



FEDERATION
OF COMMUNITY LEGAL CENTRES VIC

CLIMATE CHANGE IMPACTS ON ACCESS TO JUSTICE

Climate Justice Support Unit
Federation of Community Legal Centres Victoria



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ABOUT THE FEDERATION

The Federation is the peak body for Victoria's 47 Community Legal Centres. Our members are at the forefront of helping those facing economic, cultural or social disadvantage and whose life circumstances are severely affected by their legal problem. For 50 years Community Legal Centres have been part of a powerful movement for social change, reshaping how people access justice, creating stronger more equitable laws, and more accountable government and democracy.

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

Read our strategic plan online

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WE WANT A COMMUNITY THAT IS FAIR, INCLUSIVE AND THRIVING: WHERE EVERY PERSON BELONGS AND CAN LEARN, GROW, HEAL, PARTICIPATE AND BE HEARD.

The Federation:

- ▼ Enables a strong collective voice for justice and equality;
- ▼ Mobilises and leads Community Legal Centres in strategic, well-coordinated advocacy and campaigns;
- ▼ Works with members to continuously improve the impact of community legal services;
- ▼ Drives creativity and excellence in the delivery of legal services to communities;
- ▼ Helps make justice more accessible.

Our members lead collaboration and advocacy via several Working Groups, providing guidance and direction for the Federation's work, as well as opportunities for joint advocacy.

Together with our members and communities, we work to dismantle unjust systems that perpetuate racism, sexism, homophobia, ableism, economic injustice and other inequalities. Our priority is to be fully accountable to the communities we represent.

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ABSTRACT

This literature review explores how climate change impacts affect access to justice in Victoria, Australia. It examines the context and framing of access to justice, climate justice and disaster justice, and how climate change impacts are already shaping access to justice in Victoria. This review presents research on how climate change impacts create new justice challenges, as well as new challenges for law and practice. The literature review reveals considerable knowledge gaps about how to identify injustice in people's experience of climate change and extreme weather events. Ongoing research is needed to understand the enablers of justice in a climate-changed world.

EXECUTIVE SUMMARY

Guaranteeing access to justice requires fair and equitable access to legal assistance and justice mechanisms without economic, geographic, social, cultural, racial, linguistic, environmental or other barriers. Climate change impacts, and the lack of remedies or legal solutions to matters that have been compounded by extreme weather events or slow onset impacts, are emerging as barriers to access to justice.

'Climate change impacts' refers to the many ways in which climate change affects environments and livelihoods. This includes the direct impacts of extreme weather hazards such as bushfires, floods, storms and drought. It also includes less obvious effects such as worsening air pollution, heatwaves, species extinction, environmental depletion, sea level rise, food insecurity and higher costs of living.

The aim of this literature review is to better understand how climate change is impacting access to justice in the state of Victoria, Australia. It presents key themes from existing literature and identifies gaps in knowledge to suggest avenues for further inquiry. Four guiding research questions were developed as part of literature review design. The report follows this structure:

1. What climate change impacts have already affected access to justice in Victoria?
2. How does climate change exacerbate traditional barriers to accessing justice?
3. How is access to justice evolving as a result of climate change?
4. What are the enablers of access to justice in a climate-changed world?

This exploratory review considers research from various disciplines across access to justice, climate change adaptation, and disaster and climate justice scholarship. It brings together different fields of inquiry that approach 'justice' in conceptually distinct ways.

On one side there is traditional access to justice research situated within law, legal systems and practice, with its abiding concern for substantive equality and equal treatment, and the eradication of poverty and disadvantage. This area of research and legal practice explores barriers to accessing justice depending on who people are, where they are located, and the nature of their legal problem. It seeks to understand where, how, and why barriers to accessing justice exist, and how they can be dismantled.

On the other side, climate and disaster justice scholarship and adaptation research and policy encapsulate broader philosophical concerns about justice than can be viewed through the discipline of law alone. Research from these domains is not directed towards the legal system itself, or the legal profession's role in delivering access to justice. This literature review brings together these distinct areas of justice scholarship, to uncover knowledge gaps about access to justice in the context of rapidly increasing climate change impacts.

Part One briefly outlines the nature and scope of access to justice, followed by a critical examination of new justice framings grounded in climate change impacts and disasters. Part One also gives a brief description of the legal assistance sector in Victoria.

Part Two outlines climate change science as it relates to Australia and the state of Victoria, describing the law and policy settings to address climate change in that state. Part Two then considers evidence from

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service providers about how climate disasters affect access to justice, and critically examines whether this knowledge is reflected by evidence in other jurisdictions.

Part Three presents themes in the literature that arise from questions around how climate change impacts exacerbate traditional access to justice issues, and what new issues are emerging. Evidence about housing precarity and threatened habitability is presented, along with research about trends in land use planning, displacement and planned relocation. The slow violence of climate change is considered with a focus on extreme heat. Research about transformative adaptation and the need to avoid maladaptation is also presented.

Finally, Part Four considers how climate change affects the practice of law and service delivery in the context of access to justice. It looks at scholarship relating to the organisational capacity of community organisations and professional climate consciousness. Part Four also examines what is needed to support access to justice in a climate-changed world. Climate litigation and human rights law are considered as tools for advancing transformative adaptation. The limitations of the law to remedy incommensurable loss is also considered.

