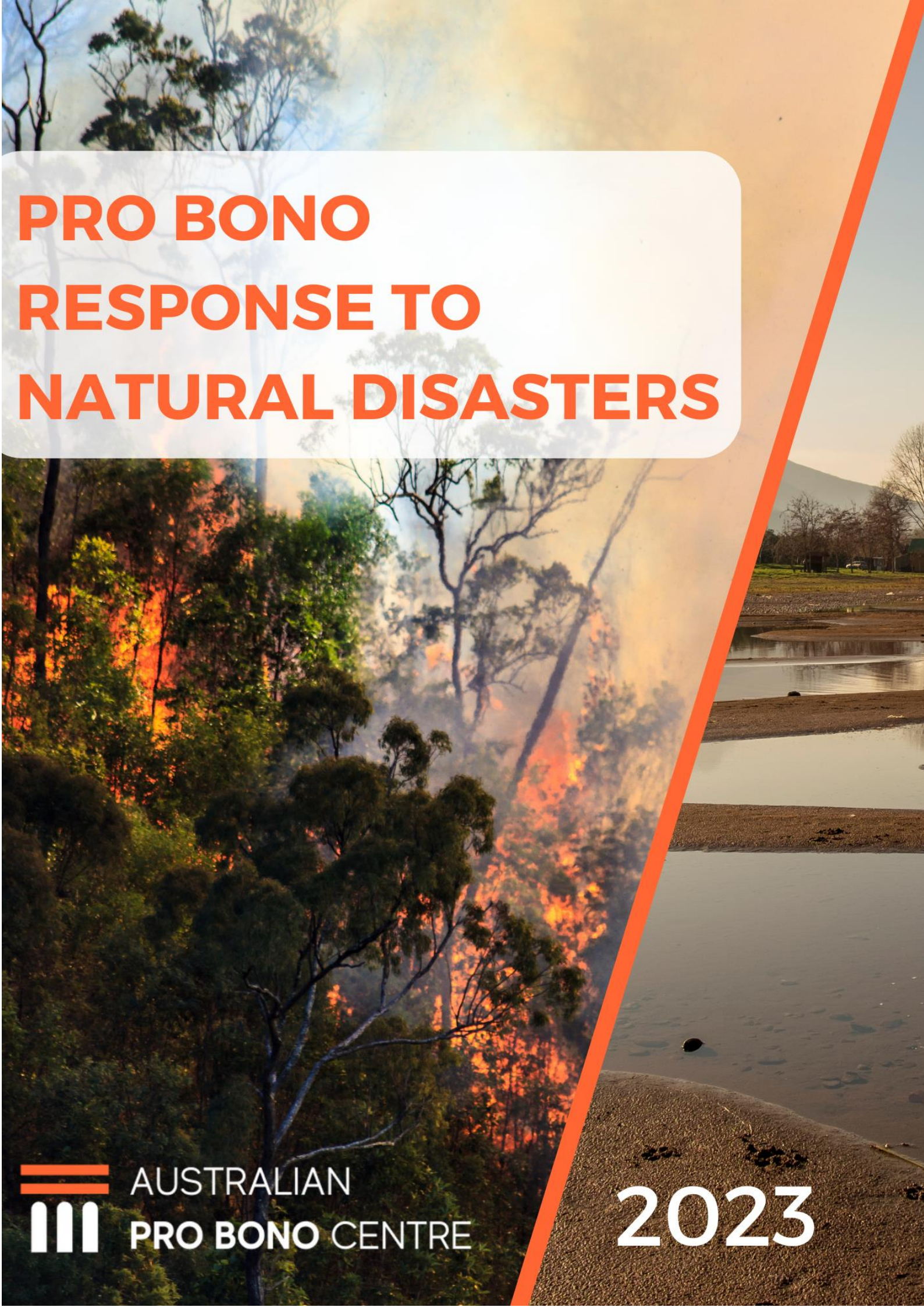
PRO BONO RESPONSE TO NATURAL DISASTERS



AUSTRALIAN PRO BONO CENTRE

2023

About the Australian Pro Bono Centre

The Australian Pro Bono Centre (the Centre) is Australia's centre of leadership for pro bono legal services. It was established in 2002 as an independent, not-for-profit organisation located at UNSW. The Centre aims to grow participation and excellence in pro bono. This is the Centre's unique contribution to closing the justice gap and creating a more equitable and sustainable society.

The Centre works to achieve this in three ways:

1. **Activating** new and existing pro bono legal professionals by promoting awareness of pro bono legal services, providing incentives to participate, and advocating for policy reform.
2. **Equipping** pro bono legal professionals by providing practical tools and resources and reducing barriers and constraints to pro bono participation.
3. **Connecting** members of the pro bono ecosystem through collaboration and best practice sharing.

More information on the strategies that the Centre uses to achieve its mission can be found in its Strategic Plan.

The Centre acknowledges the traditional custodians of the land on which it works, the Bedegal people of the Eora Nation. The Centre pays its respects to Elders – past, present, and emerging – and the youth who are working towards a brighter tomorrow.

The Centre is grateful for the funding support it receives from the governments of the Commonwealth and all states and territories, and the in-kind support it receives from the Commonwealth Attorney-General's Department, Australian Government Solicitor, private firms, volunteers, and the Faculty of Law & Justice at UNSW, which includes the use of the Faculty's premises and facilities and support from student interns.

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For more information, please contact the Centre at info@probonocentre.org.au.

[1] See details here.

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3. ARC Justice
4. Ashurst
5. Caxton Legal Centre
6. Community Justice Services SA
7. Community Legal Centres New South Wales
8. Community Legal Centres Queensland
9. Department of Justice Western Australia
10. Disaster Legal Help Victoria, constituting:
    a. Federation of Community Legal Centres
    b. Law Institute of Victoria
    c. Justice Connect
    d. Victorian Aboriginal Legal Service
    e. Victoria Legal Aid
    f. Victorian Bar
11. Financial Rights Legal Centre
12. Herbert Smith Freehills
13. Hobart Community Legal Service
14. HopgoodGanim Lawyers
15. Hume Riverina Community Legal Service
16. Justice Connect
17. JusticeNet SA
18. King & Wood Mallesons
19. Lander & Rogers
20. Law Access Western Australia
21. Law Society of New South Wales
22. LawRight
23. Legal Aid New South Wales
24. Legal Aid Queensland
25. Legal Services Commission of South Australia
26. Makinson d'Apice Lawyers
27. Mid North Coast Legal Centre
28. MinterEllison
29. New South Wales Bar Association
30. Northern Rivers Community Legal Centre
31. Shoalcoast Community Legal Centre
32. Townsville Community Law
33. Welfare Rights Centre
34. Women's Legal Service New South Wales

The Centre also thanks the following Centre Board members and staff who worked on this Report:

- Phillip Cornwell, Chair
- Gabriela Christian-Hare, Chief Executive Officer
- Alice Rolls, Head of Policy & Strategy
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- Rose Huang, UNSW Practical Legal Training Student

1 Introduction

> *'Broadscale legal response post-disaster must be agile, reasoned and client focused. Knowing our place in the legal needs sector is critical. Understanding how to authentically contribute will come from a steadfast commitment to keeping clients' realities at the forefront of our decision-making. This is best done through the lens of our frontline service lawyers. It is there that our understanding is sharpened, and effective legal responses are built.'*[2]
>
> *—Jilly Field, Pro Bono Principal, Gilchrist Connell*

Natural disasters* have increased in frequency and severity across Australia in the last five years, with some regions experiencing the impacts of multiple, compounding disasters each year. While physical safety and wellbeing is the primary concern in the immediate aftermath of a natural disaster, legal needs arise quickly thereafter but can also take months to become apparent. While disasters give rise to new legal problems for some, they can also compound pre-existing legal issues and exacerbate pre-existing inequalities. This complex legal environment requires collaboration from the legal assistance sector, and a responsive approach from the pro bono community.

This Report compiles responses from frontline legal service providers and the pro bono sector on what has been successful in the pro bono sector's approach to disaster response. It briefly describes the disaster response landscape in New South Wales, Queensland, Victoria, South Australia, Western Australia, and Tasmania. It extracts key learnings and recommendations for pro bono practitioners to consider when offering their support during live disasters in each jurisdiction, and how they might better support disaster resilience and preparedness, outside of live disasters. Finally, this Report collates key recommendations from across the country to form a blueprint for pro bono practitioners for the future.

It must be recognised that many of the recommendations within this Report are confirming effective, considered responses from pro bono providers during natural disasters. Some recommendations call on the pro bono sector to continue these practices, while others ask for alternative ways of working.

The Centre takes the view that pro bono is no substitute for a properly funded legal assistance sector. In the context of the 2023 independent review into the National Legal Assistance Partnership, the Centre calls on all governments to increase funding for the legal assistance sector, and to dedicate more resources to fund disaster preparedness, resilience, and contingency arrangements, as well as immediate front-line responses.[3]

* It is recognised that the unprecedented severity and frequency of these disasters have been impacted by climate change to the point where they may more properly be described as *unnatural* or man-made disasters. Nevertheless, the Centre has retained the terminology of 'natural disaster'.

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[2] Jilly Field and Tim Leach*, Broadscale pro bono response to bushfires and COVID-19,* (2020), *Pro Bono Voco* <https://www.probonocentre.org.au/wp-content/uploads/2020/06/AUSTRALIAN-PROBONO-CENTRE-2020-Bushfire-COVID19.pdf>.

[3] Current at time of publication, October 2023.

1.1 Purpose of this Report

The purpose of this Report is to recommend a way forward for pro bono legal support in future natural disasters, by compiling the reflections of organisations within the Australian natural disaster legal assistance sector on the effectiveness of pro bono legal services in the past.

This Report aims to:

1. Scope the historical need for pro bono legal services during and in the aftermath of natural disasters.
2. Understand how pro bono support is delivered in response to natural disasters.
3. Hear from providers and receivers of pro bono disaster support as to their experiences.
4. Reconcile learnings from these experiences to frame recommendations for the future.

This Report provides a set of **27 recommendations** for pro bono practitioners to adopt when offering support for natural disasters.

It is important to highlight that this Report does not purport to review all aspects of legal disaster response, the legal assistance sector or the systemic reform needed to properly resource it.

1.2 Scope

The scope of this Report is limited to natural disasters in Australia, with a focus on disasters that have occurred in the last five years. Though not an exhaustive list of all natural disasters in Australia, contributors to this Report made specific reference to the following events:

2022:

- December 2022 – January 2023, Western Australia: Kimberley floods.
- December 2022 – January 2023, South Australia: Murray River floods.
- October, Victoria floods (multiple locations).
- October, Tasmania: Northern Tasmania floods.
- July, New South Wales: Hawkesbury-Nepean floods.
- March, New South Wales: Hawkesbury-Nepean floods.
- February, New South Wales: Northern Rivers floods.
- February, Queensland: Brisbane floods.
- February, Western Australia: Great Southern bushfires.

2021:

- August, New South Wales: South Coast floods.
- April, Western Australia: Tropical Cyclone Seroja.
- March, New South Wales: Port Macquarie-Hastings floods.
- March, New South Wales: Hawkesbury-Nepean floods.
- February, Western Australia: Wooroloo bushfire.

2019-2020 (1 July – 31 March)

- New South Wales: 'Black Summer' bushfires.
- Victoria: 'Black Summer' bushfires.

- South Australia: 'Black Summer' bushfires.
- Queensland: 'Black Summer' bushfires.

Pre-2019

- 2016, Western Australia: Waroona-Yarloop bushfire.
- 2013, Tasmania: Dunalley bushfires.
- 2011, Queensland: Lockyer Valley and Brisbane floods.
- 2009, Victoria: 'Black Saturday' bushfires.

The Centre recognises the live natural disasters affecting communities in Victoria and New South Wales at the time of publication of this Report in October 2023, and those still living with the aftermath of many of the disasters listed above.

This Report does not cover approaches to pro bono legal support during COVID-19, or other large-scale emergency events such as building collapses, accidents or responses to conflict and war. It also does not cover any non-legal responses to disaster such as the emergency or medical responses.

