



Legislative Council Environment and Planning Committee
Inquiry into the 2022 Flood Event in Victoria
Parliament House, Spring Street
EAST MELBOURNE VIC 3002

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Submission to the Inquiry into the 2022 Flood Event in Victoria

Executive Summary

Justice Connect welcomes the opportunity to provide comment to the Legislative Council Environment and Planning Committee on the Inquiry into the 2022 Flood Event in Victoria.

Our submission identifies pathways to improve flood preparedness and recovery, including the review of legislative and regulatory frameworks in key areas of emerging legal need.

Our recommendations are drawn from our expertise in supporting a coordinated disaster legal response to disasters and assisting help-seekers in impacted communities to prepare for and resolve legal issues arising from natural disasters. We have played a leading role in the legal response to natural disasters for over a decade.

About Justice Connect

In the face of rising levels of unmet legal need, Justice Connect designs and delivers high impact interventions to increase access to legal support and progress social justice. We connect people and community organisations with legal help. We use the power of the law to open up the legal system to those locked out of it, and advocate for change to address systemic gaps.

Our expertise - responding to natural disasters

When public health and natural disasters occur, existing legal problems are exacerbated, and new legal needs emerge. In responding to emerging legal need, Justice Connect has observed this compounding disadvantage as well as new cohorts of people finding themselves navigating challenging legal problems and the legal system in the wake of disasters.

Justice Connect and its predecessors have played a central role in coordinating the legal response to disasters, including:

- 2009 Black Saturday bushfires in Victoria
- 2017 Bourke St Massacre in Melbourne
- 2019-2020 bushfires primarily in NSW and Victoria
- 2020 COVID-19 crisis, nationally
- 2021 Storm event in Yarra Valley
- 2022 floods in NSW
- 2022 floods in Victoria

In Victoria, we are a member of Disaster Legal Help Victoria (DLHV), a formal partnership of Justice Connect, Victoria Legal Aid, Federation of Community Legal Centres, Law Institute of Victoria, Victorian Bar, and Victorian Aboriginal Legal Service.

DLHV supports a locally led response to disasters and focuses on preparing for disasters, minimising their impact and responding to the legal needs that arise during and following a disaster event. DLHV helps communities prepare for disasters by building legal capability in the community through legal education and building strong referral networks between frontline and legal assistance organisations. DLHV also advocates for a joined-up community response, contributing to the integration of legal assistance into broader disaster response.

Responding to the 2022 floods in Victoria (the Flood Event)

As a partner of DLVH, and in response to the Flood Event, Justice Connect is coordinating the delivery of pro bono legal assistance to communities impacted. We receive and triage requests for assistance directly from help-seekers (individuals, small business and primary producers, and community organisations) as well as from other legal assistance

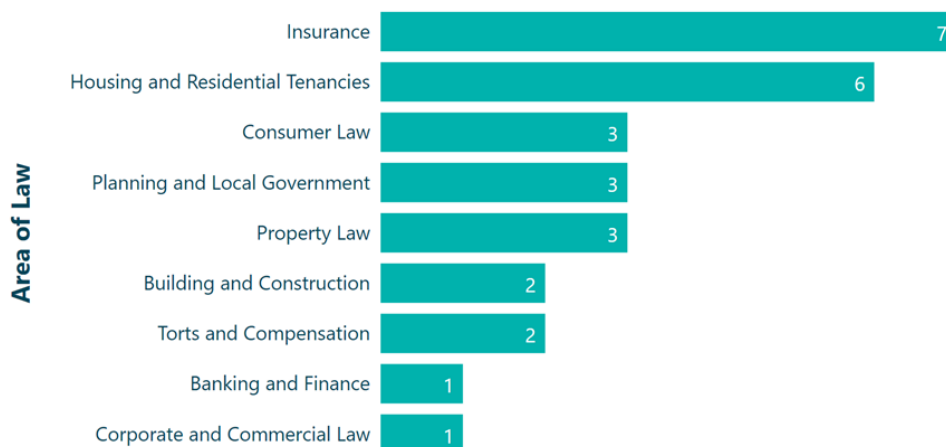
organisations (predominantly, community legal centres) and non-legal frontline workers. We take a trauma-informed approach to connecting eligible help-seekers with appropriate, free legal help from our network of over 10,000 lawyers.

