen in Europe and North America.³ The threat of litigation relating to the flood events of 2022 is already materialising. One example from the 2022 floods is the Echuca residents left on the other side of a three-metre makeshift flood levee who are reportedly considering legal action against local authorities. Resident Erin McCann reported that the residents left on the 'wrong' side of the levee were assembling to "talk about class action".⁴

Human Rights Liability

Issues of climate and disaster justice are about Victorian human rights. The link between climate change and human rights was made explicit in the preamble of the Paris Agreement, to which Australia is party, calling on states to respect, promote and consider their respective obligations concerning human rights in their decision-making processes. Climate change in Victoria has largely been framed as an economic or ecological issue, but its implications on fundamental rights and liberties require urgent consideration. The state has an obligation to protect individuals from threats to human rights, and this should include threats posed by climate change where its effects exacerbate social inequality and expose individuals to discrimination and human rights breaches.

1 Australian Local Government Association, Local Council Risk of Liability in the Face of Climate Change, 17 August 2011 retrieved at https://walga.asn.au/getattachment/Policy-Advice-and-Advocacy/Environment/Climate-Change/Climate-Change-Resources/Baker_and_McKenzie_Local_Government_Risk_Legal_Liability_Climate_Change_Feb2016.pdf.aspx?lang=en-AU p 26.

2 Kronic, Vujan, Flood risks: Victorian councils Building Act obligations and risks regarding building on allotments that are in areas liable to flooding, Maddocks, 9th May 2022 retrieved at <https://www.maddocks.com.au/insights/flood-risks-victorian-councils-building-act-obligations-risks-regarding-building-on-allotments-that-are-in-areas-liable-to-flooding> Australian Local Government Association, 2011 pg 5 retrieved at https://walga.asn.au/getattachment/Policy-Advice-and-Advocacy/Environment/Climate-Change/Climate-Change-Resources/Baker_and_McKenzie_Local_Government_Risk_Legal_Liability_Climate_Change_Feb2016.pdf.aspx?lang=en-AU p 5.

3 McIlroy, T. Judge warns of tide of climate cases, *Australian Financial Review*, February 5 2020 <https://www.afr.com/politics/federal/judge-warns-of-tide-of-climate-cases-20200204-p53xlt>

4 Sciberras, A. Residents on the 'wrong side' of Echuca flood levee consider legal action, (October 24th 2022) 9 news retrieved at <https://www.9news.com.au/national/victoria-floods-2022-residents-wrong-side-echuca-levee-contemplate-legal-action/15fe24d4-d48e-4771-8859-0d672b9c0f53>

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Further, the *Charter of Human Rights and Responsibilities Act 2006* (Vic) sets out the basic rights, freedoms, and responsibilities of all Victorians that can help ground civil claims, including several provisions that are relevant to climate change and adaptation planning, such as the right to life⁵ and the right to property.⁶

Community Legal Sector: Climate Disasters and Legal Need

The increase in frequency and intensity of extreme weather events has had an unprecedented impact on the community legal sector. During and after flood disasters, sections of the community experience a clustering of legal issues that require timely and accessible attention. Slow-onset climate impacts equally contribute to the exacerbation of existing legal needs.

Last year, CLCs provided more than 100,000 legal services for Victorians and more than half a million people used online tools and self-help resources developed by Victorian CLCs.⁷ The demand for legal help from CLCs has grown significantly due to ongoing climate disasters that widen inequality. Victorian CLCs have provided and continue to provide free legal assistance to support those most affected by flooding to overcome the legal barriers keeping them from effective recovery. Data is not yet available for the flood impacted areas, but early qualitative indications show that pre-existing legal needs have been compounded and new legal needs are emerging.

The Federation works closely with the following CLCs impacted by the 2022 floods:

- Victorian Aboriginal Legal Service (VALS)
- ARC Justice: Loddon Campaspe Community Legal Centre and Goulburn Valley Community Legal Centre
- Mallee Family Care Community Legal Centre
- WEstjustice
- Inner Melbourne Community Legal Centre.

Specialist CLCs continue to give expert support to communities in complex areas of law. For the 2022 floods these have included:

- Women's Legal Service Victoria
- Tenants Victoria
- Social Security Rights Victoria
- Consumer Action Law Centre.

The Federation also works closely with Disaster Legal Help Victoria (DLHV), which is a partnership between the Federation, VALS, Justice Connect, Victoria Legal Aid, the Law Institute of Victoria and the Victorian Bar. This partnership has been integral in coordinating the legal sector response to the 2022 floods. The Federation works closely with DLHV staff and partners to ensure CLCs have adequate resources to respond to legal and other needs in both response and recovery. DLHV plays a vital role in coordinating the legal sector's response to disasters by assessing CLCs' capacity, providing additional support when requested, supporting outreach to recovery centres, identifying unmet legal needs, and capacity building. Our close

⁵ *Charter of Human Rights and Responsibilities Act 2006* (Vic), section 9.

⁶ *Ibid*, section 20.

⁷ Federation of Community Legal Centres Victoria, Annual Report (2022) Melbourne retrieved at [Publications - Federation of Community Legal Centres \(fclc.org.au\)](https://publications.fclc.org.au)

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collaboration with DLHV staff has been integral to the CLC response to the 2022 floods and informs this submission.

The community legal sector's capacity to meet the needs of the Victorian community has not kept up with increasing demand. This gap will only continue to grow due to factors including increased precarity resulting from climate disasters which are predicted to become more frequent and intense. Nearly half of all Victorians will have a legal problem in the next 12 months, and nearly one third will have more than one legal issue.⁸ The legal system is complex and hard to navigate. People experiencing economic, environmental and social precarity, people living with a disability, First Nations people, the elderly, people from migrant and refugee communities, people experiencing homelessness and single parents are even more likely to have complex legal problems. Although greater support may be required for these groups, access to legal resources and information is often unequal. This can lead to poor outcomes for people who are most in need, such as those facing homelessness, crippling debts, loss of livelihoods and mental health issues because of the impact of extreme weather events.

CLC experience of the 2022 floods

The 2022 floods in South-Eastern Australia caused the Campaspe, Maribyrnong, Avoca, Goulburn, Loddon, Broken and Murray Rivers to flood their banks, impacting many Victorian towns. Specialist and generalist CLC services are already stretched, and the impact of extreme weather events on communities further limits their capacity to meet demand. Due to the increasing frequency and intensity of extreme weather events, CLCs are seeing an increase in demand for climate and disaster related legal services, including some new and emerging areas of legal assistance.

Figure 1: Rising areas of legal need in flood impacted areas (Federation of Community Legal Centres, 2023)



⁸ Department of Justice and Regulation Victoria (2016). Access to Justice Review, p 55.

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Tenancy

Tenancy issues are among the most observed by CLC staff working with disaster impacted communities. Joseph Nunweek from WEstJustice noted an influx of calls from renters regarding grievances about the conduct of their landlords or real estate agents, or an inability to source temporary accommodation.⁹ Tenancy Stress Clinics for flood impacted communities have been established by WEstJustice and ARC Justice.