RESEARCH PROCESS

Searches for peer review articles and book chapters were run through various research databases including Scopus, HeinOnline, WestLaw International, Overton and Google Scholar. Tracking and filtering of search results from databases was maintained as the search progressed. Grey literature (non-peer review, industry materials) was also included. This ranged widely from Victorian Community Legal Centre service data to policy and advocacy submissions across the climate movement, including from the Climate Justice Legal Project partners Environmental Justice Australia, Climate Council and the Federation of Community Legal Centres Victoria. The review limited itself to searches and material published over the past decade, however noting that climate change and associated justice issues have been occurring for a much longer timeframe.

The inspiration for this work arose from a desire to stimulate discussion and research collaboration on a topic that is fast attracting attention, but which has not yet received close examination. As the first project of its kind, this literature review focuses initially on climate change impacts on access to justice in Victoria, Australia. The content and themes identified are not exhaustive and serve as a starting point for dialogue about how to strive for justice in a climate-changed world.

PART ONE: CONTEXT AND JUSTICE FRAMES

ACCESS TO JUSTICE OVERVIEW

To understand how climate change impacts upon access to justice, we must first consider the traditional meaning and scope of 'access to justice'. As prominent former Australian Justice Ronald Sackville observed, the term access to justice 'survives in political and legal discourse because it is capable of meaning different things to different people'.¹

Access to justice focuses on the law's unequal relationship with different cohorts of society, some of whom lack effective access to the law. The concept speaks to an aspiration that all people, regardless of financial or social barriers, should have the ability to seek and obtain justice.² The provision of legal aid and free legal assistance to people experiencing poverty, disadvantage and marginalisation is a prevailing theme.³

Inquiries about the interrelationship between law, poverty and access to justice in Australia date back to the 1975 Australian Commission of Inquiry into Poverty.⁴ Since that landmark report, most but not all inquiries have broadly interpreted access to justice to signify more than just formal access to the courts, the law, and the legal system.⁵ For example, the 2009 Strategic Framework for Access to Justice in the Federal Civil Justice System moved beyond a narrow view of access to justice that centres on courts as the central suppliers of justice. Access to justice is "not only about accessing institutions to enforce rights or resolve disputes but having the means to improve 'everyday justice' – the quality of people's social, civic, and economic relations."⁶ This view is reflected in a rich vein of legal scholarship and is illustrated by this popular description about how justice moves through society:

¹ Ronald Sackville, 'Access to Justice: Assumptions and Reality Checks' (at the Access to Justice Roundtable, UNSW Law and Justice Foundation, Sydney, 2002).

² Helen McGowan and Richard Coverdale, 'Access to Justice in Rural and Regional Communities' in Trish Mundy, Amanda Kennedy and Jennifer Nielsen (eds), *The Place of Practice: Lawyering in Rural and Regional Australia* (The Federation Press, 2017) 128.

³ Wayne Martin, 'Access to Justice' (2014) 16 *University of Notre Dame Australia Law Review* 1; Mary Anne Noone, 'The State of Australian Legal Aid' (2001) 29(1) *Federal Law Review* 37; Mary Anne Noone, 'Access to Justice Research in Australia' (2006) 31(1) *Alternative Law Journal* 30; Mary Anne Noone and Stephen Tomsen, *Lawyers in Conflict: Australian Lawyers and Legal Aid* (Federation Press, 2006); Asher Flynn, *Access to Justice and Legal Aid: Comparative Perspective on Unmet Legal Need*. (Hart Publishing, 2017).

⁴ Australian Government Commission of Inquiry into Poverty, *Second Main Report, Law and Poverty in Australia (Sackville Report)* (AGPS, 1975).

⁵ Australian Government Productivity Commission, *Access to Justice Arrangements* (No 72, 2014); Victorian Law Reform Commission, *Access to Justice: Litigation Funding and Group Proceedings* (March 2018). These inquiries took a narrower perspective on the meaning of access to justice.

⁶ Australia, Attorney-General's Department, and Access to Justice Taskforce, *A Strategic Framework for Access to Justice in the Federal Civil Justice System*. (Commonwealth of Australia, 2009) 148.

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"Just as health is not found primarily in hospitals or knowledge in schools, so justice is not primarily to be found in official justice dispensing- institutions. People experience justice (and injustice) not only (or usually) in forums sponsored by the state but at the primary institutional locations of their activity – home, neighbourhood, workplace, business deal and so on..."⁷

Access to justice is a multidimensional concept that encompasses institutional, procedural and outcome-related dimensions.⁸ Broadly construed, the concept extends to social justice and the distribution of welfare, resources and opportunity.⁹ This allows a holistic examination of how the legal system and other institutions influence one another to enable or inhibit people's capacity to address legal problems and resolve disputes.¹⁰

Although its status as a universal human right under international law is uncertain, access to justice is reflected in high level international goals and targets.¹¹ Goal 16:3 of the Sustainable Development Goals seeks to promote the rule of law at national and international levels and ensure equal access to justice for all.¹² This goal recognises the intrinsic links between access to justice, poverty reduction and inclusive growth. The goal is a crucial tool for "eradicating poverty and in assisting disadvantaged people to secure democratic participation and just and fair laws."¹³ Fundamentally, access to justice is an essential element of the rule of law and democracy.¹⁴

Failure to access justice can result in significant personal, community, social and economic costs. Legal problems can become compounded if unaddressed, resulting in both problem escalation and worse outcomes.¹⁵ Unattended legal problems can diminish the ability of a person to function effectively in society.¹⁶ They can also lead to cost shifting through the economy, increasing public expenditure across different portfolios such as health care, housing, and child protection.¹⁷

⁷ Marc Galanter, 'Justice in Many Rooms: Courts, Private Ordering, and Indigenous Law' (1981) 19 *Journal of Legal Pluralism* 1, 17; Deborah L Rhode, *Access to Justice* (Oxford University Press, 2004); Ab Currie, 'The Legal Problems of Everyday Life' (2009) 12 *Sociology of Crime, Law and Deviance* 1; Rebecca Sandefur, 'Access to Civil Justice and Race, Class, and Gender Inequality' (2010) 34 *Annual Review of Sociology*.