While these disasters have had immense impacts on diversity, with an estimated 3 billion animals killed or displaced by the Black Summer bushfires, efforts to help animals and the environment itself are outside the scope of this Report. The Report is focused on pro bono legal efforts to support ***people and communities*** affected by these disasters and the organisations responding to their needs. [4]

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[4] Michael Slezak, '3 billion animals killed or displaced in Black Summer bushfires, study estimates, (28 July, 2020) *ABC News* <https://www.abc.net.au/news/2020-07-28/3-billion-animals-killed-displaced-in-fires-wwf-study/12497976>.

2 National Recommendations

Using the responses of contributors to this Report, the Centre has collated the following **27 key recommendations** which are applicable across the nation. Recommendations by jurisdiction are described in more detail in section 6 below.

Preparedness		**Jurisdiction Reference**
Recommendation 1: Preparedness	Pro bono providers should assist communities with disaster preparedness in addition to providing direct support during and in the aftermath of disasters.	NSW-1 VIC-1 QLD-1
Relationships and Commitment		
Recommendation 2: Established partnerships	Pro bono providers should be building and maintaining partnerships with community legal centres (CLCs) and pro bono referral schemes outside of live disasters. Pro bono providers should not be attempting to establish new relationships during live disasters.	NSW-2 VIC-3 QLD-4
Recommendation 3: Long-term commitment	Pro bono support should reflect the long tail of disasters and support should be extended beyond a live disaster.	NSW-6 VIC-2 QLD-3
Recommendation 4: Responsive to need	Pro bono providers should work alongside their community partners and be responsive to the stated needs of disaster-affected communities, and the legal assistance sector.	NSW-4 VIC-5
Recommendation 5: Planning	Pro bono providers should consider developing a plan with their partners for their disaster work, which should include preparedness work outside of a live disaster (see Recommendation 1), as well as models, timing, and communication during a live disaster.	NSW-3
Recommendation 6: Local-first and place-based	Pro bono providers should recognise the role of locally-led and place-based responses by working with local legal assistance providers and local pro bono providers.	NSW-4 VIC-4 SA-1
Recommendation 7: Supporting First Nations-led responses	Pro bono providers should consider how they can support First Nations-led disaster response, as well as incorporate culturally informed practice into their response.	NSW-5

Models of Pro Bono Assistance		
Recommendation 8: Surge capacity	During times of disaster, pro bono providers should consider providing support with CLCs' regular service offerings, to allow for CLC lawyers to be deployed to disaster-affected communities. Providing surge capacity increases the legal assistance sector's disaster response capability.	NSW-9 VIC-6 QLD-5
Recommendation 9: Providing advice in niche areas of law	Pro bono providers should continue providing advice in specialist and niche areas of law that are outside the scope of CLCs and Legal Aid. This is an effective practice that pro bono should continue.	NSW-7 VIC-7 SA-3
Recommendation 10: Providing training to legal assistance sector lawyers	Pro bono providers should continue providing upskilling and training to CLC lawyers in specialised areas of law relevant to natural disasters. This training should be ongoing, and not prompted by a disaster occurring. This is an effective practice that pro bono providers should continue. Refer to the **Types of Legal Issues** section in this Report for the most common areas of law that have arisen during natural disasters.	NSW-8 QLD-6 TAS-1
Recommendation 11: Capacity and capability building	Pro bono providers should support the systemic needs of the legal assistance sector through capacity and capability building. There should be greater consideration of models of support that are not solely focused on the immediate aftermath of a disaster. This is an effective practice that pro bono providers should continue.	QLD-8 SA-5 TAS-2
Recommendation 12: Providing community legal education	Pro bono providers should create, review and update community legal education resources on community preparedness, common legal issues, niche areas of law and how to identify legal problems. This is an effective practice that pro bono providers should continue.	NSW-11 SA-4
Recommendation 13: Policy and advocacy	Pro bono providers can provide effective support in law reform, policy, and research related to disaster legal response. This model should be considered especially where barriers exist for providing other models of pro bono support (eg. distance). This is an effective practice that pro bono providers should continue.	NSW-10 QLD-7
Recommendation 14: Class actions	Pro bono providers should consider providing support in class actions.	SA-2

Recommendation 15: Secondments	Pro bono providers should continue the model of offering secondments. However, they should ideally be longer-term and avoid creating an administrative burden.	NSW-12
Recommendation 16: Low bono	Pro bono providers should consider substantially reduced fee models of support in areas such as family law, wills and estates.	VIC-10
Recommendation 17: Family law	Pro bono referral schemes should consider engaging more family law practitioners.	VIC-8 VIC-9
Referrals		
Recommendation 18: Referral schemes as preferred avenue	Referral schemes are the preferred pathway for pro bono referrals by CLCs and Legal Aid Commissions.	NSW-21 WA-1
Recommendation 19: Direct referrals from CLCs and Legal Aid	Direct referrals from CLCs or Legal Aid to pro bono providers are appropriate if there is an established relationship.	NSW-22
Recommendation 20: Engaging local lawyers in small practices	Referral schemes should be encouraging small and medium practices to undertake disaster work, particularly local lawyers in disaster-affected areas and those in remote and regional practices.	NSW-18 NSW-23 WA-2
Recommendation 21: In-house lawyers	Referral schemes should consider engaging more with in-house pro bono lawyers to undertake disaster response work.	WA-3
Logistics		
Recommendation 22: Carefully consider attending affected communities	Pro bono providers should consider the appropriateness of and need to physically attend recovery centres. When pro bono support is required in the immediate aftermath, it should be at the request of the legal assistance sector.	NSW-14 VIC-11 QLD-8
Recommendation 23: Trauma and culturally-informed training	Pro bono providers should be engaging in trauma-informed practice and culturally informed training. This training should be undertaken year-round, and not for the first time when a disaster occurs.	NSW-15 VIC-12 WA-

Recommendation 24: Conflict management	Pro bono providers should be aware of areas of law relevant to disaster response in respect of which they may have a conflict, and consider mitigation strategies, so far as possible.	NSW-17 QLD-2
Recommendation 25: Understanding insurance requirements	Pro bono providers should understand their professional indemnity insurance arrangements, and whether they require further coverage to undertake pro bono work in a disaster.	NSW-16
Recommendation 26: Utilising the Centre's expert pro bono service	To engage experts, the pro bono sector can better utilise the Centre's ExpertsDirect Pro Bono Service.	NSW-13
Eligibility for pro bono assistance during disasters		
Recommendation 27: Eligibility for pro bono assistance during natural disasters	The Centre should facilitate discussion with the sector and issue guidance on the definition, eligibility and means tests for receiving pro bono assistance during natural disasters.	NSW-20 VIC-13 WA-4

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3 Background

This Report reflects the Centre's continuing investment in supporting the pro bono sector to assist communities during natural disasters, and in tackling the broader climate crisis.

The Centre's work in this area began in 2011 with the release of the report 'Emergency Preparedness and Disaster Planning for the Legal Profession in Australia.'[5] The Centre's work has continued since that time, particularly in response to the greater frequency and severity of natural disasters since 2019.

3.1 The Centre's Role in Responding to the Climate Crisis

The Centre has played an active role in engaging the pro bono sector in responding to the broader climate crisis since 2019. In 2020, the Centre published the **Pro Bono Guide to the Climate Crisis**, a guide for lawyers globally looking for ways to use their legal skillset to address the climate crisis. The Guide includes case studies, and provides the following 15 suggestions for getting involved:

1. Running strategic climate litigation.
2. Working on law reform activities.
3. Offering commercial legal advice to not-for-profit organisations and social enterprises.
4. Establishing a climate justice clinic in collaboration with a university.
5. Providing a secondee to a civil society organisation working to combat climate change (or for individual lawyers or law students, volunteering at such an organisation).
6. Providing legal assistance to Indigenous peoples who are disproportionally affected by the climate crisis.
7. Conducting legal research on the intersection between human rights and climate change.
8. Providing legal advice, information, and advocacy to those fighting climate change.
9. Providing legal information and advice to those affected by a natural disaster.
10. Offering immigration law advice to people displaced by the effects of climate change.
11. Giving legal support to NGOs and developing country delegations in international climate change negotiations.
12. Providing community legal education.
13. Providing legal assistance to communities particularly affected by the climate crisis.
14. Delivering training to community lawyers; and
15. Expanding the role of the pro bono lawyer – embedding climate transition and environmental factors in commercial decision-making.

[5] National Pro Bono Resource Centre, *Emergency Preparedness and Disaster Planning for the Legal Profession in Australia,* (Report, June 2011) <https://www.probonocentre.org.au/wp-content/uploads/2015/02/Emergency-Preparedness-and-Disaster-Planning-for-the-Legal-Profession.pdf>.

'The impacts of climate change represent the greatest threat to our national security, our economy, our health, and our environment. Legal professionals are integral to solving the climate crisis, from assisting Indigenous groups, working on law reform activities to running strategic litigation. As a lawyer and Member of Parliament, I warmly welcome this guide and initiative to encourage more lawyers to contribute their skills and expertise to the most pressing issue of our time.'

—Zali Steggall MP, Federal Member for Warringah

In 2021, in partnership with global pro bono clearinghouse PILnet, the Centre developed the Global Pro Bono Climate Action Portal. The Portal puts into action the suggestions contained in the Pro Bono Guide to the Climate Crisis. It provides case studies from around the world demonstrating the ways pro bono lawyers are using their expertise to address the climate crisis. The aim of the Portal is to provide inspiration and examples for pro bono providers and to encourage them to offer their support. The Portal is accepting submissions of case studies on an ongoing basis from providers involved in pro bono climate work.

'The Global Pro Bono Climate Action Portal is a terrific source of information and inspiration outlining the many different types of legal services that are needed, from working on law reform to public interest litigation, legal education and assistance for people who are on the frontlines of the climate crisis. It is incumbent upon members of the legal profession to contribute as lawyers, we often focus on the law and sometimes lose sight of the end goal, which is justice. And in this case, climate justice.'

—Dr David Boyd, Special Rapporteur to the United Nations on Human Rights and the Environment

3.2 The Centre's Role in Disaster Response

The Centre's role in disaster response reflects the Centre's broader role in the Australian pro bono sector, being to activate, equip and connect members of the pro bono ecosystem. The Centre has primarily shared information across the pro bono profession by coordinating with the legal assistance sector to ensure that pro bono legal providers know the main areas of legal need and to which organisations they should be directing their offers of pro bono support.

Through the ExpertsDirect Pro Bono Service, the Centre has facilitated the provision of pro bono expertise in five matters arising out of natural disasters since 2020. This has included providing experts on a pro bono basis in proceedings against insurers on behalf of people affected by disasters. These applications have included expert builders and structural engineers.

The Centre has also been involved in the New South Wales Disaster Legal Assistance Group, convened by Legal Aid New South Wales (Legal Aid NSW), since 2020, the Community Legal Centres New South Wales (CLCNSW) Disaster Planning Network since its inception in 2023, and more recently the Commonwealth Disaster Legal Assistance Group since its inception in 2023. The activities undertaken by each group are similar, and include:

- Facilitating collaboration and coordination of legal assistance in the local context.
- Referrals to other agencies, support services and legal assistance sector partners including the pro bono sector.
- Leading the law reform and policy response to disasters which has also involved pro bono support.

The Commonwealth Disaster Legal Assistance Group is a sub-committee of the National Collaborative Services Planning group. The group has been formed to share information, build capacity, identify emerging trends, and present innovative service models in the context of post-disaster legal assistance.

There is an increasing need for legal assistance providers to deliver disaster response assistance, as proven by the frequency and severity of disasters in Australia in the past 5 years. With the benefit of this experience, it is timely for the Centre as the national centre of leadership for pro bono legal services to collate key themes and extract key learnings and recommendations as a blueprint for pro bono support moving forward.