CLCs report the following legal issues experienced by tenants impacted by the 2022 floods:

- Loss of access to their property where important possessions remained, including prescriptions and vital identification or financial documents. This occurred when properties were deemed dangerous by Emergency Management or Local Council.
- Refused rent abatements in cases where rental properties are temporarily uninhabitable due to flooding. Tenants may be entitled to a reduction in rent or a temporary suspension of rent payments.
- Loss of rental bonds due to disputes over tenants' flood mitigation responsibilities.
- Inequitable eviction or mass eviction without recourse to timely legal advice.
- Tenants terminating leases in cases where rental properties are significantly damaged by flooding and cannot be repaired in a timely manner.
- Long term-issues such as water damage and mould, which raise health and safety concerns.
- Property damage leading to disputes between tenants and landlords over repair costs and responsibility for the damage. Landlords have a duty to maintain rental properties in a safe and habitable condition, which can include taking proactive measures to mitigate flood risks and responding appropriately to flood-related damage. Tenants have a responsibility to maintain rental properties in a reasonably clean condition, and to report any damage in a timely manner.
- Insurance coverage. Tenants have had queries about their contents insurance coverage in cases where their rental properties have been damaged or destroyed by flooding.
- Displacement and relocation. In cases where rental properties have been significantly damaged by flooding, tenants have needed to be temporarily or permanently relocated, leading to queries and disputes over relocation costs and responsibilities.

Tenants' needs in Rochester, Loddon Campaspe

After floods hit the Goulburn Valley and Loddon Campaspe regions, at least 160 residents were issued 24-hour forced eviction notices by local property Managers. ARC Justice's Chief Executive Officer Damian Stock recalled to *The Age* that estate agents deemed many properties uninhabitable, claiming they had no choice but to issue eviction notices, but that "this was not always true".¹⁰ Stock cited forced eviction as one of the most common concerns voiced by renters, while noting that other key concerns

⁹ Aubrey, S. 'Ruined my life': Renters like April are flood disasters forgotten victims, *The Age* newspaper, November 18 2022- 7.30pm <https://www.theage.com.au/national/victoria/ruined-my-life-renters-like-april-are-flood-disaster-s-forgotten-victims-20221117-p5bz42.html>

¹⁰ Dalton, T, D'Agostino, E. Sanders, P. " Victoria floods: Loddon Campaspe and Goulburn Valley legal centres assist flood-affected tenants with advice" (4 Nov 2022) ABC Central Victoria retrieved at: [Victoria floods: Loddon Campaspe and Goulburn Valley legal centres assist flood-affected tenants with advice - ABC News](#)

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included continuity of social security payments or Centrelink payments, and employment matters or debt issues.

Six months since the floods, the residents of Rochester continue their battle to return home, with many homes expected to remain empty for another 12–18 months. However, the reality that lies before Rochester and surrounding areas threatens to worsen, with the Climate Council predicting that by the end of 2023 a quarter of the homes in the Nicholls electorate will become effectively uninsurable.¹¹

Insurance

CLCs are seeing a rise in the number of people presenting with insurance related matters in relation to flood damage, including:

- Increased premiums in response to increased flood risk, resulting in underinsurance.
- Delays in handling claims.
- Inability to make insurance assessments due to loss of access to property.
- Pressure from the insurance industry to take cash settlements.
- No obligation on the insurance industry to recommend independent legal advice.
- Denied access to alternative hydrologists' expertise to provide reports.
- Significant issues with incorrect scope of works. One case indicated that the new oven would be installed in the toilet. Many people have been told that their stumps damage was pre-existing, and that no works could be done until the stumps were repaired, resulting in clients feeling pressured into cash settlements.
- Insurers sending excessive experts to prepare reports.
- Anger and despair from community members about the difficulty of navigating the insurance process.
- Slow communications and updates from insurers. Many people reported struggling to deal with multiple staff from the same company, most of whom had not been trained in trauma-informed practice.
- Delays in works causing mould in properties and other deteriorations.
- Clients being presented with an estimated cost of scope of works based on insurers assessments from 2022, only to be told that delays in building materials, the need for expert assessments or labour shortages have led to higher costs that cannot be covered by the insurance.

Consumer Action Law Centre has seen many referrals from flood impacted areas in Maribyrnong and the Loddon Campaspe region including Echuca, Rochester and surrounding small towns. ARC Justice, Inner Melbourne Community Legal and WEstjustice have worked closely with CALC to ensure this legal demand has been met.

Significant underinsurance or non-insurance entrenches poverty and disadvantage, which is exacerbated in the face of the unmitigated consequences of climate change. Those with little to no insurance cover often have extremely limited financial capacity to recover from a disaster and repair any relevant damage to their property caused by extreme weather, interfering with their right to adequate housing.

¹¹ Climate Council, Uninsurable Nation: Australia's most climate-vulnerable places, May 2022, retrieved at [Uninsurable Nation: Australia's most climate-vulnerable places | Climate Council](#)

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Human Rights and Discrimination

The Federation is concerned that human rights protections are sometimes breached in emergency environments caused by extreme weather. There are concerns that:

- Equality and inclusive frameworks and practices may be considered 'expendable' during emergency responses. For example, the Gender Equality Frameworks of local governments and other organisations may be overlooked as irrelevant or secondary during flood response and recovery.
- People with mobility-affecting disabilities were sent to inappropriate venues for emergency accommodation (e.g., Rich River Golf Club) during the 2022 floods. Such 'one size fits all' emergency responses fail to provide for community needs.
- VALS recorded that First Nations people reported having experienced racism, discrimination, and intimidation during extreme weather events such as being denied services and told that 'they need to go ask their own services (Aboriginal Community Controlled Organisations (ACCOs)) for help'. There have been reports of racist comments at recovery centres and threats to Aboriginal carers involved with child protection. This discrimination compounds the trauma of the disaster itself and acts as a barrier preventing people and communities from seeking assistance.

Culturally appropriate human rights training and preparedness before an extreme weather event is vital for anyone working in disaster response and recovery, including volunteers and those providing surge capacity. Emergency relief centres need to have culturally safe spaces for First Nations people and adequate and ongoing funding for Aboriginal community workers in regional locations.

Impact of the 2022 floods on First Nations people

The experience of the Victorian Aboriginal Legal Service (VALS) in the 2022 floods illustrated that community needs and requests go beyond legal needs, often starting as the identification and response to requests for more general assistance. Tali Rechtman, Senior Civil and Human Rights Lawyer, at VALS observes that "Even though we are a legal service, our clients and other community members have immediate needs that need to be dealt with, and if not dealt with they act as barriers to legal assistance, and this was apparent during the floods. Community Justice Program staff and our CEO distributed hampers with food, food vouchers and cleaning and hygiene products to community members in Shepparton and Mooroopna and it was all funded by VALS. This supported client engagement and allowed us to facilitate access to legal help in relation to disaster and other legal issues."

VALS reports that pre-existing legal needs exacerbated during disasters included tenancy issues, homelessness, debts, infringements, discrimination, insurance, poor access to services, family violence, over-incarceration of First Nations people, child protection and criminal law issues.