⁸ OECD and Open Society Foundations, *Legal Needs Surveys and Access to Justice* (OECD Publishing, 2019) 209, 142.

⁹ *Ibid.*

¹⁰ Australia, Attorney-General's Department, and Access to Justice Taskforce (n 6) 5.

¹¹ Francesco Francioni, 'The Rights of Access to Justice under Customary International Law' in Francesco Francioni (ed), *Access to Justice as a Human Right* (Oxford University Press, 2007) 1.

¹² Target 16.3, as detailed in Resolution 70/1 of the UN General Assembly, 25 September 2015, entitled "Transforming our World: The 2030 Agenda for Sustainable Development. 'SDG Indicators'

<<https://unstats.un.org/sdgs/indicators/indicators-list>>.

¹³ OECD and Open Society Foundations (n 88).

¹⁴ Australia, Attorney-General's Department, and Access to Justice Taskforce (n 6) 148.

¹⁵ Australian Government Productivity Commission (n 5); Christine Coumarelos et al, 'Legal Australia-Wide Survey: Legal Need in Australia' [2012] *Law and Justice Foundation of NSW: Sydney* 387; Nigel J Balmer et al, *The Public Understanding of Law Survey Report Volume 1: Everyday Problems and Legal Need* (Victoria Law Foundation, 2023).

¹⁶ Pascoe Pleasence and Nigel J Balmer, 'Justice and the Capability to Function in Society' (2019) 148(1) *Daedalus* 140.

¹⁷ Australian Government Productivity Commission (n 5) 30–31.

LEGAL PROBLEMS ARE JUSTICIABLE AND MEASURABLE

To access justice, a person must have a problem that is legal or justiciable in nature. A justiciable problem is one that raises legal issues irrespective of the individual's recognition of its legal character and their use of the legal system to resolve it.¹⁸ Empirically identifying and assessing the prevalence of justiciable problems in society has been a sustained focus of access to justice research over the past three decades.¹⁹ Large quantitative studies, known as legal needs surveys, are a primary tool for generating a representative picture of legal need at a national or regional level. Despite adopting different methodologies, a consistent finding of these surveys is that legal problems cluster together for certain cohorts of the community.²⁰ The Public Understanding of Law Survey (PULS) released in September 2023 by the Victoria Law Foundation confirms the phenomenon of legal problem clustering in the Victorian context.²¹ The identification of justiciable problems as experienced by Victorian survey participants was that "53 per cent of those who had faced problems reported multiple problems."²² PULS findings also reveal distinct social patterning in the experience of legal problems across the Victorian community.²³

BARRIERS TO ACCESSING JUSTICE

A hallmark feature of access to justice studies is how they identify and examine barriers to justice by considering the unique circumstances of individuals and communities who seek justice.²⁴ Traditional barriers to accessing justice include those that are geographic, place-based, structural or service related, as well as the law and the legal system more broadly.

Barriers created by the law and the legal system are well documented. One example is cost, because the majority of free legal services are subject to a means test.²⁵ Major inquiries have identified the persistent shortfall in legal assistance sector funding for civil law matters as a barrier to justice.²⁶ Additional obstacles to justice include laws themselves that do not provide remedies, or that limit entitlements due to

¹⁸ Hazel Genn, *Paths to Justice: What People Do and Think about Going to Law* (Hart Publishing, 1999).

¹⁹ OECD and Open Society Foundations (n 8). This study shows that over the last 25 years, more than 55 Legal Needs Surveys were conducted globally in over 30 jurisdictions.

²⁰ P Pleasence, NJ Balmer and RL Sandefur, 'Apples and Oranges: An International Comparison of the Public's Experience of Justiciable Problems and the Methodological Issues Affecting Comparative Study' (2016) 13(1) *Journal of Empirical Legal Studies* 50; Coumarelos et al (n 15).

²¹ Balmer et al (n 15).

²² Ibid 15.

²³ Ibid 47. Note that the Federation will release a further summary of PULS findings in relation to disaster justice as the publications appear throughout 2024.

²⁴ *The Justice Project Final Report* (Law Council of Australia, August 2018) provides a comprehensive overview of barriers to justice for different population cohorts in Australia.

²⁵ Access to Justice Taskforce Commonwealth of Australia, Attorney General's Department, *A Strategic Framework for Access to Justice in the Federal Civil Justice System* (September 2009) 40.

²⁶ Australian Government Productivity Commission (n 5).