3.3 The Role of Pro Bono in the Sector

The role of the pro bono sector in natural disaster response reflects its general position in the legal assistance sector. Pro bono legal services are not, nor should they ever be, a substitute for a properly funded legal assistance sector. Consistent with this proposition, the Centre's definition of 'pro bono legal services' provides that legal assistance should be given to individuals who '*can demonstrate a need for legal assistance but cannot obtain Legal Aid or otherwise access the legal system without incurring significant financial hardship.*'[6]

Rather than replacing the legal assistance sector, the pro bono sector acts as a safety net which sits underneath the legal assistance sector to protect individuals and not-for-profit organisations that 'fall through the cracks.' This is consistent with the professional responsibility of lawyers to work to ensure equal access to justice.

Through the safety net, the pro bono sector adds additional capacity to the legal assistance sector and provides a level of elasticity in the system. This plays out in three ways:

1. pro bono 'plugs the gaps' in the legal assistance sector by assisting individuals with matters not able to be addressed by Legal Aid Commissions, Community Legal Centres (CLCs), Aboriginal legal

[6] Australian Pro Bono Centre, *Definition of "pro bono legal services"*, < https://www.probonocentre.org.au/information-on-pro-bono/definition/>.

services and other publicly funded legal assistance organisations due to lack of capacity or expertise, or ineligibility of help seekers;

2. pro bono responds to sudden changes in legal needs that cannot be predicted with certainty – for example, **disaster legal response**; and

3. pro bono provides valuable legal assistance to not-for-profits and charities which are not typically serviced by the publicly funded legal assistance sector. This bolsters the charitable sector by allowing those organisations to use their limited funds to help vulnerable individuals, rather than spending money on legal advice.

4 Approach to this Report

This Report reflects on learnings from past pro bono responses to natural disasters. Its approach was guided by the following principles, that we must:

- engage with stakeholders across the country and in different jurisdictions.
- understand what happens when a natural disaster occurs; what legal services are deployed and how people affected by disaster are accessing legal services.
- seek the perspectives of frontline legal services, including specialist legal services, and those that represent and serve vulnerable communities.
- provide recommendations based on learnings from frontline legal services.
- be honest with the pro bono sector about what has worked, what hasn't and what is needed in the future.

Using these principles and purposes listed at section **1.1** above, the Centre undertook the research for this Report in four stages:

4.1 Desktop Research

The initial phase of this Report involved gathering relevant literature through desktop research. Key resources relied on included:

- the Centre's Emergency Preparedness and Disaster Planning for the Legal Profession in Australia, 2011.
- National Legal Aid, Submission to the Senate Standing Committee on Finance and Public Administration Inquiry into lessons to be learned in relation to the preparation and planning for, response to and recovery efforts following the 2019-20 Australian bushfire season, 2019.
- Legal Aid NSW, Submission to the Royal Commission into Natural Disaster Arrangements, 30 April 2020.
- Victoria Legal Aid, Submission to the Royal Commission into Natural Disaster Arrangements, 8 May 2020.
- Justice Connect, Submission to the Royal Commission into Natural Disaster Arrangements, May 2020.
- Royal Commission into Natural Disaster Arrangements, Final Report, 28 October 2020.

- Townsville Community Law, Disaster Readiness for the Legal Assistance Sector: Disaster Legal Assistance in Queensland, 2021.
- Climate and Sustainability Policy Research group, Flinders University, Final Report – South Australian Bushfire Legal Services: Review of Current Practices, 2021.

Following the initial desktop research, the next stage was to seek feedback from frontline services and peak bodies across the landscape of disaster response in each jurisdiction.

4.2 Outreach Tranche 1: Understanding the Landscape

The Centre needed to first understand how disaster legal assistance is delivered across each jurisdiction in Australia.

To understand the differences in delivery across the country, the Centre first spoke to key agencies and personnel, specifically legal aid offices, CLC peaks, referral schemes and individual leading practitioners. This stage was completed with a mix of interview and written submissions, depending on the needs of contributors. The following is an example of questions posed to these contributors:

- Please describe how the natural disaster legal response landscape operates in your state.
- What has been [organisation's] involvement in this legal response?
- What has been the involvement of pro bono support in this response, in [organisation's] experience?
- What has worked and not worked in terms of this pro bono support?
- Do you have any other reflections to add?
- Who should we be speaking to in your state?

Contributors also provided key internal documentation such as service delivery models which cannot be published in this Report. Throughout this process and with each new discussion, the Centre further developed its understanding of the landscape of legal disaster response.

4.3 Outreach Tranche 2: Perspectives of Frontline Services

With an understanding of how legal assistance is deployed during natural disasters across the country, the Centre approached key CLCs in affected areas and specialist services. The aim of this stage was to gather perspectives from the organisations embedded in affected communities, and highlight their experiences with pro bono services. The model of questions asked of these contributors was similar to the above:

- Based on desktop research and our discussion with other stakeholders, we understand that the legal response landscape in [state] operates as follows. Please advise if there is anything we have missed.
- What has been [organisation's] involvement in this legal response?
- What has been the involvement of pro bono support in this response, in [organisation's] experience?
- What has worked and not worked in terms of this pro bono support?
- Do you have any other reflections to add?

4.4 Outreach Tranche 3: Reflections from Pro Bono Providers

An important aim of this Report is that any recommendations are informed by frontline services who use pro bono services in their service delivery. However, the perspectives of pro bono providers have also been crucial. The following questions were asked of a selection of pro bono providers known to the Centre to have been involved in disaster response:

- What has been your firm's involvement in natural disaster response?
- Please describe how your firm initially became involved in responding to a natural disaster. Was it through existing partnerships? Do you anticipate that your involvement would be through these sources again?
- What has been your involvement, if any, outside of natural disasters?
- In your view, what has worked and not worked in terms of pro bono involvement in the legal response to natural disasters?
- Do you have any other reflections to add?

Together, these three tranches form the substantive reflections and recommendations of this Report.

4.5 Contributors

In total, **47 organisations** across Australia were approached to provide their reflections for this Report. The Centre received **responses from 34 organisations**. These contributors are named by organisation in the Acknowledgements section above, and their responses are anonymised throughout this Report.

Unfortunately, the Centre was unable to obtain a response from organisations based in the Northern Territory or the Australian Capital Territory, and there are no recommendations specifically tailored for either jurisdiction.

The following is a breakdown of organisations who provided responses for this Report by type and jurisdiction:

4.5.1 Type of organisation

Type	Number
Legal Aid Commissions	5
Referral schemes	7
CLCs	12
CLC peaks	3
Pro bono	7

4.5.2 Jurisdiction

Type	Number
National / Cross jurisdictional	9
New South Wales	11
Victoria	9
Queensland	6
South Australia	3
Western Australia	2
Tasmania	1

5 Types of Legal Issues

There is a wide range of legal issues that have arisen before, during and following natural disasters since 2018 in Australia. Some are unique to natural disasters. Others are unique to the *specific* disaster and context, and others intersect with pre-existing socio-legal issues or experiences of disadvantage which were exacerbated by disaster situations.

This section is not intended to be an exhaustive list of every legal matter that has arisen during natural disasters. It is included to highlight the re-occurring and critical legal issues as reported by frontline legal providers, and to uncover issues the pro bono sector might have either the capacity or expertise to take on.

The following types of legal issues have been described by contributors to this Report:

- Insurance and insurance claims;
- Housing, tenancy, and accommodation, including issues with temporary and emergency housing, and displacement;
- Credit and debt matters, and bankruptcy;
- Property, including property damage and planning laws;
- Social security rights, including challenging Centrelink decisions;
- Accessing disaster relief payments;
- Lost or destroyed documents, including identity and title documents, and issues related to not having identity documents in the first place;
- Commercial and small business matters;
- Parenting and child support;
- Domestic and family violence, including restraining orders;
- Employment law;
- Wills and estates;
- Coronial inquests and commissions of inquiry;
- Consumer goods and services, including scam support, hire purchase agreements and lemon cars;
- Use of donations for disaster relief and compliance with fundraising laws;
- Risks of informal volunteering;
- Liability of individuals or informal groups during disasters; and
- Deregistration of organisations who had not complied with document lodging.

Legal Aid NSW reported in 2023 that 48% of disaster legal problems were insurance-related, 17% housing related, 9% related to disaster-relief grants and 4% consumer goods and services-related.[7] The Financial Rights Legal Centre reported in 2021 that of the 768 legal services provided to 554 unique clients from the preceding storm and fire season, including the 2019-20 bushfires, most needed help with underinsurance, debris removal issues, cash settlement problems, poor claims handling and delays in processing their claims.[8]

[7] Legal Aid New South Wales, *Disaster Response: National Access to Justice and Pro Bono Conference*, (2023) <https://www.probonocentre.org.au/wp-content/uploads/2023/07/Meredith-Osborne-Disaster-Response.pdf>.

[8] Kirrily Shwarz, *Disaster Plan: How lawyers can act faster and respond better*, (18 March,2021), *Law Society Journal* <https://lsj.com.au/articles/disaster-plan-how-lawyers-can-act-faster-and-respond-better/>.

When examining the types of legal issues that arise in natural disasters, there must be recognition of how natural disasters affect communities in different ways, giving rise to intersecting and exacerbated legal problems.[9]

One Legal Aid contributor reflected that there were two types of clients seen following a disaster: those that had never needed legal aid before but became homeless overnight; and those with deeply complex pre-existing legal and social needs. According to that contributor, both types of clients often had four or more intersecting vulnerabilities and could take months to come forward for support with their legal problem/s following a disaster.

The Queensland Department of Communities, Child Safety and Disability Services has identified 10 key indicators of vulnerability in a natural disaster, including:

- Proximity to a natural disaster event.
- Insecure housing or homelessness.
- Lack of financial resources.
- Personal safety, including reduced health and wellbeing.
- Disruption or no availability of services.
- Limited understanding or knowledge of emergency information, including by migrants or refugees; and
- Social, physical, or geographic isolation.[10]

These indicators often pre-date a disaster, and can co-exist with multiple other vulnerability indicators, including the occurrence of the natural disaster itself, which further compounds legal need. As a society, it is known that these communities and individuals experiencing these vulnerabilities *will* have compounded legal need when a natural disaster occurs.

For example, regional communities can be more vulnerable to natural disasters because of their location and may have even more limitations on service availability given cuts to electricity, water, roads and infrastructure following a disaster.[11] During and after a natural disaster, there is an increase in domestic and family violence, and abuse of children, people with disabilities and older people, and these instances become more acute for those already experiencing violence and abuse.[12]

[9] Bill Mitchell, *A disaster for human rights*? (11 December, 2020) *QLD Proctor* <https://www.qlsproctor.com.au/2020/12/a-disaster-for-human-rights/>.

[10] Department of Communities, Child Safety and Disability Services, *People with vulnerabilities in disasters: A framework for an effective local response,* (August, 2016) 5 https://www.qld.gov.au/__data/assets/pdf_file/0022/55327/supporting-people-with-vulnerabilities-framework.pdf.

[11] Bill Mitchell, *A disaster for human rights*? (11 December, 2020) *QLD Proctor* <https://www.qlsproctor.com.au/2020/12/a-disaster-for-human-rights/>.

[12] Bill Mitchell, *A disaster for human rights*?, (11 December, 2020) *QLD Proctor* <https://www.qlsproctor.com.au/2020/12/a-disaster-for-human-rights/>.

Aboriginal and Torres Strait Islander communities are also uniquely impacted by natural disasters in multiple ways. According to a 2022 report by the Centre for Aboriginal Economic Policy Research at the Australian National University:

> '*Aboriginal peoples impacted by the 2019–20 bushfires had the same immediate needs as non-Indigenous peoples, such as the need for safety, shelter, food, supplies, financial assistance, mental health support, and more. However, as a group or groups of people with unique standing in Australia, with their own legal and governing institutions, with their own and spiritual needs, and as a group or groups that continue to be marginalised and discriminated against, there was a unique Aboriginal experience within the bushfire disaster. These inter- and intra-group dynamics are perhaps best understood through the field of demographic fault lines.*'[13]

While the pro bono sector cannot prepare for the impact of a disaster on every individual, it can prepare and inform itself on the communities most affected, and common legal issues that arise. The need for this preparation should be addressed when considering each jurisdiction's disaster response landscape and recommendations.