Issues reported to VALS during the 2022 floods included:

- Border issues
 - During the floods families were evacuated from NSW to Victoria but there was no apparent communication between NSW and Victorian services. This put additional pressure on disaster-affected families in Victoria as the weight fell on the community to house these additional people and source and fund extra food, water and electricity.
 - Intersection between floods and criminal law issues:

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- Clients on bail required to report to police stations were unable to comply due to evacuation, station closure or road closures. Some orders were breached (such as community corrections orders) when, because of the floods, people were unable to be home by curfew, report to a police station or notify the police of their change of address.
 - People had trouble contacting the police to update them.
 - Some people don't have phones so rely on physically getting to the police station.
- Some people who were homeless did not know that they were eligible for support. VALS supported people in this situation.
- Evacuation centres can trigger trauma responses in people who have been incarcerated and this can exacerbate mental health issues.
- It was good that there was security at the Shepparton evacuation centre and that this was not carried out by the police. The police are not the appropriate taskforce to carry out security at evacuation centres.
- People were worried about their medication. Many either did not have scripts, did not know what medication they were on or were unable to see their doctors.
- People were anxious about water supply in Shepparton during and after the floods. The authorities said the water was safe to drink but it was brown. VALS distributed water.
- Some of the services in flood-affected areas were closed. This meant that people did not have access to the health and other services on which they would usually rely. VALS, as a state-wide service that has place-based staff and offices in some of the flood affected regions, was able to support the affected communities.
- In some areas people were evacuated from their homes very quickly and did not have time to take anything with them. Some children remained in the same clothes for many days after the floods hit, until VALS provided Kmart vouchers which enabled them to purchase new clothes.

Family Violence

CLCs have observed the following impacts on family violence that have occurred because of 2022 floods:

- A rise in family violence during times of extreme weather events.
- A rise in the number of breached intervention orders, for example due to lack of accommodation.
- Failure to provide alternative and safe accommodation for those at risk of family violence. CLC staff heard anecdotal reports of women being assaulted in evacuation centres in multiple locations by perpetrators of family violence.
- Court closures due to extreme weather events and the diversion of police time to respond to the emergency. This impacts both the affected family members and the respondents to intervention orders, resulting in breached orders, failure to fulfil bail conditions and an increased likelihood of clients putting themselves at risk to attend court despite the presence of evacuation orders and the high risk to life associated with fulfilling court attendance obligations when there is a state of disaster and it is impracticable.

Social Security and Financial Rights

Social Security Rights Victoria has seen a rise in disaster related enquires since the flooding event. Staff have developed a Disaster Preparedness and Response Plan to inform the legal assistance sector. Due to

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the devastating impact of floods on property, employment and livelihoods, many Victorians have accessed social security for the first time and required assistance to navigate the complicated intersections of asset assessment such as insurance payouts, quantification and rent assistance.

Issues that have arisen include:

- Access to crisis and disaster payments.
- Need to suspend mutual obligation and debt obligations to Centrelink.
- Loss of documentation and identification.
- Need to update Centrelink on change of circumstances.
- Relocation from principal home and insurance issues having consequences for assets.
- Queries about eligibility for disaster payments and the possibility of special circumstances for the purpose of a Compensation or Preclusion Period Reduction or waiver of a debt.
- Ambiguous questions on forms assessing eligibility.

Planning Law: Emerging Legal Need in Disaster Related Jurisdictions

Since the 2019/2020 Black Summer fires, CLCs are seeing a rise in legal needs outside their traditional practice areas, such as in planning and building law enquires. This was particularly apparent for Gippsland Community Legal Service, which has taken initiatives to increase community and sector literacy in planning and land management law. During the 2022 floods, Community Legal Centres experienced several queries relating to Rivervue Retirement Village and the contribution of the Flemington Racecourse wall to resident's flood damage. There is not a specialist planning law CLC. The community legal sector has taken the decision to invest in upskilling in planning law to meet the climate justice and legal needs of impacted individuals, and soon-to-be-impacted communities at risk of climate harm.

This is discussed at greater length in Section 3 of this submission.

Document and identification destruction.

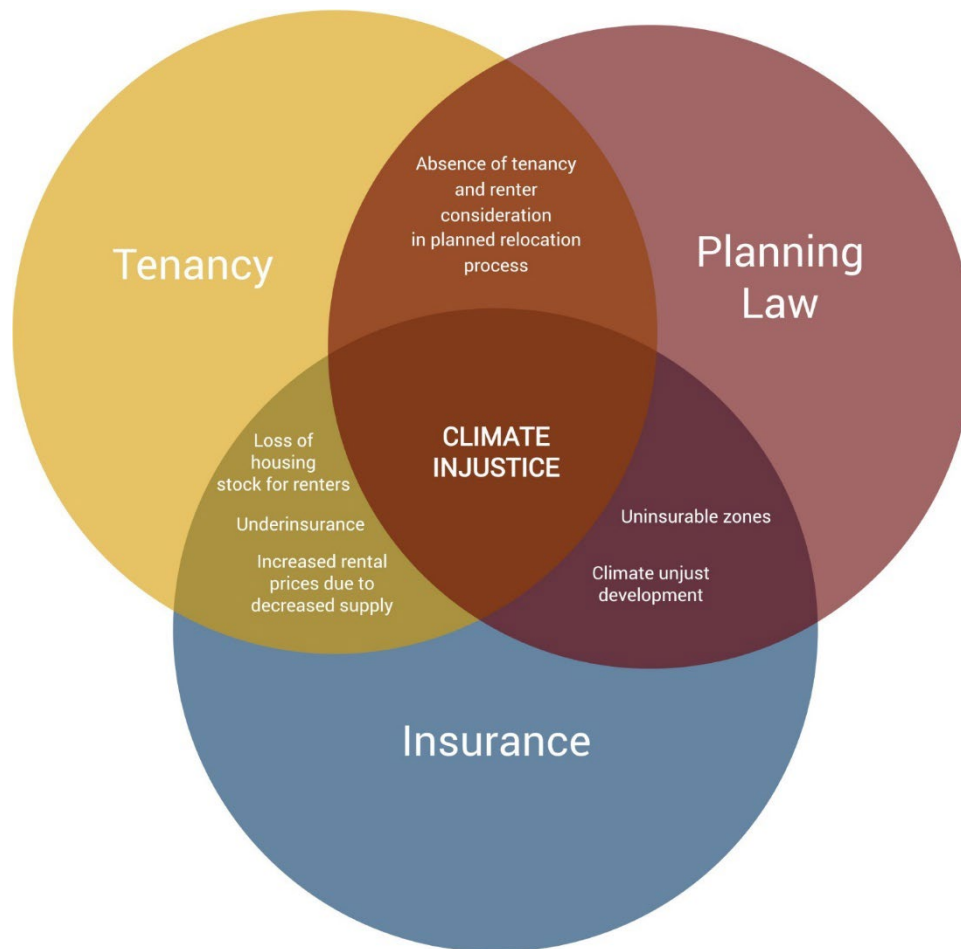
Document destruction due to floods impacted many areas of law, most pertinently regarding property, social security and probate issues. After disasters such as floods and bushfires, CLCs are often called upon to ensure clients have a way of recovering essential identity documents required to navigate all administrative, legal, regulatory and service providers.

Legal Intersections and Overlaps: Risk of climate and disaster injustice.

It is becoming increasingly apparent in public and media forums that property and community risk exposure to flood impacts is determined by many diverse areas of law that regulate biophysical, financial, and social risk for Victorians. Among these areas of legal need that arise in flood events, three emerge as presenting a major policy concern. The intersection and clustering of these issues poses an enhanced risk to climate justice.