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procedural rules such as standing (the legal ability to commence proceedings).²⁷ The complexity of formal court processes and procedures is also recognised, as are delays and the slow pace of seeking formal justice. In the Victorian climate disaster context, the Kilmore East Kinglake bushfire class action is a striking example of how costs and delays can deny justice to members of a class. This case included a six year wait for the class action to be heard and the eventual distribution of the scheme taking a further 29 months at a cost of AUD\$ 30 million.²⁸

Beyond the legal system itself, rurality and remoteness are significant barriers to justice that are also well established in the literature.²⁹ Rural, regional, remote and very remote communities have poorer access to services due to geographic distance. They are also more likely to be digitally excluded and have reduced access to online information.³⁰

Structural barriers to accessing justice are embedded in our social and institutional norms and include racism, sexism, classism, ableism, and cultural stereotypes. As theorised by American law professor and critical race scholar Kimberle Crenshaw:

"Intersectionality is a lens through which you can see where power comes and collides, where it interlocks and intersects. It's not simply that there's a race problem here, a gender problem here, and a class or LGBTQ problem there. Many times that framework erases what happens to people who are subject to all of these things."³¹

Structural and system barriers result in differential individual and collective experiences of seeking and accessing justice. There is considerable evidence through large scale reports and inquiries, and smaller, qualitative studies on the justice needs of certain population groups.³² In 2021, the Law Council of Australia delivered a major project examining access to justice in Australia through the lived experience of

²⁷ Andrea Durbach, "'Between the Idea and the Reality': Securing Access to Justice in an Environment of Declining Points of Entry" in Andrea Durbach, Brendan Edgeworth and Vicki Sentas (eds), *Law and Poverty in Australia: 40 Years after the Poverty Commission* (The Federation Press, 2017).

²⁸ Michael Legg, 'Kilmore East Kinglake Bushfire Class Action Settlement Distribution Scheme: Fairness, Cost and Delay Post-Settlement' (2018) 44(3) *Monash University Law Review* 658.

²⁹ Trish Mundy, Amanda Kennedy and Jennifer Nielsen (eds), *The Place of Practice: Lawyering in Rural and Regional Australia* (The Federation Press, 2017).

³⁰ Christine Coumarelos, Zhigang Wei & Albert Z Zhou, Law and Justice Foundation of New South Wales, *Justice made to measure: NSW Legal Needs Survey in disadvantaged areas (2006); The Justice Project Final Report* (n 24) 33.

³¹ Columbia Law School, Kimberlé Crenshaw on Intersectionality, More than Two Decades Later (8 June 2017) <<http://www.law.columbia.edu/news/2017/06/kimberle-crenshaw-intersectionality>> as cited in *The Justice Project* (n 24), 53. See also Kimberle Crenshaw, 'Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color' (1990) 43(6) *Stanford Law Review* 1241.

³² See for example, Margaret Camilleri, 'Disabled in Rural Victoria: Exploring the Intersection of Victimisation, Disability and Rurality on Access to Justice' (2019) 5(1) *International Journal of Rural Criminology*; Maria Karras et al, *On the Edge of Justice: The Legal Needs of People with a Mental Illness in NSW* (Law and Justice Foundation of New South Wales, May 2006); Suzie Forell, Emily McCarron and Louis Schetzer, *No Home, No Justice? The Legal Needs of Homeless People in NSW* (Law and Justice Foundation of New South Wales, July 2005); Sarah Ellison et al, *The Legal Needs of Older People in New South Wales* (Law and Justice Foundation of New South Wales, December 2004).

13 population cohorts.³³ These broadly align with the priority population groups listed under the National Legal Assistance Partnership, which in turn supports the National Strategic Framework for Legal Assistance.³⁴ These policy documents set the agenda for funding and administration of Australia's legal assistance sector.

CLIMATE CHANGE IMPACTS NOT RECOGNISED AS BARRIERS TO ACCESSING JUSTICE

Despite extensive evidence about barriers to accessing justice for different populations, access to justice research is largely silent on how climate change impacts are experienced as barriers to justice. There is a temporal complexity to climate change impacts where incremental changes occur alongside increasingly frequent, severe, compounding and cascading extreme weather events. This makes it difficult to identify how different communities experience climate change impacts, and how these impacts interplay with access to justice and legal issues. An area for further research is the examination of differential climate impacts on population groups, and how this shapes their justice needs.

In this literature review the terms 'extreme weather event', 'disaster' and 'climate disaster' are used interchangeably. This review focuses upon climate justice in the context of extreme weather events, as these can directly generate identifiable legal issues and are amenable to quantitative legal needs research. To date, it is also the main experience of the legal assistance sector with climate change impacts. Until very recently there have been no empirical studies in Australia or elsewhere that examine legal problems arising from climate change impacts. However PULS, a new empirical study in Victoria, does consider the association between extreme weather events (bushfires) and legal need. This is discussed further in Part Two. Access to justice scholar Rebecca Sandefur points out that there is no consensus about what constitutes the full landscape of possible justiciable situations.³⁵ This suggests that legal problems arising from broader climate change impacts, not just extreme weather events, should be the subject of future empirical studies.

³³ People with disability, people experiencing economic disadvantage, LGBTI[QA]+ people, prisoners and detainees, Aboriginal and Torres Strait Islander people[s], people who experience family violence, people who have been trafficked and exploited, recent arrivals to Australia, children and young people, rural, regional and remote Australians, asylum seekers, older persons, people experiencing homelessness

³⁴ Council of Attorneys-General, *National Strategic Framework for Legal Assistance* (Commonwealth of Australia, 2019) <<https://www.ag.gov.au/system/files/2020-06/National-Strategic-Framework-for-Legal-Assistance.pdf>>; National Legal Assistance Partnership 2020-2025 <<https://www.ag.gov.au/legal-system/publications/national-legal-assistance-partnership-agreement>>.