We work closely with our sector partners, both legal and non-legal organisations, to ensure the timely provision of assistance to help resolve disaster legal issues before they arise or escalate, minimising long-term and complex negative impacts, and identify any gaps in legal assistance, such as disaster legal issues which require specialist advice (for example, insurance, planning and environment, fencing and boundaries, wills and estates, small business contracts and insurance).

Legal needs arise across a wide range of areas of law following a disaster and sometimes help-seekers are dealing with multiple legal issues simultaneously.

Justice Connect’s Access Program has received 17 requests for assistance in relation to issues arising out of the Flood Event to date. The largest referrer of these matters has been Victoria Legal Aid, with other referral sources including specialist and frontline disaster-affected community legal centres.

Most enquiries were related to Insurance and Housing

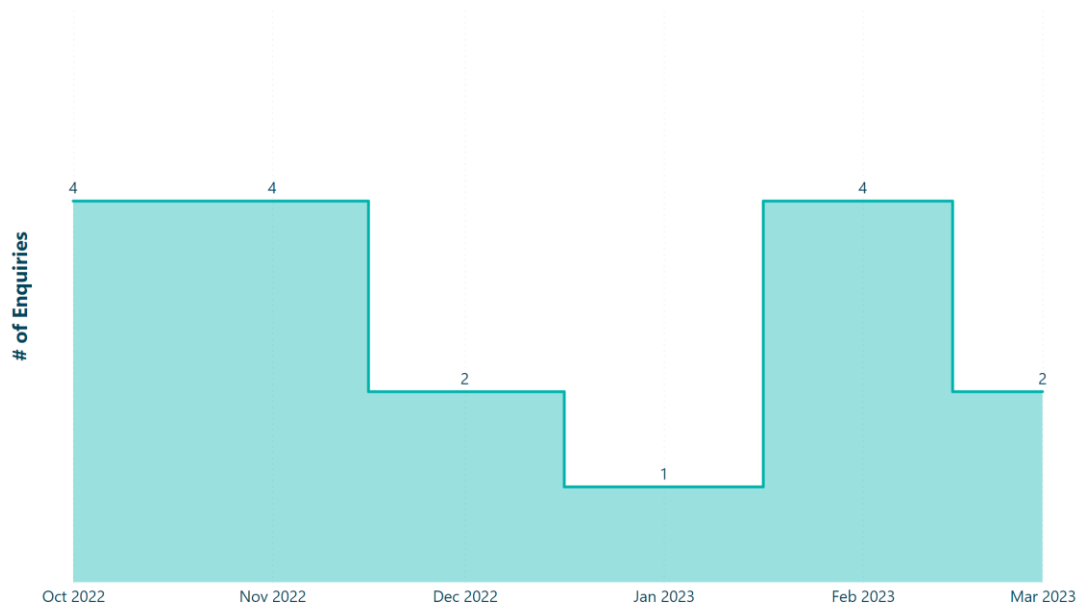


Legal issues can take between 6 months – 36 months to emerge following the time of the disaster. For example, communities that suffered significantly in the 2019/2020 bushfires, are having resultant legal issues emerge only now in 2023. We expect to receive an increasing volume of enquiries over time in relation to a wide range of issues emerging out

of the Flood Event. Between October 2022 and now, we have connected 8 help-seekers (6 individuals and 2 small business/primary producers) in Victoria with pro bono legal assistance with flood-related legal issues. In a further 6 matters, we identified the correct pathway for the help seeker and referred them to another service provider. Our service includes an in-depth intake with the client so that we can triage matters accordingly.

A substantial number of enquires were received in the immediate aftermath of the flooding

However, we continue to receive new enquires every month since then and expect this to continue



Our recommendations for better disaster preparedness

Coordination across governments is critical to effective disaster responses

We strongly recommend that local, state and federal governments commit to continuing and enhancing the delivery of coordinated, consistent, and coherent responses to disasters that put the needs of people and organisations experiencing disasters, or working to address disasters, front and centre. This includes effective coordination at the state government level across portfolios addressing disasters.