Figure 2: Legal Intersections and Overlaps of Climate Injustice
(Federation of Community Legal Centres, 2023)

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The Federation has observed that the risk of climate injustice at the unresolved intersection of insurance, planning and tenancy laws is high if not properly considered. The confluence of rising legal need at this intersection warns of climate justice issues in relation to housing, forced relocation and the possibility of climate ghost towns. These risks are discussed at greater length in Section 3 of this submission.

CLCs and Integrated Community Response to Flood Impacts.

CLCs also play a role in building community resilience. During the immediate response and in the following weeks, CLCs were asked to provide basic brokerage for communities impacted by floods, including assessing immediate needs (such as basic household items and food). Public Housing tenants turned to ARC Justice renter advocacy service when their homes became uninhabitable overnight. Although offered alternative housing in different communities, renters only had what they could take with them when evacuated. ARC Justice community service professionals sourced a range of personal and household goods to help clients establish themselves.

CLCs offer holistic and place-based services. Due to their integrated services approach, they join with other community service organisations to meet the needs of their communities and do so in a collaborative manner. This puts CLCs in a position where they not only witness the experience of climate injustice and hardship on their communities, but also live through the same challenges.

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RECOMMENDATIONS

- Upskill CLCs in emerging areas of legal need such as planning law and provide additional support for CLCs to provide community legal education in climate and disaster justice.
- Equip CLCs and their communities to engage in equitable and collaborative climate change adaptation before disasters as well as resource increased outreach during the response and recovery.
- Provide funding and resources to local place based and statewide CLCs to ensure basic needs of impacted communities are addressed.

SECTION 3: EARLY AND PREVENTATIVE INTERVENTION

A report from Climate Valuation in March 2022 warned that one million homes around Australia will be at high risk of riverine flooding by 2030 without adequate investment in adaptation and mitigation.¹² Victoria is the state most at risk of riverine flooding. The flood map risk profile of the Climate Council predicted as recently as 2021 that the 2022 floods were likely to occur. The Federation, with DLHV, took steps to ensure our members in high-risk areas were aware of these risks.¹³ As floods and climate change events increase in frequency, intensity and complexity, their impacts on the community become more injurious and persistent. The importance of preparedness measures such as early warning systems, evacuation plans, and public education programs reduce the impact of disasters by enabling people to take appropriate actions before, during, and after a disaster. The Sendai Framework for Disaster Risk Reduction explains it this way: "Disaster preparedness is the knowledge and capacities developed by governments, professional response and recovery organisations, communities and individuals to effectively anticipate, respond to, and recover from, the impacts of likely, imminent or current hazard events or conditions."¹⁴

CLCs are committed to early intervention for all Victorian communities in the areas of family violence, crime, and civil law issues such as debt and infringements. Climate and disaster justice equally demand early and preventative intervention to mitigate against climate harms, impact of disasters and the long and complicated tail of resultant legal and livelihood needs. Measures and decisions in the areas of emergency management procedures and mitigation infrastructure have a significant determining impact on community resilience.

The notable trends of rising and emerging legal need in flood impacted areas can be reduced and ameliorated if equitable and transparent risk mitigation and increased community led preparation occurs. CLCs focus on intervening early, avoiding the escalation of legal problems and providing holistic support in partnership with other community service professionals. Early intervention effectively reduces the devastating impact that legal issues can have on a person's life. Early intervention not only improves individual outcomes, but also avoids significant costs to government and alleviates pressure on other parts of the service system, such as disaster response and recovery.

Inherent to all early interventions to mitigate against extreme weather impacts and disasters is the need for:

- Community involvement in decisions that impact them
- Communication of risks
- Transparency of decision makers
- Timely and preventative communication of risks to enable community mitigation and adaptation strategies to be implemented.

Self-determination and community-led resilience are important for all communities. For the Victorian First Nations communities it is vital that there are resources and communication channels between emergency

¹² Climate Valuation, <https://climatevaluation.com/flood-risk-threatens-australian-property-value/>

¹³ Retrieved at <https://www.climatecouncil.org.au/resources/climate-risk-map/>

¹⁴ Sendai Framework for Disaster Risk Reduction 2015-2030 (2015 March 14-18) In United Nations World Conference on Disaster Risk Reduction, Sendai, Japan. Paragraph 26 is relevant to the Victorian floods in 2022, including the need to understand disaster risk, strengthen governance, investment in disaster risk reduction, enhancement of preparedness, and strengthening partnerships.

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management and disaster authorities and ACCOs and community leaders to ensure communication about extreme weather events is received and understood by community members in a culturally appropriate manner.

Issues that have been raised by VALS in relation to the 2022 floods include:

- The need for disaster and emergency organisations to work with ACCOs, recognising that ACCOs know their communities best and ACCOs (including Traditional Owner Corporations) have expertise in relation to extreme weather events, such as:
 - Working with ACCOs and community leaders in the longer-term adaptation and preparation as well as the response and clean-up to ensure this is done in a culturally appropriate way and cultural heritage is not harmed.
 - Recognising that emergency management protocols that prioritise human life and property ownership need to be reformed to adequately factor in cultural considerations and cultural heritage.
 - Understanding the importance of Sorry Business and that complications arising from extreme weather events (e.g., disruptions to travel routes) affect grieving and cultural practices.
- Disaster policy and response in Victoria needs to embed human rights considerations including self-determination for First Nations people (United Nations Declaration on the Rights of Indigenous Peoples).

Preparedness and risk management

As illustrated by the 2022 floods, Victoria's current early warning and prevention methods can exclude communities and are not best adapted to address community safety. They are also not sufficient to mitigate against the intensification of pre-existing and emerging legal needs flowing from the increased and exacerbated impacts of flooding. Some of the key recommendations made by the Royal Commission into National Natural Disaster Arrangements (Bushfire Royal Commission), such as improving community education and awareness, remain applicable to flood management.¹⁵

Early intervention in flood mitigation can reduce the legal needs associated with flood-related disasters in several ways:

- **Prevention of property damage and loss:** Early intervention in flood mitigation prevents property damage and loss, reducing the need for legal action related to property damage, insurance claims, tenancy needs, social security rights and document destruction.
- **Prevention or mitigation against significant disruption of daily life and service delivery:** This avoids exacerbating pre-existing legal issues such as the need to access police or courts due to family violence, civil debt or social security or criminal justice issues.

¹⁵ Royal Commission into National Natural Disaster Arrangements. (2021). Final Report - Volume 1. Retrieved from <https://www.royalcommission.gov.au/sites/default/files/2021-10/final-report-bushfire-royal-commission-volume-1.pdf#page=51> Chapter 6: Community preparedness and resilience: <https://www.royalcommission.gov.au/sites/default/files/2021-10/final-report-bushfire-royal-commission-volume-1.pdf#page=314>

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- **Improved coordination and communication between different agencies, organisations, and community members:** This can reduce potential legal issues related to disputes and conflicts such as discrimination and human rights issues.
- **Improved public safety:** This decreases the potential for legal issues related to personal injury and other civil and administrative legal claims.
- **Increased community resilience:** Early intervention measures in flood mitigation can reduce the need for legal action related to recovery and rebuilding efforts after a flood event including tenancy relocation, insurance claims and rebuilding.
- **Prevention of the overwhelming of SES and other Emergency Management at the time of disaster impact.** Communities need to be adequately informed of risks prior to impact. Private individuals undertaking rescue activities or giving emergency assistance to their community due to the inadequate service provision of SES and other Emergency Management teams may face legal issues of liability as well as claims relating to potential harms and risks to these individuals.