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[13] B. Williamson, *Aboriginal Community Governance on the frontlines and fault lines in the Black Summer bushfires,* (2022) Centre for Aboriginal Economic Policy Research, Australian National University 3 https://caepr.cass.anu.edu.au/sites/default/files/docs/2022/4/DP_300_Williamson_2022.pdf.

6 Jurisdictions

Each state and territory has a unique approach and framework for state-based services, reflected in their delivery of disaster response services - including their legal response.

The legal response of some jurisdictions is led by the relevant legal aid office, with support from local CLCs, while others rely principally on CLCs and the pro bono sector, or a combination of all three. Though disaster responses have mostly taken a state-based approach, there is also opportunity for the pro bono sector to expand on a documented practice of cross-border support. Referral schemes also play a vital role across the country.

This section examines each state and territory's delivery of pro bono legal assistance during and following recent disasters to highlight how pro bono is best placed to support in each jurisdiction.

6.1 New South Wales

6.1.1 Landscape

Disaster legal assistance in New South Wales has been delivered by a range of providers, including Legal Aid NSW, CLCs and the pro bono sector.

Following a natural disaster, a Disaster Recovery Centre (DRC) is set up close to affected communities, where many critical services are available, including legal advice and referrals. Legal Aid NSW coordinates statewide disaster legal help on behalf of the New South Wales legal assistance sector, working closely with Community Legal Centres NSW, Tenants Union NSW, Aboriginal Legal Service NSW/ACT, the New South Wales Bar Association, the Law Society of NSW, Justice Connect and the pro bono sector.

Legal assistance has been provided by the Legal Aid NSW Disaster Response Legal Service (DRLS), in partnership with local or specialised CLCs, and the Aboriginal Legal Service NSW/ACT. The DRLS has a team of dedicated disaster response solicitors but may also call on solicitors from local Legal Aid offices or across the broader organisation's civil law division. Specific CLCs in affected areas also reported having a solicitor dedicated to disaster response in their region who attended DRCs for months following a disaster.

The DRLS and partner CLCs have physically attended and provided on-the-spot advice and information to disaster affected communities at each DRC, as well as ongoing assistance for more complex legal matters. The DRLS also has a telephone line operating for people affected by a disaster who cannot attend a DRC, and can be booked into a telephone advice clinic with Legal Aid. Specialist CLCs also offer issue-specific avenues of advice and information, such as the Financial Rights Legal Centre's Insurance Law Service.

Contributors widely reported the 'long-tail' of disasters, and that many disaster legal assistance providers are managing caseloads as well as initial requests for legal assistance years on from an initial disaster event. Contributors outlined that these services still continue to actively assist communities, such as in the Northern Rivers, providing legal advice, advocacy and support through community information and education, as well as pro bono referrals. Contributors reflected on the impact of trauma, the confusing nature of disaster relief packages and continued displacement of community,

including having offices and staff directly impacted by the disaster themselves, as ongoing challenges from disasters.

There is also a focus on preparedness work, including advocacy, especially funding advocacy, community legal education, the development of legal information factsheets and resources, and sector capacity building.

CLCNSW and Legal Aid NSW have convened communities of practice networks. Legal Aid NSW convenes meetings of the New South Wales Disaster Legal Assistance Group to share information and define referral pathways. CLCNSW also facilities a quarterly community of practice for its CLC members.

6.1.2 Pro Bono Response

As the frontline legal service providers, the DRLS and CLCs facilitate referrals to other legal and non-legal organisations as required, including to pro bono practitioners and referral schemes. In New South Wales, formal pro bono referral avenues are available through Justice Connect, the Law Society of New South Wales and the New South Wales Bar Association. Pro bono support has come in many forms in New South Wales, including legal advice and casework directly with clients, producing resources and training of frontline Legal Aid or CLC staff and providing secondments. One CLC contributor reflected that:

> '*We have had some great outcomes for clients through engaging with pro bono lawyers and barristers for advice or ongoing support. We really value this as CLC everyday work is very different and tends to more focused on the client's wellbeing*.'

Another contributor commented that:

> '*We have not had difficulty in most cases obtaining specialist support from pro bono as long as we communicated the needs of the client well and worked to connect the client with pro bono*.'

The Justice Connect referrer tool has allowed frontline legal assistance providers at the DRCs to make requests for pro bono support to its member firms. The tool facilitates these providers submitting requests for assistance in areas of law outside of Legal Aid New South Wales' or a CLCs' area of expertise or matters that are likely to be beyond the time and resourcing capacity of these providers. These referrals can then be directed to Justice Connect's member firms through the Pro Bono Portal.

Justice Connect's Pro Bono Portal allows requests for pro bono support to go directly to its network of approximately 10,000 pro bono lawyers, utilised by 160 law firms across Australia.[14] One pro bono provider reflected that the Portal is useful as it has closed the referral loop, has been easy to use because of its digital infrastructure and interface, as well as enabled requests for resources such as factsheets. Another contributor reported that they have used the referral tool to refer matters, but that these are not always taken up by pro bono firms.

[14] As at the date of this Report.

The Portal has enabled the effective, efficient, and scaled legal response to disasters, with 110 new firms onboarded onto the Portal in 2020 to provide support. Justice Connect received significant pro bono support from Makinson d'Apice in a 6-month secondment of a dedicated pro bono bushfire lawyer who assisted in triaging clients and finding appropriate pro bono support.

The New South Wales Law Society Pro Bono Scheme provides free legal assistance to people who cannot access Legal Aid but cannot otherwise afford private legal help. Firms and individual lawyers can offer pro bono support through the Scheme. Through the Scheme, people affected by disaster have received assistance in many areas of law, including tenancy, financial hardship, social security, and employment. The Law Society of New South Wales actively seeks pro bono support from the profession in weekly newsletters and media releases during specific disasters. The Law Society of New South Wales reflected '*there was an outpouring of support from New South Wales solicitors and firms offering pro bono legal assistance to communities impacted by the [2019-2020] bushfires*.' In a three-day period in 2020, more than 200 solicitors and firms across New South Wales responded to the Law Society's call for support. This level of offering of support has been replicated across subsequent disasters in New South Wales.

Pro bono support from barristers has also been available through the New South Wales Bar Association's Legal Assistance Referral Scheme. Contributors indicated that this Scheme has been utilised to refer matters for advice from barristers. The New South Wales Bar Association noted that the Scheme has the capacity to take further referrals from natural disasters.

Pro bono providers reported that they also provided monetary donations and offered pro bono legal support to pre-existing pro bono clients who had been affected by a disaster. These were contextual and dependent on the nature and extent of existing relationships.

6.1.3 Reflections on the pro bono response

While the scale and quality of the pro bono response to natural disasters in New South Wales must be commended, New South Wales based contributors reflected on what worked and what did not work in that response. A summary of their responses follows.

A. Preparedness

Pro bono support for disaster preparedness

Contributors made it clear in their responses that the pro bono sector should align with supporting communities affected by disaster beyond live disasters. One pro bono provider commented on the need for pro bono to act proactively by thinking less about disaster response and more about how to build capacity and expertise. This might involve developing new relationships geared around 'prevention' rather than waiting for the call for assistance in 'response.' A third pro bono provider stressed the importance of broader climate justice pro bono work, including providing pro bono support to organisations fighting the climate crisis, and that disaster response is just one aspect of this.

Multiple pro bono providers reflected on their work assisting organisations with internal change and adaption for disaster readiness. One contributor outlined that:

> *'We have more recently been engaging in work with CLCs around mitigation of climate change…we are keen to engage in systemic change and policy work to prevent repeated failures in systems or responses or preparedness of communities and organisations.'*

Recommendation NSW-1:	Pro bono providers should assist communities with disaster preparedness in addition to providing direct support during and in the aftermath of disasters.

B. Relationships and Commitment

Established and strong pro bono partnerships

The pro bono sector should continue to foster and grow its strong relationships with legal assistance sector partners. Pro bono firms or practitioners should not be contacting legal assistance sector organisations for the first time when a live disaster is happening. Effective partnerships require trust, capacity, and time to develop, which is not possible during an emergency when most resourcing is going towards addressing community legal need.

Pro bono partnerships that transcend live disasters bolster the legal assistance sector's '*ability to respond effectively and in a timely manner,*' as one CLC contributor reflected. A CLC contributor outlined that these more established partnerships are '*really helpful as we have a working relationship so can filter work through to their teams without having too much extra workload for our lawyers*.'

Pro bono contributors reflected on their '*holistic approaches*' to disaster responses, which involve multi-year planning protocols. These allow them to activate and deploy quickly, and in accordance with their partner's needs. This might include planning for the pro bono support that is most useful to that partner during and following a disaster, including articulating models of support, timing of offers, and how pro bono and community partners communicate. Importantly, as one pro bono contributor reflected, pro bono providers need feedback from their partners on what is effective, and what is needed across individual disasters, and strong relationships are conducive to these conversations.

One pro bono provider highlighted that their own internal systems can be mobilised at any time, with budgets set aside, firm lawyers who are interested in providing disaster support and their expertise areas already identified, and community partnerships maintained. For these pro bono providers, their role in disaster response is to 'help the helpers,' and clearly recognise CLCs and Legal Aid as the best placed organisations to respond.

Further, it is these relationships that will ensure effective scaling of disaster responses, which is certainly needed given predictions of the increased frequency and severity of disasters in Australia.

Recommendation NSW-2:	Pro bono partnerships should be established and fostered outside of live disasters, which might include participation in the New South Wales Disaster Legal Assistance Group. This aligns with previous recommendations to provide ongoing disaster preparedness support, which will be conducive to stronger and established partnerships.

Recommendation NSW-3:	Pro bono providers should develop a plan with their partners to support their disaster work, which should include preparedness outside of a live disaster, as well as models, timing, and communication during a live disaster, which could be facilitated by participation in the New South Wales Disaster Legal Assistance Group.

Pro bono services' responsiveness to need

Pro bono must be responsive to the legal needs of disaster-affected communities and community legal assistance providers. CLC contributors reflected on some pro bono practitioners being selective with what matters or type of work they took on (separate to conflicted-out matters). One pro bono provider reflected that the most effective pro bono support is seen when '*law firms [come] with an ability to listen and respond with flexibility rather than dictate solutions*.' Some areas for which community legal assistance providers struggled to find support from pro bono included:

1. Preliminary advice on the process or logistical position of a matter rather than substantive advice on the likelihood of success;
2. Litigious and lengthy matters; and
3. Matters not involving a 'disadvantaged cohort' but involving a client who would be unable to pay their legal costs regardless.

Being responsive to need requires pro bono providers to recognise the pre-existing instances of disadvantage within a disaster-affected community and understand how a disaster event exacerbates this. Critically, pro bono partnerships and responses must recognise the impact of natural disasters on, and role of, First Nations communities in the legal response:

> '*As relief and recovery organisations reform their practice and engage with Aboriginal peoples (some for the first time) in planning for future socio-natural disasters, these engagements must be built on the strengths and resilience embedded within and across Aboriginal communities. Importantly, these relationships must also be developed at the local or regional levels where the distinct knowledges of Aboriginal groups and communities is most important and most accurate. This 'decolonial turn' in resilience thinking…supports Aboriginal peoples through the*

dismantling of systems of marginalisation and discrimination that produce disasters within disasters.'[15]

One pro bono provider articulated that:

'*The best examples of pro bono participation in natural disaster response are where firms listen to and support the organisations with the expertise – the community sector, CLCs and Legal Aid. Pro bono firms must recognise we do not have a key role in the immediate aftermath of a natural disaster, other than to support the CLC and disaster response sector with resourcing, secondments, and funding*.'

Recommendation NSW-4:	Pro bono providers should be responsive to the need of communities by listening to the legal assistance sector and supporting them in the ways they need.

Recommendation NSW-5:	Pro bono providers should consider how they might support Aboriginal-led disaster response, as well as incorporate culturally informed practice into their response.