Digital infrastructure to facilitate scaled-up disaster responses and resilient services

We urge state and federal governments to support all areas of public legal services, from community legal centres to legal aid commissions, courts and tribunals, to undertake digital transformation work. A digitally transformed sector will be better positioned to respond to disasters at scale and will be better positioned to provide continuity of services during and post-disaster.

In 2022, we enhanced and opened up Justice Connect's successful digital tool, the [Pro Bono Portal](#), to allow locally based community legal centres (CLCs) to connect with the help they need directly. We have provided tailored support and training to CLCs in flood and other disaster-affected areas to use the Portal to post pro bono opportunities directly to the platform to connect help seekers experiencing disaster related legal problems with pro bono assistance quickly and securely (as well as to allow CLCs to seek assistance for their own centre).

Legal and regulatory frameworks in areas of emerging legal need require review to ensure flood disaster preparedness

Addressing emerging legal need through the review of legal and regulatory frameworks will ensure communities are better prepared to respond to flood disaster.

Through our work with disaster-affected communities, we have identified pathways to improve flood preparedness and recovery, including through the review of legislative and regulatory frameworks in two key areas of emerging legal need: planning and insurance.

Planning law

Our work with help seekers and frontline workers has shown us that regular review of planning law frameworks is important to ensure: adequate or increased drainage; early warning systems are operational; developments provide adequate drainage, and flood zones have increased protections including requirements for raised building and increased drainage. It is important to consider and prepare for emerging issues that are going to affect communities where future floods may occur. The story below describes a practical example of some of the challenges experienced. We note client names have been changed.

Emilio's Story

Following the Flood Event, Justice Connect participated in a disaster response sector meeting, engaging with flood recovery case managers on community need and building capability to identify legal issues early. We followed up with one case manager, Emilio, after the meeting to discuss ways we could support his organisation in assisting flood-impacted individuals.

Emilio told us that several of his clients require partial rebuilds of their homes after the floods, and he is supporting them to become 'owner builders'. Emilio considers this is the cheapest route to rebuilding but has found that there is no readily available information targeted at the flood recovery process which identify the lengthy timeframes that are required to obtain relevant permits and consents, and how to plan for these. For example, once the owner builder course is complete, Emilio reports that it takes a minimum of 45 days to obtain consent from the Victorian Building Authority (VBA). If a higher level of qualification is required (eg. White Card), there are further delays.

Emilio and his clients are frustrated by the waiting times. They would have handled the process differently if they had known about the delays they would encounter. Emilio has said to the relevant authorities "could you please push these through?" His clients are living in caravans with no hot water, and with the recent autumn cold snap, are in freezing cold conditions. Emilio is concerned about the impact these conditions are having on his client's physical and mental health. Emilio also needs to take his clients through the process of permitting with the local government council. Most of Emilio's clients don't have the technical skills to manage this on their own, and he is surprised that "there is no dedicated team (within councils or the VBA) set up to help streamline the process" for flood recovery and rebuild.

Another issue Emilio is facing is the cost of permitting. For Emilio's clients, funds are limited, and most will need to pay permit fees of at least \$1,000 dollars for rebuilding. Most of his clients will receive the flood recovery grant, but this doesn't go very far when rebuilding.

Emilio thinks it would help to have a step-by-step guide to rebuilding after floods. Justice Connect is exploring assistance we can provide to develop this information resource in the absence of other existing resources, but note the role of the Victorian government in sharing clear information to the community.

A review of the planning framework is required in light of barriers resulting from cost and wait times. Applying exemptions for the cost of consents and permits, and expedited pathways to decrease waiting times would address some of the hurdles flood affected Victorians face when rebuilding after flood disaster.