By taking proactive measures to mitigate flood risks, communities and state bodies can reduce their legal vulnerability and increase their capacity to respond to and recover from flood events.

Early Warning Systems

Communication about flood risks is a key step in the flood warning system to raise awareness about hazards and promote protective behaviour in the affected community. In many cases in 2022, people encountered difficulty in receiving or understanding pertinent information about hazards that may impact them due to the exclusionary nature of its dissemination.

Some examples are:

- When people were not properly able to understand the communication of flood risk because it is presented in a language they do not understand.
- When messages were disseminated via a channel with which they were unable to engage, such as written material for illiterate individuals or acoustic messaging for deaf individuals.
- When individuals did not have the capacity to use or access reliable technology to receive warning messages, such as those living in remote areas with compromised capacity to remain updated on flood risks or respond to an immediate flood risk. This includes those without internet access or mobile phones.
- Culturally inappropriate messaging of risks and opportunities for preparedness. VALS observes that there is a high need for adequate communication to and funding of ACCOs to ensure communication about extreme weather events is received and understood by community members. This extends to preparedness activities including community legal education, as well as communication on the supports available for recovery.

When the communication about flood risk is inadequate, legal needs can become intensified, particularly for those who already have the most restricted access to assistance. Problematic information flow results in a lack of community preparedness which has implications for insurance, tenancy and, in many cases, family and family violence law, as well as human rights.

The areas impacted by the 2022 Victorian floods, in particular the Loddon Campaspe region, were known to be at high risk for many years prior to the 2022 floods. Despite institutional awareness of the risks, communities were not adequately warned of these risks, nor were the appropriate community service

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organisations (CSOs) given funding to enable community adaptation including the communication of these risks to the community.

The Age newspaper reports that residents of Rivervue Retirement Village on the Maribyrnong River did not have access to the floodplain information of the properties they purchased. About the circumstances of one resident, it said:¹⁶ "According to the overlay on the Rivervue property she bought, it was not prone to flooding – even though it had been until the planning changes approved by the Andrews government in 2016." The resident stated that "[the fact that] this home was in a floodplain was information that I simply didn't have and that we should have been entitled to."

There is also concern that the removal of flood overlay at the Rivervue Retirement Village led to residents being omitted from the vulnerable persons register at the Moonee Valley Council. This resulted in delayed response by local council and emergency management staff in assisting Rivervue residents due to lack of information about the flood risk, causing stress for all involved. If the omission of Rivervue residents on the vulnerable persons register is found to be a consequence of the property no longer being considered as having a flood overlay, then the consequences for residents could have been life threatening. If this occurred, it needs to be addressed at the systemic level where communication of risk is a regulatory obligation that should not be obfuscated by bad planning laws and decisions.

The potential liability consequences are concerning. There is a need to increase obligations to provide information about prior risks to properties and land areas for both tenants and title holders. While the history of overlays is publicly available to those who can navigate the system, failing to actively inform all householders, regardless of pecuniary interest or property rights, of the climate risks of where they live, work or frequent, is unjust. The non-disclosure, or obfuscation, of these risks will also have consequences for Emergency Management and response planning. This is extremely concerning for communities at high risk of harm during extreme weather conditions.

Community Involvement and Education

In Rochester, the community reported that sometimes the warnings were incorrect. At least one person who spoke with ARC Justice was falsely informed by the warning system that their house would be safe. The terminology of upstream and downstream proved confusing and unfamiliar to many community members.

Feedback from CLC clients and communities includes:

- Publicly available information about the floods was not updated regularly enough.
- Some people found Facebook the most reliable source for up-to-date and relevant information.
- People found communication about road closures inadequate. There was a need for clear information about the need to turn back and the reason why. In instances where authorities do not know what is happening, transparency and honesty about the situation gave people greater peace of mind than no information at all.

To be resilient, it is essential for communities to understand and be informed of disaster risk. The Total Flood Warning System (TFWS) adopted in Australia reflects a top-down, non-participatory approach,

¹⁶ Lucas, C. and Aubrey, S. 'Very premature': Plea to block more homes at flooded retiree village, (18 May 2023) *The Age* newspaper retrieved at [Retirement village flooding: Plea to block more homes at Avondale Heights \(theage.com.au\)](https://www.theage.com.au/national/very-premature-plea-to-block-more-homes-at-flooded-retiree-village-20230518)

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whereby at-risk community members are the last to be notified. The system instead relies heavily on expertise in the initial observational phases of the system, and emergency services and government in the decision-making phases once a risk has been determined. This highlights the need for more effective engagement of all community members at every stage of the flood warning system in Victoria. A community-based warning system should place communities at the centre of the system's operation. The Federation notes that there have been announcements from the Federal Government that the national flood gauge infrastructure will be updated over the next ten years.¹⁷ However, there has been no correlated announcement outlining how this information will be socially distributed and communicated.

As the Sendai Framework states "Understanding disaster risk is fundamental to managing disaster risk. This includes considering, as appropriate, the past, present and future disaster risks, including those resulting from climate change."¹⁸ The building of flood resilient communities requires effective, targeted education. The risks posed by floods to community members are diverse as people face different risk profiles based on factors such as their proximity to a floodplain or catchment and individual circumstances. Where communities are not informed nor consulted about deficient decisions made in the flood prevention process, this raises the potential of increased need for redress in litigation or legal processes, and an increased reliance on legal services and the court system.

Equitable Adaptation and Risk Mitigation for Victorian Communities

The 2022 floods illustrate a lack of equitable adaptation in Victorian social infrastructure. The Sendai Framework recognises that both equitable climate change adaptation and disaster risk reduction "requires an all-of-society engagement and partnership. It also requires empowerment and inclusive, accessible and non-discriminatory participation, paying special attention to people disproportionately affected by disasters, especially the poorest."¹⁹ The current focus on mitigating damage to biophysical and physical infrastructure can result in other priorities such as building community social infrastructure and community led resilience strategies being overlooked.

As we have seen in the 2022 floods, and prior to that in the Black Summer fires, communities denied or lacking in equitable adaptation and mitigation strategies are at risk of:

- loss of secure and safe housing
- relocation
- homelessness
- degraded living conditions that risk their health and livelihoods
- economic loss resulting in dependence on state provided support services
- increased mental health stress, family conflict and family violence.

If communities are not adequately prepared for extreme weather impacts the results can be decimating at an individual, family, community and whole of society level.

¹⁷ Nothling, L. and Waterson, L. Flood gauges to be upgraded as part of \$263 million disaster warning network, (15 May 2023) Australian Broadcasting Corporation retrieved at [Flood gauges to be upgraded as part of \\$263 million disaster warning network - ABC News](https://www.abc.net.au/news/2023-05-15/flood-gauges-to-be-upgraded-as-part-of-263-million-disaster-warning-network/105444444)

¹⁸ United Nations Office for Disaster Risk Reduction. (2015). Sendai Framework for Disaster Risk Reduction 2015-2030. Retrieved from <https://www.undrr.org/publication/sendai-framework-disaster-risk-reduction-2015-2030> Paragraph 16.

¹⁹ Ibid, Paragraph 33.