Pro bono support and the long tail of disasters

As discussed, disaster legal assistance can require longer-term commitment, with frontline providers still receiving initial requests for assistance years on from the initial disaster or dealing with long-term matters. Contributors were aware of pro bono practitioners who offered support in the initial aftermath or during a live disaster, but who were then not prepared for a long-term commitment. This short-term commitment does not reflect the true level of need and is not what is needed to deeply support frontline providers and expand their capacity. Pro bono contributors to this study noted their current practice is to continue offering support on an ongoing basis.

One pro bono provider encouraged the whole pro bono sector to '*continue to recognise that unmet legal need caused by natural disasters continues to emerge in the months and years that follow. It is incumbent on the pro bono sector to ensure we do not forget about the unmet legal needs once the next natural disaster unfolds.*'

Recommendation NSW-6:	Pro bono support should reflect the long-tail of disasters and extend well beyond a live disaster. This requires pro bono practitioners to be willing to take on long-term matters.

[15] B. Williamson, *Aboriginal Community Governance on the frontlines and fault lines in the Black Summer bushfires,* (2022) Centre for Aboriginal Economic Policy Research, Australian National University 3 https://caepr.cass.anu.edu.au/sites/default/files/docs/2022/4/DP_300_Williamson_2022.pdf.

C. Models of Pro Bono Assistance

Providing advice in niche areas of law

NSW-based contributors to this study reported that pro bono support was effective when frontline legal assistance providers did not have the technical expertise in an area of law, which may involve advice to clients, producing legal factsheets or developing other community legal education resources.

By way of example, one contributor reflected on the usefulness of pro bono support in developing a factsheet for lawyers to use on legal issues related to livestock, such as stock movement and wandering and damage or loss that occurs as a result, as well as interbreeding when fences were destroyed. Another contributing CLC reported that pro bono assistance was essential when clients had many issues including some that the CLC had not assisted with before. A further contributor outlined that many matters were beyond the scope of 'regular CLC work' and the ability to funnel this work to pro bono lawyers was very helpful.

Another reflected that when pro bono support is provided for a specific expertise area in the form of client advice, it is beneficial for the frontline service provider to stay involved in the matter, to upskill those lawyers in that area of law and practice. Clients may also see better results if they are still engaged with Legal Aid or a CLC as well as the pro bono provider, especially if they have multiple legal issues, and Legal Aid or the CLC may be better placed to provide holistic legal support.

Recommendation NSW-7:	Pro bono support in niche or technical areas of law outside the scope of CLCs or Legal Aid practice areas has been very useful, and this practice should continue.

Providing training and advice to legal assistance sector lawyers

NSW-based contributors reported that pro bono support in the form of upskilling CLC lawyers in technical or niche areas of law had been successful. While each disaster demonstrated that expertise in different niche areas of law was required, there was a growing body of knowledge of which issues commonly arise. Contributors reflected that upskilling and continued education of CLC staff and lawyers by pro bono lawyers in specialised areas outside of the expertise of a CLC and those that arise in disasters was valuable and a useful model.

Recommendation NSW-8:	Pro bono practitioners should consider providing upskilling and training to CLC staff in specialised areas of law relevant to natural disasters. This training should be ongoing, and not prompted by a disaster occurring.

Providing surge capacity to CLCs

NSW-based contributors reported that a model of providing surge capacity to a CLC's 'day-to-day' workload could be useful.

During a natural disaster, a CLC's other work streams and clients do not pause. Further, CLC or Legal Aid lawyers may also have been personally impacted by the disaster. To allow CLC lawyers to attend a DRC or be dedicated to disaster recovery work, pro bono support could cover the CLCs' other casework while CLC lawyers are deployed. The combination of other recommendations in this Report, including established relationships, disaster pro bono planning, and trauma-informed training will enable pro bono lawyers to provide surge capacity to free up CLC lawyers who may be better placed to support their local disaster-affected community.

Recommendation NSW-9: Pro bono partners should consider providing surge capacity to CLC partners to support their general work, rather than or in addition to directly supporting disaster-affected communities.

Providing legal research, policy, and law reform support to the legal assistance sector

Pro bono support through legal research to inform policy, advocacy, and broader law reform efforts has been a successful model. One CLC contributor reflected that legal research conducted by a pro bono partner some years ago is still being used to inform law reform efforts today.

Another contributor outlined that the provision of legal research, policy and law reform support can circumvent other barriers to providing pro bono support, since support can be provided remotely. Additionally, it can avoid pro bono partners being conflicted out of matters as there is limited client information required. It is also a model of pro bono work that can be undertaken year-round and regardless of whether a live disaster is occurring. This aligns with recommendations in this Report which encourage the provision of pro bono disaster preparedness support, rather than providing support exclusively during live disasters.

Recommendation NSW-10: Pro bono practitioners should consider providing pro bono support in the form of legal research, policy and advocacy support. This model should be considered especially where barriers exist for providing other models of pro bono support.

Producing factsheets and community legal education resources

NSW-based contributors to this study reported that pro bono support to create legal factsheets and resources for community legal education had been useful and that more of this model is needed, alongside consideration of how and when these resources are disseminated.

Further resources are needed on both the common legal issues that arise in disasters, as well as on topics typically outside of the scope of CLCs or Legal Aid. Another contributor commented on the need to upskill the community in preparing for a disaster, providing support in identifying that they have a legal problem, and how to get help. Once these resources are initially created, they then also require

regular reviewing and updating by pro bono lawyers. Many contributors reflected on the broader role pro bono could be playing in regard to preparedness, with which this recommendation aligns.

Recommendation NSW-11: Pro bono practitioners should consider creating, reviewing and updated resources for community legal education on community preparedness, common legal issues, niche areas of law and identifying legal problems.

Secondments

NSW-based contributors reported that longer secondments can be an effective pro bono model during disasters. There is a considerable administrative burden associated with secondments, given many have been part-time for a few months, and secondees must undergo systems and technology training, subject matter training and require supervision from CLC lawyers. This all can amount to extra work for an already small and busy CLC team.

This is problematic for short secondments, which, as one CLC contributor reflected '*draw in resources in training and technology support, but competency is not reached until the 10–12-week mark, when the relationship ends.*'

Pro bono providers reflected on the usefulness of secondments, when it is possible to provide them, and that this model was an approach that many CLCs and other legal assistance providers want to see more of for both lawyers and paralegals.

Another pro bono provider suggested there are different approaches to secondments such as full and part-time secondments to CLCs on the frontline, as well as to CLC peak bodies and referral schemes.

Recommendation NSW-12: Secondments can be useful models of pro bono support provided they are of sufficient duration. However, they should not create an administrative burden.

Disbursements including expert reports

NSW-based contributors to this study reported that pro bono support for disbursements and expert reports can be useful for CLCs. As matters progress, providing expert reports and materials for court for niche arguments is required. However, the costs of experts can be prohibitive.[16]

In partnership with ExpertsDirect, the Centre runs the ExpertsDirect Pro Bono Service, a service which puts pro bono and community lawyers in touch with professionals who are willing to provide expert witness services for free or at low cost in legal matters assisting those experiencing disadvantage or

marginalisation.[17] Subject to the Centre's guidelines, the Service can be accessed by pro bono and community lawyers responding to disasters.

Recommendation NSW-13:	Pro bono providers should consider contributing to the costs of disbursements, though this may fall outside the definition of 'pro bono legal services.' To engage expert witnesses, applications to the Centre's ExpertsDirect Pro Bono Service are encouraged.

Coordination

NSW-based contributors to this study reported that the pro bono sector should consider how it supports coordination of a sector response, to free up resources of frontline organisations. One pro bono provider suggested this could include coordination of pro bono sector disaster response meetings, developing databases and resources, and streamlining the point of contact for pro bono support during live disasters. While an important observation, this comment does not form the basis of a recommendation for the purposes of this Report since it relates to non-legal work which does not fall within the Centre's definition of 'pro bono legal services'.

D. Logistics

Pro bono practitioners attending disaster affected communities

NSW-based contributors reported that pro bono practitioners face difficulty in physically accessing disaster affected communities and should consider if this is the most appropriate model of support. A disaster affected area may be physically inaccessible by road or air, as well as experience shortages of resources, including water and electricity, and destroyed infrastructure, including housing. These communities may not have the resources to accommodate many pro bono practitioners, or may be needed to support displaced locals, or emergency services personnel.

Further, contributors outlined local-first and place-based primary approaches are what is most needed. There is an additional administrative burden on frontline service providers managing additional practitioners. Therefore, there will be a role for pro bono to support locally led responses and fill any gaps that arise given the nature or intensity of legal problems or to provide expertise in niche areas of law.

Pro bono contributors encouraged the pro bono sector to:

> '*refrain from creating added burden to frontline organisations during the immediate aftermath of natural disasters. Initiatives (often well-intentioned) that seek to assist these organisations may be counter-productive if first responder organisations are forced to divert critical resourcing to respond to firm's offers of support*.'

[17] ExpertsDirect Pro Bono Service: https://www.probonocentre.org.au/expertsdirect-pro-bono-service/

Another provider outlined:

> *'The most effective responses to natural disasters are based on requests made by frontline, local community organisations who are best placed to ascertain community need and avoid unintentional adverse impacts of aid provided by external actors. Community-led responses also assist in building empowerment and resilience of local communities to recover from natural disasters.'*

Another reflected:

> *'Ideally, we want to help and lessen the load of those experiencing disasters and their aftermath. Even if this is done well, it can be of great benefit. If we become a problem – too many helpers and not the right help, or help that is no longer required – then we add to the complexity.'*

Recommendation NSW-14: The pro bono sector should recognise that pro bono lawyers providing on the ground support by physically attending a disaster affected community or otherwise making offers of support can be unhelpful. This should be considered in consultation with legal assistance partners.

Trauma-informed training of pro bono practitioners

NSW-based contributors reported that pro bono practitioners must have trauma-informed practice and training to work with disaster-affected communities. Contributors reflected on the need for pro bono practitioners to be upskilled in trauma-informed practice. Specific reference was made to training and awareness in domestic and family violence, as well as for Aboriginal and Torres Strait Islander communities so that useful referrals can be made to specialist services.

Recommendation NSW-15: Pro bono practitioners should be engaging in trauma-informed practice training. Trauma-informed practice training should be undertaken in preparation for natural disasters, and regularly, not undertaken for the first time when disasters occur.

Awareness and knowledge of professional indemnity insurance

NSW-based contributors reported that access to and knowledge of professional indemnity insurance was a barrier to legal practitioners taking up pro bono work in New South Wales. One contributor reported that pro bono providers did not know if or to what extent they were insured to undertake pro bono work during natural disasters.

If a practitioner is volunteering through a CLC, or their workplace firm, it is *likely* they are covered by professional indemnity insurance to undertake pro bono work. The Centre recommends confirming this arrangement before commencing pro bono disaster work.

Practitioners that do not have access to professional indemnity insurance for pro bono work may apply to the Centre's National Pro Bono Professional Indemnity Insurance Scheme. In New South Wales, that Scheme is open to all practising solicitors with an unsupervised practising certificate who undertake pro bono work that aligns with the Centre's definition of 'pro bono.' The Centre prioritises disaster-related applications.

Recommendation NSW-16: Pro bono practitioners should understand their professional indemnity insurance arrangements, and whether they require further coverage to undertake pro bono work in a disaster.

Pro bono providers and conflict management

Conflict-checking is required by any pro bono partnership model. Contributors reported that many pro bono providers offered initial support but were ultimately conflicted out of a lot of work. This was especially true for specialist areas of law, for example financial, social security or insurance services, all of which feature in the **Types of Legal Issues** discussed above.

Another contributor suggested that clarity on what a pro bono partner might be conflicted out of in initial partnership discussions would be useful, to allow community legal providers to source other support. One pro bono provider indicated that conflict issues can be mitigated with smaller and boutique firms assisting.

Recommendation NSW-17: Pro bono providers should be aware of and notify their community partners as soon as practicable of potential or real conflicts.

Recommendation NSW-18: Referral schemes should be encouraging smaller and boutique practices which may not have conflicts of interest to undertake disaster work.