³⁵ Rebecca L Sandefur, 'What We Know and Need to Know About the Legal Needs of the Public' (2016) 67(2) *South Carolina Law Review* 443.

NEW JUSTICE FRAMINGS THROUGH A CLIMATE CHANGE LENS

Adjacent to the literature on access to justice is a vibrant body of scholarship, in particular from the fields of human and political geography, that examines justice in climate change adaptation and disaster risk reduction.³⁶ These disciplines may conceptually help to expand the thinking around access to justice to account for both its complexity and the imperative for system change.

CLIMATE JUSTICE

Climate justice derives from earlier struggles and the demands of the environmental justice movement, which focused on how and why historically marginalised communities were disproportionately subjected to environmental harm.³⁷

There are various definitions of climate justice across academia, policy, and activist movements but it generally describes the intersection between climate change impacts, social justice and inequality.³⁸ Similar to access to justice, it incorporates different dimensions of justice that are framed as procedural, distributive, justice-as-recognition,³⁹ and corrective and social injustice.⁴⁰ The International Bar Association (IBA) describes climate change justice as encapsulating rights and obligations spanning generations, across political entities, and implicates state, corporate and individual responsibilities.⁴¹

Climate justice brings a human rights lens to the nexus of ecological and social justice. It helps to identify and address the inequities of climate breakdown and reframe mainstream debates to focus on social impacts, outcomes, and justice concerns.⁴² The roots of contemporary climate injustice lie in colonialism, and advancing climate justice requires decolonised approaches that reject Western presumptions of

³⁶ Guy Barnett, John Gardner and Jacqui Meyers, 'Adaptation: Living with a Changing Environment' in Rae Walker and Wendy Mason (eds), *Climate Change Adaptation for Health and Social Services* (CSIRO Publishing, 2015) 17; Kristie L Ebi, 'Facilitating Climate Justice through Community-Based Adaptation in the Health Sector' (2009) 2(4) *Environmental Justice* 191; Karen O'Brien and Elin Selboe, 'Social Transformation: The Real Adaptive Challenge' in Elin Selboe and Karen O'Brien (eds), *The Adaptive Challenge of Climate Change* (Cambridge University Press, 2015) 311; Mark Pelling, *Adaptation to Climate Change: From Resilience to Transformation* (Taylor & Francis Group, 2010); Linda Shi et al, 'Roadmap towards Justice in Urban Climate Adaptation Research' (2016) 6(2) *Nature Climate Change* 131.

³⁷ D Schlosberg and Lisette B Collins, 'From Environmental to Climate Justice: Climate Change and the Discourse of Environmental Justice' (2014) 5 *Wiley Interdisciplinary Reviews: Climate Change*, 361.

³⁸ Ibid.

³⁹ David Schlosberg, *Defining Environmental Justice: Theories, Movements, and Nature* (Oxford University Press, 2007); Gordon Walker, *Environmental Justice: Concepts, Evidence and Politics* (Routledge, 2012); Brian J Preston, 'The Effectiveness of the Law in Providing Access to Environmental Justice' in *The Search for Environmental Justice* (Edward Elgar Publishing Limited, 2015); Robert D Bullard (ed), *The Quest for Environmental Justice: Human Rights and the Politics of Pollution* (Sierra Club Books, 1st ed, 2005).

⁴⁰ Robert R Kuehn, 'A Taxonomy of Environmental Justice' (2000) 30 *Environmental Law Reporter* 10681.

⁴¹ International Bar Association Climate Change Justice and Human Rights Taskforce, *Achieving Justice and Human Rights in an Era of Climate Disruption* (July 2014) 3.

⁴² Farhana Sultana, 'Critical Climate Justice' (2022) 188(1) *The Geographical Journal* 118, 118.

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universal truths or solutions.⁴³ In Australia, this means centring the voices and wisdom of First Nations peoples and their relationship to Country in the development of laws, policies and strategies to address climate change.⁴⁴

Climate justice asserts that a healthy environment is a necessary precondition for the achievement of social justice.⁴⁵ One of the limitations of traditional access to justice thinking in the context of climate change is that it regards access to justice in an anthropocentric frame where humanity is separate from nature. Climate justice framing can help to uncouple this nature/human binary to show that the goals of access to justice cannot be achieved without a safe and healthy climate. An example of this is the IBA Climate Change Justice and Human Rights Taskforce's work on achieving justice and human rights in an era of climate disruption.⁴⁶ Expanding access to justice discourse in this way is an avenue of further research.

DISASTER JUSTICE

Disaster justice explores issues of inequality across all phases of disaster management – prevention, preparedness, response and recovery.⁴⁷ Coined by Robert Verchick, disaster justice focuses on equity in treatment of groups in disaster-related policies and reframes disaster management in terms of social justice and human rights.⁴⁸ The disproportionate impact of disasters on people with disabilities is an example that is well documented in the literature,⁴⁹ along with many feminist voices that offer gendered critiques of disaster management.⁵⁰

⁴³ Carmen G Gonzalez, 'Racial Capitalism, Climate Justice, and Climate Displacement' (2021) 11(1) *Oñati Socio-Legal Series* 108; Farhana Sultana, 'The Unbearable Heaviness of Climate Coloniality' (2022) 99 *Political Geography* 102638.