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Since Black Summer, only 22 per cent of those who lost houses have rebuilt in the East Gippsland region.²⁰ These statistics hide the longer tail of the mental health and financial impacts on these communities. The rebuilding process after the 2022 floods may experience similar delays. The Federation is concerned that as extreme weather frequency and severity increases, Victoria will see many communities having to live in substandard conditions for years without redress. To prevent this scenario, place-based and state-wide equitable adaptation and mitigation policies and approaches are vital to ensure and enable community resilience and prevent compounding livelihood and legal needs. The consequences of this are discussed in Section 3.

Community Legal Centres are experiencing increasing demand for legal assistance around issues such as insurance, planning, building codes and small business and agricultural sector problems due to the impacts of climate change. Access to support in these complex areas of law is essential for communities' self-determination and ability to prepare for, and recover from, climate change impacts. This need is particularly acute in regional, rural, and peri-urban areas, which are most at risk of increasing vulnerability due to slow onset climate impacts and climate disasters such as the 2022 floods. There is a pressing need to increase resources for local place-based community organisations so they can invest in understanding and communicating climate risks, engaging in community led adaptation and ensuring collaboration between CLCs, Local Government Areas (LGAs), CSOs and local emergency response teams. This investment will allow them to build place-based resilience to the impacts of climate change and ensure culturally appropriate communication of risk. CLCs' holistic, intersectoral, place-based approach is best practice for reducing disaster risk and adapting equitably to climate change. Secure, sustainable funding for integrated services, place-based collaboration and climate impact preparation is crucial to empowering resilient communities in these uncertain and precarious times.

Construction of levee in Echuca

About 190 properties were left inundated in the low-lying north-east of Echuca after a three-kilometre makeshift flood levee was constructed to protect the town's central business district from flooding. The levee's location was decided by Emergency Management Victoria and there are competing narratives as to whether community, impacted individuals and the local council representatives were adequately consulted.

This decision illustrates the lack of community preparedness as well as a failure of process in emergency decisions to be transparent, participatory and accountable. The fallout of the flooding caused by the levee has left residents with no option other than to seek legal redress with some seeking compensation from their local council, and others considering legal action against the responsible authorities.

²⁰ A survey by the East Gippsland Shire Council has found that of the 123 families that lost their homes in Mallacoota and nearby Gipsy Point and Genoa, 79 plan to rebuild, but only 27 have finished. <https://www.theage.com.au/national/victoria/people-are-at-breaking-point-still-waiting-for-a-home-in-mallacoota-20221230-p5c9f8.html>

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RECOMMENDATIONS

- Increase community engagement and involvement in risk assessment of hazards and climate change impacts.
- Involve members of the community in decision making about risk mitigation as soon as risk is observed as probable.
- Invest in collaborative community resilience initiatives prior to the advent of predicted climate change impacts.
- Invest in culturally safe messaging of risks and opportunities for preparedness including ensuring local organisations have the resources and capacity to respond to community needs.

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Climate Justice Framework

CLCs in flood impacted areas report that community members are increasingly frustrated by the limited remedies to the impact of climate disasters offered to them, as well as limited capacity of communities to ensure that adequate preparedness and mitigation of future risks occurs. With other climate disasters such as the Black Summer fires, the 2022 floods illustrate that the current legal framework and different areas of law are failing to prevent and remedy the harm or loss that Victorians experience after an extreme weather event.

In Victoria there is need for a holistic Climate Justice Framework as a supplement to the *Climate Change Act 2017* (Vic) and the Victorian Climate Change Adaptation Action Plans (AAP)²¹. The Federation acknowledges the AAP emphasis on the critical role of the justice sector in ensuring operational resilience to the impacts of climate change and extreme weather. However, the obligations and objectives of policymakers to consider and adapt to climate change impacts is different from ensuring that the laws governing Victorians are also adapted and reconciled to ensure the principles of climate and disaster justice are embedded within them. There is a need for a whole-of-government approach to adaptation including climate justice considerations. This means that all government departments and agencies need to work together to ensure that equitable climate change adaptation is integrated into all policies and programs. This obligation presumes legal and legislative coherence with equitable policies and laws that are adapted to climate change.

The current AAPs, as legislated for in the Climate Change Act, includes considerations of social equity, recognises that climate change is likely to exacerbate pre-existing social and economic inequities, and commits to engaging with diverse communities and stakeholders to ensure their perspectives are integrated into the AAP. However, the realisation of substantial climate justice requires that all legal and regulatory frameworks include climate impacts and climate equity as a primary consideration. It is important to fulfill the full mandate of the Climate Change Act so that all decision making, legislation and regulation addresses climate justice considerations.

A point of reference in the gender equality space that may be adapted to a possible Victorian Climate Justice Framework is the approach of the Gender Equality Commission, which was established by the *Gender Equality Act 2020* (Vic). All Victorian government departments and entities of a certain size are required to undertake a gender audit across a comprehensive set of indicators and then produce and deliver on an action plan to achieve measurable improvements. The approach mainstreams, systematises and to some extent universalises reform towards gender equality, with best practice applying this gender-informed lens to all legislation and budget decisions.²² This model could be replicated to ensure climate justice is embedded across all areas of government and law.

21 Department of Environment, Land, Water and Planning. (2021). Climate Change Adaptation Action Plan 2022-2026. Melbourne, Victoria: Victorian Government.

22 Victorian Government, Baseline report 2021 workplace gender data analysis, Commission for Gender Equity in the Public Sector, 2022, Melbourne Victoria <https://www.genderequalitycommission.vic.gov.au/insights-and-research>

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Access to Justice and Planning Law

The Bushfire Royal Commission recommended that existing legal frameworks be strengthened to address the risks associated with bushfires and other disasters. This involves changes in planning law, building codes and environmental protection.²³ WEstJustice and Inner Melbourne Community Legal Centre have referred complex tenancy and insurance queries from communities impacted by the flooding at the Maribyrnong River to specialists at Consumer Action Law Centre and Tenants Victoria. However, deeper analysis of the issues revealed that the systemic causes of clients' legal issues potentially resulted from the planning decisions to remove the flood overlay on residential areas and construct a flood wall around Flemington Racecourse. This question of causation will hopefully be resolved in the near future.

Residents of Retirement Village in Avondale Heights forced out of their homes

Residents of Avondale Heights' Rivervue Retirement Village were forced to evacuate their homes when the banks of the Maribyrnong River burst in October 2022. In 2015, the Moonee Valley City Council's planning panel and Melbourne Water resolved to remove a flood overlay in the planning scheme, leaving only a thin slice of designated flood-prone land between the Maribyrnong River and the village. This was the result of an incomplete consideration of the flood risk and inadequate protection of residents in the area, which was in floodplain proximity and at risk of riverine and flash-flooding events. Civil engineer and former manager of land development at Melbourne Water Ron Sutherland maintains the flood overlay should never have been removed, and that "the developer wanted it changed so they could build more units".

The Rivervue residents, many of whom were tenants of 99-year leases, have been faced with an unexpected need for assistance with issues surrounding their tenancy and insurance. Residents have been forced to source and fund alternative tenancy arrangements, discovering that their properties had a flood insurance cap of \$5 million, for what is estimated to be \$86 million worth in assets.²⁴ Rivervue has equally acknowledged that this flood event may affect its ability to obtain insurance in the future.²⁵ The complexity of the Rivervue residents' legal needs arising from flood impacts illustrates the increasing need for access to justice for those impacted by Victorian planning law.