Insurance law

It is essential to ensure that the insurance sector flood response is consistent with existing legal frameworks to support community preparedness for and recovery from flood disaster. Our work with flood-affected help seekers highlights that closer regulation is required to limit the challenges Victorians experience even when they are fully insured for flood by, for example, reducing barriers to entitled Victorians accessing their insurance. A review of the insurance sector should examine how reform combined with an increase in community

education about reasonable standards of service, could increase consumer protection and go some way to addressing increased vulnerability after a flood disaster.

We have worked with flood-affected help seekers whose insurance claims have been fully or partially rejected by insurance companies. Kay's story below describes a few of the common challenges experienced by flood-affected Victorians, even when properly insured.

Kay's story

In October 2022, Kay's home and property was flooded when the local river overflowed. Kay is insured for flood but is experiencing ongoing, lengthy delays in trying to access her insurance.

Kay is an older person, suffers from a chronic physical health condition and is the primary carer for her 20-year-old daughter who has mental health issues. Kay and her daughter are currently living in a one-room caravan on Kay's land, as the house has been unliveable since the flood. After some months, Kay's daughter is struggling to cope with the inadequate accommodation and her mental health condition is making it difficult for Kay to manage.

Kay made a claim for the damage to the house with her insurance company. The insurer instructed a builder who assessed the property and sent Kay a scope of works to rectify the damage to the house. The builder said it would be an easy, quick job.

Kay knew enough to understand this wasn't right given the extensive damage. She checked the flood building codes and noticed that the builder's scope of works did not comply.

Kay notified her insurer of the missing requirements and delays have been ongoing since that time.

Given the time the property has been water-logged, there is extensive damage. All the mud from the floods is still there, and black mould is developing.

Our team placed Kay's matter on our online Pro Bono Portal, seeking assistance to pursue her claim, and it was soon accepted on a pro bono basis by a law firm. This firm will act for Kay for free to pursue the full benefit of the insurance policy and the best outcome possible.

A review of insurance legal frameworks is required to reduce barriers to entitled Victorians like Kay, who need timely access to their insurance.

More legal support is required for not-for-profit community organisations and groups to deliver more effective disaster preparedness planning and responses to disasters

Justice Connect operates [Not-for-profit Law](#), Australia's only dedicated free legal service for not-for-profit community organisations. Our work with community organisations and groups in disaster-affected areas indicates that these organisations and groups may experience a range of legal issues as they deliver support to communities in need and they evolve over time, including in relation to:

- Navigating decisions around how and when to incorporate
- Understanding their governance obligations
- Ensuring appropriate risk management, insurance coverage and work, health and safety precautions are in place in relation to their activities
- Managing volunteers safely and effectively
- Managing government funding and public donations
- Working with other community organisations and government

Legal help for not-for-profit community organisations and groups should be regarded as a vital component of the disaster response service ecosystem at a national level. There is a need for stronger government promotion, funding and endorsement of professional (including legal) support services that have the expertise to assist the community sector with disaster preparedness and recovery on a pro bono basis.

The legal assistance sector disaster response framework should be appropriately funded

Adequate funding is needed to ensure that the legal assistance sector disaster response framework continues to adequately support disaster-affected communities.

The framework must also be sufficiently flexible to support a local, on-the-ground response which can be supported with digital infrastructure which can be utilised quickly to scale up services.

Government funding should be quarantined to support legal assistance sector responses to disaster. The process for applying the quarantined funding in a disaster response setting should be clear and transparent. This funding is essential for frontline organisations to respond quickly in a disaster and for wider networks to provide the appropriate support and additional resources to organisations on the ground, which may include:

- Developing, delivering and sharing legal education resources to build legal capability in the community, that is, increased ability to identify disaster legal issues and access appropriate assistance pathways. This is critical for ensuring community preparedness for flood events

- Cross-sector coordination work and liaison with non-legal service providers (e.g. crisis response centres)
- Coordinating and mobilising pro bono resources

Conclusion

We would be happy to discuss or expand on any of our comments. We agree to this submission being made public (with signatures redacted).

Yours sincerely,



Emma Ryan

Manager – Innovation | Access Program

For questions in relation to this submission, please contact Emma Ryan at emma.ryan@justiceconnect.org.au.