⁴⁴ Judy Lawrence et al, 'Australasia' in *Climate Change 2022: Impacts, Adaptation, and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press, 2022) 1581.

⁴⁵ Schlosberg and Collins (n 37) 363.

⁴⁶ International Bar Association Climate Change Justice and Human Rights Taskforce (n 41).

⁴⁷ Anna Lukasiewicz, 'The Emerging Imperative of Disaster Justice' in Anna Lukasiewicz and Claudia Baldwin (eds), *Natural Hazards and Disaster Justice: Challenges for Australia and Its Neighbours* (Springer, 2020) 3.

⁴⁸ Robert RM Verchick, 'Disaster Justice: The Geography of Human Capability Disaster Law' (2012) 23(1) *Duke Environmental Law & Policy Forum* 23.

⁴⁹ David Alexander, 'Disability and Disaster: An Overview' in Ilan Kelman and Laura M Stough (eds), *Disability and Disaster: Explorations and Exchanges* (Palgrave Macmillan UK, 2015) 15; Laura M Stough and Ilan Kelman, 'People with Disabilities and Disasters' in Havidán Rodríguez, William Donner and Joseph E Trainor (eds), *Handbook of Disaster Research* (Springer International Publishing, 2018) 225; Laura M Stough et al, 'Barriers to the Long-Term Recovery of Individuals with Disabilities Following a Disaster' (2016) 40(3) *Disasters* 387.

⁵⁰ Sarah Bradshaw and Maureen Fordham, 'Chapter 14 - Double Disaster: Disaster through a Gender Lens' in John F Shroder et al (eds), *Hazards, Risks, and Disasters in Society* (Academic Press, 2015) 233; Elaine Enarson, Alice Fothergill and Lori Peek, 'Gender and Disaster: Foundations and New Directions for Research and Practice' in Havidán Rodríguez, William Donner and Joseph E Trainor (eds), *Handbook of Disaster Research* (Springer International Publishing, 2018) 205; Tricia Hazeleger, 'Gender and Disaster Recovery: Strategic Issues and Action in Australia' (2013) 28(2) *Australian Journal of Emergency Management*.

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United States scholarship documents the many instances of disaster inequality through the interplay between race, poverty and disaster risk.⁵¹ Recent US research reveals that government relief payments are implemented in ways that entrench wealth trajectories along already established lines of inequality, driving the growing gap between white and black wealth.⁵² Australian research also points to inequities in post-disaster relief and recovery funding, with income gains for businesses and high-income households resulting in uneven distribution.⁵³

'Disaster justice' as a critical frame in the Australian context is continuing to evolve. This is evidenced by the work of established disaster scholars,⁵⁴ innovative research in disability-inclusive disaster risk reduction⁵⁵ and legal practitioner opinion.⁵⁶ This framing is still relatively new. However, as disasters continue to increase in frequency and severity, there will no doubt be a correlative need for Australian research to critically examine the cycle of disaster management through a disaster justice frame.

This social turn in disaster scholarship reflects a larger theme across this literature review about the importance of narrative framing. In this broader framing, climate and disaster injustices are viewed as the consequences of systemic choices that require and demand transformative change.⁵⁷ There is opportunity for access to justice scholarship to benefit from these broader perspectives to prompt issues of responsibility and accountability in the context of climate change impacts.

FRAMING CLIMATE RISK, EXPOSURE AND VULNERABILITY

The Intergovernmental Panel on Climate Change (IPCC) confirms the climate change adaptation (CCA) and disaster risk reduction (DRR) assumption that climate change risk is a product of the interactions of hazards (such as bushfire) with socioeconomic processes (such as governance) which inform exposure and vulnerability.⁵⁸ This framing makes it clear that the causes of vulnerability are socially, politically and

⁵¹ Daniel A Farber, 'Disaster Law and Inequality' (2007) 25(2) *Law and Inequality: A Journal of Theory and Practice* 297.

⁵² Junia Howell and James R Elliott, 'As Disaster Costs Rise, So Does Inequality' (2018) 4 *Socius*; Junia Howell and James R Elliott, 'Damages Done: The Longitudinal Impacts of Natural Hazards on Wealth Inequality in the United States' (2019) 66(3) *Social Problems* 448.

⁵³ Mehmet Ulubasoglu, 'Natural Disasters Increase Inequality. Recovery Funding May Make Things Worse', *The Conversation* (26 February 2020) <<http://theconversation.com/natural-disasters-increase-inequality-recovery-funding-may-make-things-worse-131643>>.

⁵⁴ Rosemary Lyster, *Climate Justice and Disaster Law* (Cambridge University Press, 2015).

⁵⁵ Michelle Villeneuve, 'Building a Roadmap for Inclusive Disaster Risk Reduction in Australian Communities' (2021) 10 *Progress in Disaster Science* 100166; Michelle Villeneuve et al, 'Applying a Person-Centred Capability Framework to Inform Targeted Action on Disability Inclusive Disaster Risk Reduction' (2021) 52 *International Journal of Disaster Risk Reduction* 101979.