Recommendation NSW-19: Pro bono firms can arrange conflict carve-outs to mitigate issues with conflicts.

Eligibility for pro bono assistance during disasters

There have been calls to re-examine pro bono eligibility criteria in the context of disasters. Multiple pro bono contributors suggested the inclusion of small businesses. Though they may have assets, these assets may have experienced serious damage and may be the sole source of income.

Another pro bono provider indicated that broadening the pro bono criteria to include small businesses would recognise '*the importance of the recovery of the small business sector for community resilience*.' Multiple contributors reflected on the need for guidance on this issue.

Recommendation NSW-20: The Centre should facilitate discussion with the sector and issue guidance on the definition, eligibility and means tests for receiving pro bono assistance during natural disasters

E. Referral Pathways

Organised referral pathways, such as Justice Connect's Pro Bono Portal, the New South Wales Law Society Pro Bono Scheme and the New South Wales Bar Association's Legal Assistance Referral Scheme are well utilised and preferred in New South Wales.

One referral scheme contributor reflected that during the 2019-2020 bushfires there were many duplicated calls for assistance and offers of help. A pro bono contributor suggested that duplication of offers of support or calls for assistance can be confusing for pro bono, and so one streamlined avenue, like that of Justice Connect, is preferred.

While utilising formal pro bono referral pathways is the preferred avenue for the legal assistance sector, there should always be multiple avenues for referrals, and there is ultimately 'no wrong door.'

It is also important to note that if referral schemes are used, CLCs and Legal Aid should be notified of the closing of the referral loop, and/or if a matter has been taken up with a commitment from a pro bono provider. Contributors noted their interest in seeing referral schemes engage more with local lawyers who wish to provide pro bono support, including understanding availability and areas of speciality.

One CLC contributor commented:

> '*where a pro bono partner had demonstrated a real interest in matters and offered a clear pathway to referrals (an easy point of contact), it was easy to engage*.' Another CLC contributor outlined that '*having a pro bono partner who is incredibly supportive and responsive in providing detailed and timely advice has enabled the organisation to better advocate for the community post-disaster.*'

If a pro bono provider is going directly to a CLC, offers of support should demonstrate examples of what work can be done, what the pro bono provider might be conflicted out of, areas of law specialised in, and case studies. This approach aligns with previous recommendations about developing pro bono partnerships in preparation for and anticipation of disasters.

Recommendation NSW-21: Referral schemes are the preferred avenue for pro bono referrals.

Recommendation NSW-22: If there is an established relationship, direct referrals from a CLC or Legal Aid to pro bono providers is appropriate. Pro bono firms and practitioners should not be contacting a CLC or Legal Aid for the first time for referrals during a live disaster.

Recommendation NSW-23: Referral schemes should look at how to better engage local lawyers who want to provide pro bono support.

6.2 Victoria

6.2.1 Landscape

Disaster legal assistance in Victoria is coordinated by a coalition of organisations through Disaster Legal Help Victoria (DLHV).

DLHV is a formal partnership between the Federation of Community Legal Centres, Justice Connect, the Law Institute of Victoria, Victoria Legal Aid, the Victorian Aboriginal Legal Service, and the Victorian Bar. DLHV was initially formed in 2009 to respond to the 'Black Saturday' bushfires, and since then has coordinated the legal response to disasters across Victoria, both natural - such as the 2019-20 'Black Summer' bushfires and the 2022 floods - and other emergencies such as the lockdown of public housing during COVID-19. The partnership focuses on community preparedness and locally led responses.

In the aftermath of a natural disaster, DLHV activates and coordinates the public and private legal services required to respond to community needs. DLHV partner organisations attend recovery hubs to deliver legal services, including advice, information, and referrals to affected communities as required. One contributor reflected that '*on the ground legal assistance is based on relationships and partnerships; it is primarily local, and place-based, but draws on our connections with specialist CLCs, DLHV and pro bono partners to link our clients with the most appropriate service*.'

DLHV also maintains the Disaster Legal Help telephone advice line, a dedicated and permanent avenue for advice as well as factsheets on common disaster-related legal issues. One contributor from Victoria reflected that DLHV also effectively connects affected CLCs with specialist CLCs or CLCs with experience with natural disasters.

Outside of a live disaster, DLHV delivers community legal education for resilience of communities to increase awareness, preparedness, and capacity to respond to natural disasters. Further, DLHV engages in disaster preparedness work, including advocacy and capacity building of the sector. The Federation of Community Legal Centres, also convenes working groups and communities of practice for CLCs in disaster response and climate justice, including in disaster preparedness.

6.2.2 Pro Bono Response

Pro bono practitioners in Victoria have been involved in natural disaster response by attending recovery hubs, providing legal assistance through Justice Connect or on an ad hoc basis, contributing to the development of legal information fact sheets, or providing community legal education and training and support to the sector.

During the 2009 'Black Saturday' and 2019-20 'Black Summer' Victorian bushfires, DLHV conducted a volunteer call out, and pro bono providers attended recovery centres to provide legal advice and information and make referrals as appropriate. DLHV managed and trained these volunteers as needed. Individuals, small businesses, and farmers have been paired with pro bono support through Justice Connect to also receive advice in specialised areas of law. There have also been specific pro bono providers who have ongoing relationships with CLCs or DLHV who are 'on call' for casework and capacity building of the sector.

DLHV's website provides a series of legal information sheets on common or specialist issues that have arisen in disasters in Victoria. Pro bono partners make annual updates to these information sheets to ensure their currency, relevancy and usefulness to people affected by disasters. One contributor commented that pro bono was effective when providing specialist advice in areas of law that fall outside the expertise of CLCs or Legal Aid.

Pro bono partners of DLHV have also developed community legal education modules, and guides for use in local communities. However, contributors reflected there was a greater need for community legal education prior to disasters, and '*that people were acting in ways detrimental to their interests in the absence of this*.'

Barristers have made a significant pro bono contribution in specialist areas of law to support local legal assistance providers who may not have knowledge of a particular area of law. DLHV partners facilitated expert opinions from pro bono barristers on rights and responsibilities in relation to evacuation orders during a bushfire. This advice was developed into a resource for affected communities and legal practitioners and was used across the legal assistance sector. One contributor submitted that this education and training for the sector helps in building the capacity of the legal assistance sector to respond in the aftermath, and for future disasters. Another contributor reflected on the difficulties in maintaining this training and sector support in the context of time gaps between disasters and changes in the pro bono workforce.

Like in New South Wales, Justice Connect provides a key avenue for connecting legal practices offering pro bono support with legal need during natural disasters. Its digital infrastructure has been vital for the pro bono response in Victoria, with the following available:

1. A digital referrer tool for members of the legal assistance sector working in recovery centres and other service locations tailored to a natural disaster context and allowing for a more streamlined matching process; and
2. The adaption and scaling of the pre-existing Pro Bono Portal, a technology-driven system to match unmet legal need with the capacity in Justice Connect's network of 10,000 pro bono lawyers. During the 2019-20 bushfires, the Portal was adapted to allow for firms that are not Justice Connect members to join, created a new category for 'bushfire response' and sent weekly updates on relevant opportunities to firms with the requisite experience and capacity.[18] The Portal also allows for geographical matching of pro bono support with affected communities, supporting local lawyers with expertise to assist their own communities. Justice Connect reported that in Victoria, 45 new firms had been onboarded to the Portal by the end of January 2020 in response to the 2019-20 'Black Summer' bushfires.[19]

One contributor from Victoria reflected that they '*often rely on Justice Connect for the provision of pro bono support in disaster response. We work with them to ensure the referral pathways between pro bono practitioners and CLCs reach communities*.' Another commented that DLHV has worked together

[18] Justice Connect, Submission to the Royal Commission into National Natural Disaster Arrangements, (Submission, May 2020) 7 <https://naturaldisaster.royalcommission.gov.au/system/files/submission/NND.600.00320.pdf>.

[19] Ibid 8.

with Justice Connect to increase the referral pathways to secure pro bono support more quickly. Another CLC contributor reflected that it has been very helpful to have access to pro bono support through the involvement of Justice Connect in the disaster networks and through the Portal.

One contributor reflected on delays in the matching process and lack of guarantee that a matter will be taken on by a pro bono partner, which can lead to poor outcomes to people affected by disasters and even compound their trauma unnecessarily. Conversely, another pro bono provider reflected that the Justice Connect Portal has been very effective in ensuring that help seekers' needs remain in front of pro bono lawyers for months and years after the initial disaster.

6.2.3 Reflections on the pro bono response

DLHV's strong partnership model has been conducive to effective pro bono support during disasters in Victoria. However, Victorian-based contributors reflected on what could be improved moving forward, including for future disasters.

A. Preparedness

The pro bono sector can better support disaster preparedness and resilience, as well as form part of the live disaster response. Providers should be engaging with their partners in the legal assistance sector year-round to understand continuing and emerging legal need, to be deployed when needed. One contributor reflected on the work already being undertaken by the pro bono sector in the form of the creation and updating of factsheets, community legal education, providing specialist advice and the delivery of training to CLCs. However, significantly more community legal education in preparedness is required for at-risk communities.

Recommendation VIC-1:	The pro bono sector should increase its support before disasters to build resilience through the delivery of community legal education, training and specialist advice.

B. Relationships and Commitment

Long-term pro bono support

Support from pro bono providers in the aftermath of disasters has not always translated into long-term support. One contributor reflected that pro bono support tends to decrease over time, as the live disaster subsides, and this negatively impacts those whose legal issues may take time to become apparent, or to resolve.

Another suggested that pro bono providers must be willing to take on low-resource but ongoing legal assistance, and not focus exclusively on matters that are only 'strategically significant', such as strategic litigation. Pro bono providers should be offering casework support in the weeks, months and years following a disaster. They should be more open to taking on matters that reflect the long tail of disasters.

Recommendation VIC-2:	Pro bono support should reflect the long tail of disasters and be offered long-term, both year-round and for longer matters.

Established pro bono partnerships

Pro bono providers should form relationships with communities and legal assistance providers before disasters**.** Strong existing relationships are needed to scale responses. Pro bono providers that have pre-existing relationships prior to a disaster have been more able to assist in effective community recovery.

Justice Connect's Pro Bono Portal facilitates establishing and maintaining strong partnerships. Justice Connect member firms can connect with CLCs on the Pro Bono Portal to establish new relationships with legal assistance providers, as well as connect with those with whom they have an existing relationship.

Recommendation VIC-3:	Pro bono providers should be establishing relationships before natural disasters occur.

Local-first partnerships

Pro bono support that is responsive to and recognises the relationships on the ground is the most effective. For place-based and regional centres, relationships with local private practitioners are most viable. These are often long-term relationships that transcend hazards and disasters, as these practitioners are from the affected community.

Recommendation VIC-4:	The role of locally led responses should be recognised, including the involvement of local pro bono practitioners.

Responsiveness and pre-existing legal issues

Pro bono support should be responsive to the needs of local communities. This requires expanding how some pro bono providers view and define legal issues related to disasters. One contributor reflected on pro bono providers having too narrow a definition of the impacts of natural disasters, counting only those legal problems directly caused by the natural disaster, rather than those that may have been pre-existing and exacerbated by disaster.

Recommendation VIC-5:	Pro bono providers should work alongside their community partners and be responsive to both pre-existing and new legal issues caused by a natural disaster.

C. Models of Pro Bono Assistance

Surge capacity

Pro bono support that provides surge capacity by freeing up CLC lawyers is an effective model of support. One contributor reflected that pro bono had been beneficial to the broader legal sector response when it involves '*access to surge capacity of legally trained volunteers when large scale response and physical attendance is required*.' This surge capacity increases the capacity of the whole legal assistance sector and allows for local lawyers to focus on disaster work.

Recommendation VIC-6:	Pro bono providers consider a model of support that takes on a CLC's regular service offerings, to allow for CLC lawyers to be deployed to disaster affected communities.