Planning law influences the delivery of climate justice and plays a crucial role in building disaster resilient communities. Planning decisions are often made without consideration for climate justice. CLCs have witnessed the legal need and barriers to justice that flow from a planning system that fails to take community needs into account. The floods of 2022 again confirmed that for access to climate and disaster justice for communities to be realised, CLCs need to offer services relating to planning law, as well as services that increase community participation and literacy on land management and adaptation and provide communities with basic information about the Victorian planning scheme.

23 Royal Commission into National Natural Disaster Arrangements. (2021). Final Report. Canberra: Commonwealth of Australia - Volume 1. Retrieved from Recommendation 3.3: <https://www.royalcommission.gov.au/sites/default/files/2021-10/final-report-bushfire-royal-commission-volume-1.pdf#page=51>

And Chapter 9: Bushfire risk management and land use planning: <https://www.royalcommission.gov.au/sites/default/files/2021-10/final-report-bushfire-royal-commission-volume-2.pdf#page=342>

24 Thompson, J. (15 May 2023) Rivervue retirement village, struck by Maribyrnong River disaster, had \$5 million flood insurance limit. *The Age* newspaper retrieved at

<https://www.abc.net.au/news/2023-05-15/rivervue-retirement-village-residents-maribyrnong-river-flood/102321790>

25 Ibid <https://www.abc.net.au/news/2023-05-15/rivervue-retirement-village-residents-maribyrnong-river-flood/102321790>

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Victoria's Planning Provisions were amended in June 2022 to oblige all planning schemes to take account of the biophysical impacts of climate change and climate hazards, yet no planning decisions in the state are bound to consider matters of climate justice and the climate resilience of communities affected by planning decisions.²⁶ With statutory force the Planning Provisions play a fundamental role in setting the parameters of planning decisions, and so an increased role for considerations of justice in all planning legislation would have a substantial and positive impact on the delivery of climate justice in Victoria. This would reduce the legal need that at-risk communities experience due to poor planning decisions.

The Bushfire Royal Commission recommended that building and land use planning regulations should be strengthened to ensure that buildings and infrastructure are more resilient to bushfire events, and that development in high-risk areas be restricted.²⁷ This also fits with the United Nations Special Rapporteur's report to the Human Rights Council in February 2023 on the climate crisis and the right to housing:

"There is a need for systemic and integrated urban and rural planning at the national and local levels that fully integrates climate change, disaster risk reduction, location of services and infrastructure, planning for transit, green space, vegetation, the mitigation of heat islands, water and waste management, net-zero building codes and resilience, especially in relation to the informal city. Contrary to planning decisions being driven by the financial interests of developers, as is frequently the case, a rights-based approach to planning ensures community participation, especially of marginalised communities, and the collective agency of residents to shape the future of their city. Urban and regional planning needs to incorporate risk assessment, mapping and resilience planning, to ensure buildings can withstand changing weather conditions and to minimise the need for rebuilding and repair in the aftermath of climate-induced extreme weather events."²⁸

Considering the evident and increasing risks to communities of long-term climate harm, the Victorian Government needs to restrict development that does not comply with the principles of climate justice.²⁹

Questions and concerns about the wider climate change adaptation frameworks are increasing as communities struggle with recovery and attempt to act pre-emptively to prepare and adapt to accelerating and increasing climate change impacts. The 2022 floods in Victoria sound the warning that communities cannot afford maladaptive policymaking that is not fit for purpose in a climate changed world. Maladaptation is when actions taken to help communities to adapt to climate change, thus reducing

26 Department of Environment, Land Water and Planning (2022). Victorian Planning Provisions, Melbourne Victoria.

27 Royal Commission into National Natural Disaster Arrangements. (2021). Final Report - Volume 1. Retrieved from <https://www.royalcommission.gov.au/sites/default/files/2021-10/final-report-bushfire-royal-commission-volume-1.pdf>

Bushfire Royal Commission, <https://www.royalcommission.gov.au/sites/default/files/2021-10/final-report-bushfire-royal-commission-volume-2.pdf#page=342> and Bushfire Royal Commission report, Chapter 9: Bushfire risk management and land use planning: <https://www.royalcommission.gov.au/sites/default/files/2021-10/final-report-bushfire-royal-commission-volume-2.pdf#page=342>

28 United Nations Human Rights Council. (2023). *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context: Towards a just transformation: climate crisis and the right to housing*. Fifty-second session, 27 February - 31 March 2023, Agenda item 3, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development. Author: Balakrishnan Rajagopal.

29 Cook, B. and Werner, W. To stop risky developments in floodplains, we have to tackle the profit motive-and our false sense of security, (4 July 2022), The Conversation retrieved at: [To stop risky developments in floodplains, we have to tackle the profit motive – and our false sense of security \(theconversation.com\)](https://theconversation.com/to-stop-risky-developments-in-floodplains-we-have-to-tackle-the-profit-motive-and-our-false-sense-of-security)

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vulnerability, have unexpected consequences resulting in increased vulnerability. Maladaptation consequences on the ground are often a result of laws and policies that have not considered potential foreseen harms. Climate harm because of poor or negligent planning decisions is a real and evident risk in Victoria. The clustering of legal issues around land, houses and property also highlights the need for a holistic Climate Justice Framework to resolve this policy complexity and prevent future maladaptation.

Planning law and disaster recovery in Gippsland

In response to community needs after Black Summer, Gippsland Community Legal Service (GCLS) sought the help of pro bono partners to increase community legal education and literacy on planning law issues that were impacting those rebuilding after the fires. It was apparent that communities were not well informed about planning law, despite its impact on their lives and livelihoods.

GCLS provides legal advice and assistance to communities that have been impacted by the Black Summer bushfires. A place-based, trauma-informed response required GCLS to make itself available as the initial contact point for all legal issues experienced by communities, including responding to an increasing number of queries and community needs regarding planning and environmental law that resulted from the bushfires. With the support of pro bono law firm partner King & Wood Mallesons, GCLS has been providing the community with initial advice and casework in response to issues concerning:

1. **Legal advice:** For individuals affected by disasters seeking to understand their legal rights and options on decisions related to public land management and planning. This includes guidance on the processes involved in making a complaint or taking legal action. King & Wood Mallesons has provided secondary consultations on individual matters and research.
2. **Capacity building:** In conjunction with the Monash Climate Justice Law Clinic (a program of another CLC, Monash Law Clinics), GCLS produced its “Guidebook to Public Land Management” for CLCs. A guidebook to planning law is soon to be released.
3. **Advocacy:** Working with other organisations and community groups to advocate for policy changes and reforms related to public land management, planning law and disaster recovery.
4. **Community education:** Offering training sessions, workshops, and information sessions on topics such as environmental law, planning law, and disaster recovery. King & Wood Mallesons provided “Planning 101” training.

GCLS continues to respond to the community’s needs, helping individuals to access planning and environmental law justice and to recover and rebuild after disasters.

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Human Rights: Planned Relocation or Climate Ghost Towns?