⁵⁶ Bill Mitchell, 'A Disaster for Human Rights?', *Proctor* (11 December 2020) <<https://www.qlsproctor.com.au/2020/12/a-disaster-for-human-rights/>>.

⁵⁷ Michael D Cooper, 'Seven Dimensions of Disaster: The Sendai Framework and the Social Construction of Catastrophe' in Katja LH Samuel, Kirsten Nakjavani Bookmiller and Marie Aronsson-Storrier (eds), *The Cambridge Handbook of Disaster Risk Reduction and International Law* (Cambridge University Press, 2019) 17.

⁵⁸ Christopher B Field et al (eds), *Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation: Special Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press, 2012).

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culturally constructed. However, 'vulnerability' is often used to describe an individual's inability to protect themselves or their communities and can undermine self-determination and community resilience. Definitions such as vulnerability can reinforce power imbalances that imply certain groups are helpless and in need of external intervention.

The importance of identifying the socio-political drivers of climate disasters is a strong theme across social science literature.⁵⁹ The many socio-political factors that cause exposure and vulnerability in a DRR and CAA framing include social exclusion,⁶⁰ racism and discrimination,⁶¹ a lack of private property ownership and social infrastructure,⁶² and poverty and power relations.⁶³ Climate change and extreme weather events do not cause disasters; it is not credible to blame the weather. Weather is a hazard, and the disastrous impacts that follow are exacerbated by pre-existing inequality.⁶⁴ Where we can strengthen systems to cope with these stressors and hazards, we can minimise impact on communities. The United Nations Office for Disaster Risk Reduction states that the phrase 'natural disaster' is not acceptable because disasters are the result of human agency.⁶⁵ Once the root causes of vulnerability are understood, questions of responsibility and liability for climate disasters can be considered.⁶⁶

Using the term 'vulnerable' without considered translation from DRR and CCA framing suggests that people are at risk of harm due to the weather itself or because of their own inability to adapt. This is especially problematic for First Nations peoples and communities, whose high adaptive capacity and deep cultural knowledge and expertise regarding climate impacts is beyond question.⁶⁷ Outside DRR and CCA discourse,

⁵⁹ Jesse Ribot, 'Cause and Response: Vulnerability and Climate in the Anthropocene' (2014) 41(5) *The Journal of Peasant Studies* 667; Jesse Ribot, 'Vulnerability Does Not Just Fall from the Sky: Addressing the Vulnerability Conundrum' in *Risk Conundrums* (Routledge, 2017); Myanna Lahsen and Jesse Ribot, 'Politics of Attributing Extreme Events and Disasters to Climate Change' [2021] *WIREs Climate Change* e750; Jon Barnett, 'Global Environmental Change II: Political Economies of Vulnerability to Climate Change' (2020) 44(6) *Progress in Human Geography* 1172; Jon Barnett, 'Global Environmental Change III: Political Economies of Adaptation to Climate Change' (2022) 46(4) *Progress in Human Geography* 1106.

⁶⁰ Kathy Arthurson and Scott Baum, 'Making Space for Social Inclusion in Conceptualising Climate Change Vulnerability' (2015) 20(1) *Local Environment* 1.

⁶¹ Bhiemie Williamson, Jessica K Weir and Francis Markham, *Submission to the Royal Commission into National Natural Disaster Arrangements* (No NND.001.00969.01, 28 April 2020).

⁶² Daniel P Aldrich, 'How Social Infrastructure Saves Lives: A Quantitative Analysis of Japan's 3/11 Disasters' (2023) 24(1) *Japanese Journal of Political Science* 30.

⁶³ Lahsen and Ribot (n 59).

⁶⁴ Ibid.

⁶⁵ United Nations Office for Disaster Risk Reduction, 'Sendai Framework 6th Anniversary: Time to Recognise There Is No Such Thing as a Natural Disaster - We're Doing It to Ourselves' (18 March 2021) <<https://www.undrr.org/news/sendai-framework-6th-anniversary-time-recognize-there-no-such-thing-natural-disaster-were>>.

⁶⁶ Jesse Ribot, 'Violent Silence: Framing out Social Causes of Climate-Related Crises' (2022) 49(4) *The Journal of Peasant Studies* 683, 690.

⁶⁷ Bhiemie Williamson, Francis Markham and Jessica K Weir, *Aboriginal Peoples and the Response to the 2019-2020 Bushfires* (CAEPR Working Paper 134/2020, Centre for Aboriginal Economic Policy Research, ANU College of Arts & Social Sciences, 2020); Bhiemie Williamson, Jessica K Weir and Francis Markham, *Submission to the Royal Commission into National Natural Disaster Arrangements* (No NND.001.00969.01, 28 April 2020); Melissa Nursey-Bray et al, 'Old Ways for New Days: Australian Indigenous Peoples and Climate Change' (2019) 24(5) *Local Environment* 473;

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there are calls in different sectors to reconsider the use of vulnerability. Examples appear in Australian public health and anthropology literature, where there is an "undercurrent of disquiet" about continuing to use this type of language that essentialises others and can perpetuate violence.⁶⁸

Discernment in the use of vulnerability framing is important for the legal assistance sector, whose clients are often labelled vulnerable and disadvantaged.⁶⁹ Using phrases like 'climate exposed' or 'at risk of climate harm' avoids essentialism and individualising responsibility for climate change impacts.