Providing expert advice in niche areas of law

Pro bono is effective in providing expert legal advice and training in specialist areas of law outside of the expertise of a CLC or Legal Aid. For example, specific planning law issues arose out of the Black Summer bushfires and CLCs did not have the knowledge or area expertise to provide advice. A key pro bono partner was able to provide casework advice, as well as provide resources for community legal education, and upskill CLC lawyers.

Recommendation VIC-7:	Pro bono advice should be provided in specialist and niche areas of law outside the expertise of CLCs and Legal Aid.

Pro bono support in family law

There is a significant need for support in family law matters that could be met by pro bono. Contributors reflected that pro bono providers may not want to take on or have deprioritised family law.

Recommendation VIC-8:	Pro bono referral schemes should engage more family law experts and practitioners.

Recommendation VIC-9:	Family law practitioners could consider greater involvement in disaster response on a low bono basis.

Low bono models

There is opportunity for low bono providers to provide support for specific areas of law, such as preparation of wills and enduring powers of attorney.

Recommendation VIC-10:	Pro bono providers should consider low bono models of support, including preparation of wills and enduring powers of attorney.

D. Logistics

Pro bono practitioners attending disaster affected communities

Pro bono support by physically attending communities may not always be appropriate in the immediate aftermath of natural disasters. The best approaches to disaster response in Victoria have been place-based, with local, trusted organisations as the first point of contact providing support for their own communities. There may be a personal preference from those affected by disasters for face-to-face contact.

Additional infrastructure challenges such as physical access to a disaster affected communities and lack of electricity and accommodation present further challenges to pro bono support in the immediate aftermath of a disaster. As a result, pro bono support may not be required on the ground at recovery centres immediately after a disaster. Pro bono providers must be responsive and flexible as to what is needed.

Resourcing of the legal assistance sector is a key consideration. In Victoria, dedicated DLHV trained teams can provide the support needed by a CLC in an affected area when capacity is low. A CLC representative reflected that in their context, before a natural disaster happened, the plan was for pro bono lawyers to provide services the CLC offers that were not disaster related, to free up CLC lawyers for disaster work.

However, this support can also provide the resourcing supporting needed. A recent report from DLHV evaluating the legal disaster response to the 2019-2020 Victorian bushfires outlines that pro bono support on the ground can also support local legal services that have been affected by disaster:

> *'Most locally based service providers felt that being geographically local was best and that communities would be reluctant to trust external organisations or practitioners. However, this was not a universally held view and some clients interviewed were less concerned… An additional consideration is that many local service providers will themselves be affected by the disaster, at least in the initial period. This will affect their capacity to provide services in the short-term. Having contingency plans in place and leveraging remote or outside service delivery will be critical for minimising interruptions to services for community members.'*[20]

Ultimately, a decision to attend disaster affected communities should be made in consultation with DLHV as the coordination lead, with consideration for contextual factors and need at the forefront.

Recommendation VIC-11:	There should be consideration of flexible models that support the legal assistance sector to provide a local response. Attendance at recovery hubs may be part of this coordinated legal assistance sector response to disaster recovery.

Trauma-informed training of pro bono practitioners

A lack of trauma-informed and cultural sensitivity training is a barrier to pro bono's usefulness in disaster response. Changes to the pro bono workforce, as well as gaps between disasters, makes maintaining culturally sensitive and trauma informed training difficult to maintain in the pro bono

[20] Social Impact Hub, 2023, Disaster Legal Help Victoria Monitoring and Evaluation Report, (Final Report) 55.

workforce. One pro bono provider reflected on a need for *'resources to ensure lawyers are prepared mentally and emotionally for the work, as well as legally.'*

Recommendation VIC-12:	Pro bono practitioners should maintain their trauma-informed and cultural-sensitivity training year-round.

Clarity on pro bono means tests

Pro bono means tests may exclude people affected by disasters who might have assets or whose income exceeds pro bono thresholds. However, Justice Connect has issued useful guidelines for referrers when assessing eligibility for pro bono support as part of intake, where a help-seeker's legal issue must be sufficiently linked to a natural disaster to be eligible.

Recommendation VIC-13:	The Centre should facilitate discussions with pro bono providers and provide guidance on means tests during natural disasters, noting Justice Connect's best practice guidance.

6.3 Queensland

6.3.1 Landscape

When a natural disaster occurs in Queensland, Community Recovery Hubs are set up and attended by a range of community stakeholders to support affected communities. Legal Aid Queensland (LAQ) attends recovery centres and provides legal advice and representation. Individual CLCs also attend recovery centres to provide support, including both generalist and specialist CLCs, such as the Aboriginal and Torres Strait Islander Legal Service (Qld) and Tenancy Queensland. LAQ provides a Disaster Response phone number which those affected by a disaster can call to receive support if they cannot access a recovery centre. LAQ also attends public forums organised by the Insurance Council of Australia, and broader community groups to provide free and independent advice.

Specific CLCs have established dedicated services for disaster recovery, such as Caxton Legal Centre's flood recovery service, which has been able to employ a dedicated lawyer, a social worker and paralegal.

The Queensland government has also established the Disaster Legal Assistance Forum, supported by the Department of Justice and the Attorney-General. The Forum is an opportunity for LAQ and members of the broader legal assistance sector in Queensland to discuss what is needed for a response to a specific disaster. Community Legal Centres Queensland acts as a key responder to systemic issues, advocates for funding for CLCs and data collection, and has developed training videos for practitioners on key areas of law that arise in specific disasters.

6.3.2 Pro Bono Response

The pro bono community in Queensland has been utilised effectively in responding to natural disasters. The key referral pathway for pro bono support during a disaster in Queensland is LawRight, which plays a leading role in matching complex and extended legal need arising from disasters with pro bono support. LawRight's model of diagnosing legal need using the Legal Health Check model with community workers, has been effective and is considered best practice for legal disaster response.

LawRight also runs Pro Bono Connect, which allows help-seekers to apply for assistance, with LawRight matching these requests with member law firms and barristers. When issues arise that are beyond the scope or capacity of LAQ or CLCs, they refer matters to firms and barristers through Pro Bono Connect. Historically, LawRight has set up panels of firms which have offered support during specific disasters. In response to the 2022 Brisbane floods, many firms offered pro bono assistance, and LawRight established a 'Flood Pro Bono Panel' with a range of expertise available.

One pro bono provider outlined that:

> *'We anticipate that our involvement in responding to a natural disaster would continue via these referral agencies, noting that [this] approach has since become more effective and sophisticated [than] the outreach model.'*

The Consumer Law Advice Clinic was also a key referral pathway for people affected by the 2022 floods, which is a partnership between Caxton Legal Centre and the University of Queensland's Pro Bono Centre. The Clinic utilises students to provide pro bono advice on consumer related issues.

Pro bono support has also come in the form of community legal education, webinars, as well as information and factsheets for first responders.

6.3.3 Reflections on the pro bono response

Queensland's coalition of different organisations providing legal support during disasters has been supported effectively by pro bono providers, however, Queensland-based contributors put forward suggestions for improvement of the pro bono response.

A. Preparedness

Broader role of pro bono in preparedness and climate justice

The pro bono sector in Queensland could be providing more support to facilitate disaster preparedness of communities and the sector. One contributor suggested that this aligns with work in climate justice and disaster resilience and is separate to immediate aftermath assistance. Another reflected that priority should be given to preparedness work by the sector. This role may be particularly important, especially if legal assistance providers have more formalised funding for immediate disaster response services in the future. One pro bono provider reflected that '*environmental disaster preparation work and policy and reform work is a great area for pro bono lawyers to assist, however, the laws and policies are quite complex and change frequently*.'

Pro bono providers reflected on multi-pronged approaches to climate justice, which includes directly supporting communities affected by disasters, as well as broader policy, advocacy, and community legal education. This approach allows for identification of gaps in service areas and knowledge, as well as areas for further advocacy and law reform.

Recommendation QLD-1:	Pro bono providers should consider further disaster preparedness, resilience, and climate justice support. This is in addition to support during live disasters.

B. Logistics

Pro bono and conflict management

Conflicts of interest can prevent pro bono providers from effectively providing support during disasters. Law firms are frequently conflicted out of taking on insurance, credit and debt matters. This poses a challenge to large firms, in particular, when managing these conflicts.

Recommendation QLD-2:	Pro bono providers need to be comprehensively aware of areas of law they might be conflicted out of, and consider mitigation strategies, so far as possible.

C. Relationships and Commitment

Long-term commitment to disaster response work

While significant pro bono support is evident in the initial stages of a disaster and its aftermath, the pro bono sector's support has tended to decrease over time, as a live disaster subsides. This is

significant to the broader sector as many people affected by disasters can delay seeking help, or their legal issues relating to a disaster arise sometime after.

One pro bono provider outlined:

> '*The legal profession needs to remain cognisant of the impact that environmental disasters have on communities and individuals long after the immediate danger is gone, and the disaster event has faded from public awareness. Legal need may not be immediately apparent, however the tail of legal need from an environmental disaster is long*.'

Another reflected that *'it has been important to recognise that referrals may take months (or years) to come through to us.'*

Recommendation QLD-3:	Pro bono should have a longer-term commitment to disaster response work. Offers of assistance should be channelled to both long-term disaster preparedness and long-term assistance in the aftermath of disasters.

Effective partnerships pre-date live disasters

Effective pro bono partnerships with CLCs exist prior to a live disaster occurring. These historical relationships allow trust and understanding to develop over time. Additionally, CLCs do not have the capacity during a live disaster to build new relationships, deliver tailored training, or onboard partners. One pro bono provider highlighted that:

> *'Having strong community partnerships already in place has worked well for us. It means that we can respond urgently, we can be flexible with models of providing assistance and we can be proactive about approaching organisations to see if they need help.'*

Recommendation QLD-4:	Pro bono providers should be building and maintaining partnerships with CLCs and referral schemes outside of live disasters. Pro bono partners should not be attempting to establish or approach new CLC relationships during live disasters.

D. Models of Pro Bono Support

Surge capacity

Pro bono support in the form of surge capacity has been suggested as an effective model of support. The Townsville Community Law document outlines that:

> '*Flexible surge capacity is touted as a necessary evolution and includes the extra and adjustable human and material resources that can be mobilised by activating nonprofessional but educated staff and different but accepted facilities in a fast, smooth, and productive way. In legal assistance sector terms, it might include the use of volunteer and pro bono services, paralegal and student clinic resources. Four essential elements need to be direct to affected*

areas: Staff (competency and availability), Stuff (equipment and materials), Structure (physical infrastructure), and System (responsibility, management, coordination).'[21]

An example is the collaboration between Caxton Legal Centre and the University of Queensland's Pro Bono Centre to provide the Consumer Law Clinic (discussed above). Caxton Legal Centre noted that, in the context of disaster response, the presence of this clinic '*gave us resources that could be easily made available, …without taking away our staff from their day-to-day duties*.'

Recommendation QLD-5:	Providing surge capacity increases the legal assistance sector's disaster response capability.

Upskilling legal assistance lawyers

Upskilling of legal assistance sector lawyers has been a useful model of pro bono assistance that should be continued. Community Legal Centres Queensland has collaborated with a range of private pro bono practitioners to produce sessions for community legal sector lawyers on specific areas of law that arise as a result of disasters, which typically fall out of the scope of a CLC. Firms have typically also been enthusiastic about providing this form of support.

Recommendation QLD-6:	Pro bono should consider models of support that upskill legal assistance sector lawyers in preparation for disasters, including on niche areas of law.

Law reform, advocacy, and governance

The pro bono sector could better utilise its role and relationships in the legal assistance and the private and government sectors to influence policy and law reform for the legal assistance sector. This could involve facilitating more conversations, including with key clients, and building the profile of disaster response across the state.

As specific disaster response issues arise, pro bono providers can identify areas for reform or policy advocacy. A good example of this is a pro bono provider investigating the lack of protections for 'Good Samaritan' community volunteers who try to help, for example by taking their own boat to perform rescues. This report is due for circulation late 2023.

Recommendation QLD-7:	Pro bono can provide effective support in law reform, policy, and research related to disaster legal response.