Shepparton-Mooroopna, which sits in a floodplain by the Goulburn River and was impacted by the 2022 floods, is predicted by reports and scenario planning data to become ‘unviable’ if all climate risks were considered by insurance “making it Australia’s riskiest urban centre.”³⁰ Shepparton is a highly culturally diverse community with high proportion of First Nations people with significant and vital cultural and spiritual ties to the land. VALS re-emphasises the importance of culturally appropriate communication and action as well as the need to understand the trauma of planned relocation and forced evacuation for First Nations people. During the 2022 floods some Elders did not want to go to the evacuation centres because they experienced forced displacement from Country when they were younger and did not trust that authorities would permit them to return home.

Planned relocation refers to the process of deliberately moving communities, individuals or populations away from areas that are highly susceptible to the impacts of climate change to safer and more sustainable locations.³¹ In the context of worsening housing shortages due to climate disasters, the 2022 floods illustrate that Victoria needs to accelerate community and public conversations about planned relocation to prepare for increasing climate impacts.

A climate ghost town is a town or settlement that has been abandoned, depopulated, or lacks services and amenities because of the impacts of climate change and extreme weather events. If these policy conversations and consultations do not occur, many towns or settlements will be at risk of becoming climate ghost towns. Forced retreat is another potential phenomenon that could occur in a climate changed world. It is non-voluntary movement that may occur when the costs and risks of maintaining homes and infrastructure in a certain area outweigh the benefits, forcing individuals to leave.

Housing is a fundamental human rights concern.³² The Victorian Climate Change Adaptation Plan includes the intention to ensure that the needs and perspectives of all Victorians are considered in adaptation planning, including those who are most vulnerable to the impacts of climate change. This implies ensuring that the potential impacts of climate change on human rights, such as the right to life and security of person, health, and the right to an adequate standard of living are incorporated in adaptation strategies. The risk of widespread maladaptation to climate change is high in Victoria particularly in areas where housing availability is reduced, and healthy habitation becomes impossible due to the compounding pressures of economic and housing policies and pressures. The complexity of climate justice issues where insurance, contracts, tenancy, leases, wills and emergency management preparation and procedures intersect could be addressed and resolved through a Climate Justice Framework that reconciles human rights with adaptation policies.

Victoria is already experiencing housing shortages. This is being compounded by extreme weather impacts in the following ways:

- Immediate evacuation from homes that have become uninhabitable due to flood impacts,

30 Ting, I, Scott, N, Palmer, A. and Slezek, M. (3 January 2020) The rise of red zones of risk, Australian Broadcasting Corporation retrieved at [How the spread of insurance red zones could trigger a property crunch - ABC News](#)

31 Insurance Australia Group (March 2023) Planned Relocation: Protecting our communities, page iv. Retrieved at <https://www.iag.com.au/about-us/research>

32 Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESR) affirms that all persons are entitled to an adequate standard of living, including adequate access to housing Art 11, ICESCR. retrieved at [UNTC](#)

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- The reality of slow repairs and rebuilds due to supply chain issues and labour shortages.
- Social and economic impacts of evacuation and temporary relocation. Evacuation can be the start of a long arduous journey rather than a mere temporary solution.
- Relocation to emergency accommodation facilities far from community networks can exacerbate family violence, mental health challenges and trauma. This was reported at the Mickleham quarantine hub which was used to house flood evacuees.³³

The loss of secure tenancy is also often overlooked. Tenancy and the right to secure housing need to be included in adaptation frameworks and disaster response policy decisions. The Federation notes with concern that attention given to homeowners and property holders' loss of rights and capital due to disaster impacts creates a risk of excluding the rights and needs of those who do not have pecuniary interest in housing stock but need elemental shelter. Fiscal compensation received by landlords from the state or insurance companies for damage done to investment properties is not necessarily directed back into the provision of replacement private tenancy.

Extreme weather events and slow-onset climate events have significant and lasting impacts on the right to housing. The frequency and risk of extreme weather events, as well as the long-term impact of slow-onset climate events, are already evident. The recent recommendations from the Special Rapporteur to the Human Rights Council are relevant to the Victorian experience.

The report confirms that States have an obligation:

- To work continuously, in consultation with and with the participation of affected people, to improve the climate resilience of housing and climate-disaster preparedness. This entails regional or local strategies to map, identify, prepare for, and mitigate climate risks.
- To provide safe and adequate shelter and reconstruction assistance after climate events, including through the provision of funds, materials, facilities, and infrastructure.
- To work, in the case of climate-induced migration, with interest groups to ensure rights-compliant, resilient, and durable housing solutions, including security of tenure, in places where communities move to.
- To ensure that resettlement and relocation are pursued only when they cannot be avoided and are strictly necessitated by the unsustainability of maintaining human settlements in at-risk zones. Any resettlement and relocation should be planned and implemented with the full consultation and participation of affected and receiving communities and comply with the basic principles and guidelines on development-based evictions and displacement and other applicable human rights norms, for example the United Nations Declaration on the Rights of Indigenous Peoples.³⁴

The Special Rapporteur report clearly demands the integration of the right to housing with adaptation and disaster recovery policies: "States should adopt legislation to protect, respect and fulfil the right to adequate housing without discrimination. They should, in addition: (a) Incorporate the right to adequate housing in national climate action plans, national determined contributions and national adaptations plans;

33 Taylor, J. and McCarthy, J. After the Mickleham quarantine hub was used for flood victims, documents show violence and drug use were rife, (29 March 2023), *The Age* newspaper,

[After the Mickleham quarantine hub was used for flood victims, documents show violence and drug use were rife - ABC News](#)

34 United Nations Human Rights Council. (2023). *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context: Towards a just transformation: climate crisis and the right to housing*. Fifty-second session, 27 February - 31 March 2023, Agenda item 3, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development. Author: Balakrishnan Rajagopal.

SECTION 4: SYSTEMIC CLIMATE JUSTICE IN FLOOD IMPACTED REGIONS

(b) Ensure that national housing strategies take climate risks into account and are coordinated with climate policies.”³⁵

Human rights protections must form the basis of climate change relocations at the individual and incremental level as well as planned communal relocations. Self-determination is a “cornerstone of the human rights principles that need to guide community relocations”.³⁶ The right to self-determination, at the very least, entails the entitlement of people to have control over their destiny and to be treated respectfully. Successful relocation is more likely when critical decisions are made by the people affected. The range of impacts on parties faced with the reality of managed retreat highlight the importance of cooperative governance to enable self-determination regarding when, where how and why retreats occur. If parties choose to remain in place rather than to relocate, the onus remains on government to develop programmes to promote a reasonable quality of life in climate-impacted territories through alternative, localised adaptation measures.

Overall, the Victorian Charter of Human Rights influences the development and implementation of the AAP by emphasising the importance of human rights considerations in adaptation planning and highlighting the need to protect the rights of all Victorians, particularly those who are most at risk of climate harms. However, the Charter does not include the right to housing or other vital rights necessary for climate and disaster justice.

RECOMMENDATIONS

- Develop a Climate Justice Framework for Victoria to supplement the *Climate Change Act 2017* (Vic) and the Victorian Climate Change Adaptation Plan so that climate change mitigation and adaptation are reconciled with human rights.
- Incorporate consideration for climate justice and human rights across all disaster preparation, response, and recovery policies in Victoria.
- Commence consultation with communities on planned relocation and principles of self-determination to be incorporated into the proposed Climate Justice Framework for Victoria.

³⁵ Ibid. Section 67.

³⁶ Ibid.