[21] Townsville Community Law, Disaster Readiness for the Legal Assistance Sector: Disaster Legal Assistance in Queensland, (Report, January 2021) 13 <https://cdn.communitylegalqld.org.au/wp-content/uploads/2022/04/DLAiQ_TCLi-mainFinal_version-ContinuosPage1.pdf>.

Usefulness of pro bono in immediate aftermath

Pro bono providers must recognise that responses should be led by the legal assistance sector and local responders, and their assistance may not be appropriate. One pro bono provider outlined that:

> '*For case work, pro bono lawyers need to be aware that their legal skills are generally not required in the immediate aftermath of a disaster. At this time, communities are generally in need of financial donations and pro bono lawyers would do best to encourage their organisations to make financial donations direct to community-led organisations…'*

Another pro bono contributor shared their firm's experience:

> '*The biggest learning for us and the sector generally has been an understanding that our assistance via the traditional referral method is not necessarily needed in the immediate aftermath of a natural disaster even though that is when people are generally more motivated to help out.'*

Recommendation QLD-8:	Pro bono should consider models of support that do not rely on offers of assistance in the immediate aftermath of a disaster.

6.4 South Australia

6.4.1 Landscape

Housing South Australia is the lead agency for responding to disasters in South Australia, and facilitates CLCs physically attending recovery centres in affected communities. In the immediate aftermath of a disaster, CLCs provide legal advice in-person at relief centres, and over the telephone, as well as develop resources and legal factsheets.

The Legal Services Commission of South Australia also offers free legal advice clinics throughout the year, on a range of issues specific to disasters.

CLCs and specialist programs such as the Disaster Legal Support Program and the Bushfire Legal Advice Service also offer free community legal education to affected areas on relevant areas of law. This includes education on community preparedness and measures that can be taken to mitigate against and prepare for bushfire-related losses.

6.4.2 Pro Bono Response

The pro bono response in South Australia is largely run through JusticeNet SA and its pro bono membership. A key CLC in delivering disaster legal response, Community Justice South Australia, utilises its existing referral relationship with JusticeNet SA to refer matters to lawyers and barristers. Community Justice South Australia has also had successful ad-hoc partnerships with private pro bono partners.

Further, the Law Society of South Australia maintains a list of private practitioners who have previously offered pro bono support during natural disasters and who may be able to attend physical recovery centres to provide legal assistance.

One contributor outlined that pro bono has been most effective where is a clearly defined scope of support. Another suggested there is no lack of goodwill or people offering their support, but there must be a clear call to action for pro bono practitioners, which utilises the momentum of a natural disaster.

6.4.3 Reflections on the pro bono response

South Australian-based contributors made a number of recommendations as follows.

A. Place-based responses

It is important for legal assistance providers to provide in-person advice. Regional communities may be physically cut off from access, as well as experience limitations in infrastructure. Additionally, there may be a lack of trust in remote assistance. This also applies to the provision of pro bono assistance.

Recommendation SA-1:	If the disaster requires it, pro bono advisors should ideally be place-based in affected communities.

B. Models of pro bono

Role of pro bono in class actions

Given the limited resourcing of CLCs, if requested pro bono may have a role in conducting and advising on class actions.

Recommendation SA-2:	To support CLCs, pro bono providers could consider involvement in class actions as a model of support.

Providing support in niche areas of law

Pro bono should provide more support in niche areas of law that might be outside the scope or capacity of a CLC or the Legal Services Commission.

Recommendation SA-3:	Pro bono providers could provide more advice in niche areas of law.

Providing community legal education and resources

Pro bono should consider a greater role in providing community education in the form of legal information, resources, and factsheets.

Recommendation SA-4:	Pro bono providers could undertake more community legal education.

Engaging in capacity and capability building

There is a role for pro bono in capacity and capability building of the sector, including in preparedness.

Recommendation SA-5:	Pro bono providers should work on capacity building of the sector, including for disaster preparedness.

6.5 Western Australia

6.5.1 Landscape

Following a natural disaster in Western Australia, the Natural Disaster Response Group meets to discuss legal needs and provide legal services to affected communities. The Group is made up of the Western Australian Department of Justice, Legal Aid Western Australia, the Aboriginal Legal Service of Western Australia, Law Access, Community Legal Western Australia, as well as Aboriginal family violence prevention legal services and CLCs. The Group is convened by the Western Australian Department of Justice, who identifies the lead legal assistance provider best placed to respond. On the ground, the lead agency coordinates the response, alongside delivery with other legal assistance providers. These organisations are the most appropriate first contact for people affected by disasters.

6.5.2 Pro Bono Response

The pro bono sector is engaged through Law Access and the private relationships legal assistance providers have with pro bono providers that existed prior to a natural disaster. Contributors also reflected on the role that the Law Society of Western Australia had in undertaking call-outs for pro bono support in weekly newsletters. Law Access is the primary pro bono clearinghouse for Western Australia and coordinates pro bono assistance for natural disasters as part of the Natural Disaster Response Group. Through the Group, Law Access has been able to liaise directly with both legal and non-legal agencies to discuss legal need for recent disasters such as the 2021 Wooroloo bushfires, Cyclone Seroja, the 2022 Great Southern bushfires and the 2022-23 Kimberly floods. Throughout the duration of these disasters, members of the legal assistance sector also had direct outreach to firms and individuals seeking pro bono participation.

Following initial advice and assessment of legal need, Legal Aid Western Australia and CLCs make warm referrals for pro bono support to Law Access, and the appropriate registered pro bono support can be connected. This support could be in the form of pro bono secondments, remote support or advice in areas of law outside the scope of CLCs or Legal Aid Western Australia. Law Access is best placed to work with legal assistance providers to assist in the early identification and scoping of where pro bono is needed.

One contributor reported that there has always been an '*enthusiastic response*' from the pro bono sector.' Another contributor reflected that they '*have always been successful in finding the pro bono assistance required*.' Another outlined that '*agencies on the ground know they can seek pro bono secondments, remote support and any other pro bono assistance they require to address impacts on their service, including direct impacts such as on their facilities and staff and the impact on their client group including increased need for help*.' Pro bono support has been particularly helpful in commercial areas of law such as consumer protection and in community legal education. For specific disasters, such as Cyclone Seroja, outreach trips with pro bono lawyers have been arranged by Law Access to attend affected communities.

6.5.3 Reflections on the pro bono response

Western Australian-based contributors made the following recommendations:

A. Referral Pathways

Referral schemes

Contributors reflected on a preference for pro bono providers to utilise referral schemes. Contributors also reflected on the need for a single and clear referral pathway. Frontline organisations then only need to engage with one organisation, which can be the main point of contact for pro bono support and can focus their efforts on service provision. Referral schemes should already have the established connections and systems in place to be quickly deployed to coordinate pro bono support. One contributor reflected that referral schemes should be invited to participate in all relevant coordination meetings within the legal assistance sector to ensure information is received by them and need can be identified early.

Recommendation WA-1: Referral schemes are the preferred pathway for pro bono referrals.

Engaging with firms in regional and remote areas

Contributors reflected on the drive for top tier firms with pro bono practices to undertake pro bono because of government panel requirements, however, that these organisations are typically not located in regional or remote areas. There were suggestions that more mid-tier firms which might have this presence be more engaged in disaster work. This also aligns with insights on the challenges of pro bono practitioners physically attending disaster affected communities due to shortages to infrastructure.

Recommendation WA-2: Referral schemes should engage more with regional and remote practices to undertake pro bono in their communities.

B. Conflicts

Conflicts have been an issue for pro bono practitioners in Western Australia. Despite a keenness to support, client conflicts prevent many from assisting in specific legal practices such as insurance. One contributor suggested engaging more with the in-house pro bono sector in Western Australia, who may not be subject to these conflicts.

Recommendation WA-3: Better engagement with in-house pro bono lawyers should be facilitated to avoid conflicts of interest.

C. Eligibility for ‘pro bono’ in disasters

There are some communities that have been affected by disaster in Western Australia which do not meet the Centre’s definition of ‘pro bono legal services’ but which require legal assistance, nonetheless. One contributor reflected on a significant need for small business assistance and general

commercial expertise, and that First Nations owned and controlled for-profit organisations often need support but may not fall within the definition. However, Law Access's usual eligibility criteria is broadened by a broader Public Interest test which is reflected in its internal assessment criteria. In circumstances of the general public interest, Law Access takes into account the circumstances of the disaster when assessing who should be able to access legal assistance on a pro bono basis, which broadens the application of and access to pro bono services during a disaster in Western Australia.

Recommendation WA-4:	The Centre should facilitate discussions and issue guidance on the definition and threshold for pro bono legal services during natural disasters.

D. Supporting lawyers to deliver trauma-informed training

Contributors reflected on the need to consider how to best upskill lawyers to support clients that might fall outside of their usual client base, and who may be experiencing significant trauma. There may also be a need for culturally-informed training.

Recommendation WA-5:	Pro bono practitioners should consider how to engage in trauma-informed training to support communities affected by disaster.

6.6 Tasmania

6.6.1 Landscape

The response of legal service providers in Tasmania to a natural disaster is outlined in the *Emergency Legal Assistance Response Plan* and draws on the responses to the 2009 Victorian bushfires, 2011 Queensland cyclone and floods and disaster response in Tasmania. It was developed in 2022 by Law Link Tasmania: The Tasmanian Legal Assistance Collaborative Planning Forum. Law Link Tasmania is comprised of the Department of Justice, Tasmania Legal Aid, the Law Society of Tasmania, the Tasmanian Association of Community Legal Centres, the Tasmanian Bar Council, and the Tasmanian Council of Social Services.

The Plan indicates that when a natural disaster occurs in Tasmania, a collaborative approach to addressing immediate legal need is adopted. This involves the physical presence of Tasmania Legal Aid and relevant CLC lawyers at a disaster recovery centre proximate to a community affected by natural disaster for initial advice, the availability of a telephone advice line administered by Tasmania Legal Aid, and ongoing referrals to Tasmania Legal Aid, CLCs and private firms as required.

6.6.2 Pro Bono Response

Contributors reported that CLCs have been largely able to provide immediate legal assistance, and so pro bono has not been significantly relied upon. The Tasmania Law Society also does not receive many offers of pro bono support from private lawyers. However, pro bono practitioners have provided helpful training to CLC lawyers on specific legal issues, such as insurance claims and consumer issues.

6.6.3 Reflections on the pro bono response

Tasmanian-based contributors made a number of recommendations as follows.

A. Pro bono Upskilling CLC Lawyers

The pro bono sector in Tasmania should continue providing training to CLC lawyers on niche areas of law that arise during disasters. Contributors reflected that this was an area of need that pro bono had historically supported effectively.

Recommendation TAS-1:	Pro bono providers should continue the practice of upskilling CLC lawyers on niche disaster related legal areas.

B. Other models of pro bono support

In the absence of a need for frontline immediate aftermath support, the pro bono sector should consider how it can support the broader capability and capacity of the sector.

Recommendation TAS-2:	Pro bono providers should consider a variety of models of support including supporting the systemic needs of the legal assistance sector and capacity building.

7 Conclusion

The country has faced devastating and prolonged natural disasters in the last decade, which is expected to continue. With each disaster, and across each jurisdiction in Australia, legal responses have become more coordinated, sophisticated, human and collaborative.

The role of pro bono in disaster response is no different to its role outside of disasters; the pro bono sector exists to support the community legal assistance sector, and pro bono is no substitute for that sector being properly funded.

The findings for each jurisdiction summarised in this Report demonstrate their own unique learnings and reflect the range of contributions the Centre received. However, readers are encouraged to review the full list of **National Recommendations** in section 2 above. In summary, there are a few key takeaways which apply across the Australian pro bono sector:

1. Preparedness and community legal education is required;
2. Strong and established partnerships are needed;
3. Supporting locally-led and placed-based responses is key; and
4. The pro bono sector must be responsive to need.

These learnings ring true across the nation. Most importantly, pro bono providers should be led by the publicly funded legal assistance organisations who are at the heart of the people and communities affected by disasters.

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