KEY POINTS

- ▼ The concept of access to justice is located within a critique of law, legal systems and practice. It refers to the law's unequal treatment of different cohorts of society and their lack of effective access to the law.
- ▼ Access to justice scholarship typically focuses on barriers to accessing justice, but to date this has not encompassed climate change impacts.
- ▼ New justice framing through a climate and disaster lens expands the discourse of access to justice to reinforce that the goals of access to justice cannot be achieved without a safe and healthy climate.
- ▼ The term 'vulnerability' has a strict definition in DRR and CAA contexts that reflects socio-political drivers and systemic factors that create climate risks, vulnerabilities, exposures and harms. Considered use of the term vulnerable in relation to climate change impacts is important when the legal assistance sector engages with CCA and DRR.

OPPORTUNITIES FOR FURTHER EXPLORATION

- ▼ Climate change impacts on access to justice have not been empirically identified or measured. An avenue for further research is to consider how to include climate change impacts in future legal needs research.
- ▼ There is an opportunity to examine the differential climate impacts on population groups and how this shapes their justice needs.

Kerry Arabena and Jonathan 'Yotti' Kingsley, 'Climate Change: Impact on Country and Aboriginal and Torres Strait Islander Culture' in Rae Walker and Wendy Mason (eds), *Climate Change Adaptation for Health and Social Services* (CSIRO Publishing, 2015). On the important of narrative framing for Indigenous peoples, see also *Passing the Message Stick: 2023 Report* (2023) <<https://passingthemessagestick.org/>>.

⁶⁸ Stephanie C Munari et al, 'Rethinking the Use of "Vulnerable"' (2021) 45(3) *Australian and New Zealand Journal of Public Health* 197; Elizabeth K Marino and Aj Faas, 'Is Vulnerability an Outdated Concept? After Subjects and Spaces' (2020) 44(1) *Annals of Anthropological Practice* 33.

⁶⁹ The broad purpose of the National Strategic Framework for Legal Assistance 2015-2020 is to 'help *vulnerable people facing disadvantage*, who are unable to afford private legal services, to access and engage effectively with legal solutions and the justice system in order to address their legal problems.' A toolkit recently produced by Community Legal Centres NSW provides guidance on strength-based messaging: *Talking Justice: A Guide for Community Legal Centres* (Community Legal Centres NSW, March 2023).

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CLIMATE SCIENCE FOR AUSTRALIA AND VICTORIA

In Australasia, climate impacts are cascading, compounding and aggregating across sectors and systems due to complex interactions. These impacts are projected to grow due to increases in heatwaves, droughts, fires, storms, floods and sea level rise.⁷⁰ Australia is the most climate-vulnerable nation of all its developed country counterparts⁷¹ and in 2019 - 2020, it experienced the worst bushfire season on record.⁷² Black Summer was shortly followed by the Covid-19 pandemic, and a La Niña event in 2022 which led to unprecedented flooding along the Eastern seaboard. This resulted in calls that Australia had entered a new era of unnatural disasters⁷³ with recovery time between extreme events contracting.⁷⁴ The overall state and trend of the Australian environment is "poor and deteriorating" in large part due to increasing pressure from climate change.⁷⁵

Victoria's climate has already changed due to the increased concentration of greenhouse gases into the atmosphere. It has experienced a decrease in autumn and winter rainfall and significant increase in bushfire risk. Streamflow and snowfall decline has also increased in recent decades. Since 1910, the average temperature has risen just over 1.0 degree, and under a high emissions scenario, Victoria is projected to warm on average by 2.8 to 4.3 degrees compared to 1986 - 2005.⁷⁶ In a world of more than 2 degrees warming, Victoria would experience a doubling of the number of extreme heat events and up to 60% more very high fire danger days.⁷⁷ Alongside the acceleration of climate change impacts, the likelihood of more compounded extreme weather events in Victoria will increase.⁷⁸

⁷⁰ Lawrence et al (n 44) 1632.

⁷¹ Ross Garnaut, *The Garnaut Review 2011: Australia in the Global Response to Climate Change* (Cambridge University Press, 2011).

⁷² *The Royal Commission into National Natural Disaster Arrangements Report* (October 2020) <<https://naturaldisaster.royalcommission.gov.au/publications/royal-commission-national-natural-disaster-arrangements-report>>.

⁷³ Climate Council, *The Great Deluge: Australia's New Era of Unnatural Disasters* (Climate Council and Emergency Leaders for Climate Action, 2022) 45.

⁷⁴ Martin Rice et al, *A Supercharged Climate: Rain Bombs, Flash Flooding and Destruction* (Climate Council of Australia, 2022).

⁷⁵ Ian Cresswell, Terri Janke and Emma Johnston, *Australia State of the Environment 2021: Overview* (Independent report to the Australian Government Minister for the Environment, Commonwealth of Australia, 2021).

⁷⁶ *Victoria's Climate Science Report 2019* (State of Victoria Department of Environment, Land, Weather and Planning 2019, 2019) 8.

⁷⁷ Legislative Assembly Environment and Planning Committee, *Inquiry into Tackling Climate Change in Victorian Communities* (Parliament of Victoria, November 2020) xi.

⁷⁸ *Victoria's Climate Science Report 2019* (n 76) 37.

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Victoria has also experienced some of the nation's worst climate disasters in recent years, including the devastating 'Black Saturday' bushfires in 2009, the 2019 - 2020 Black Summer bushfires, 2021 storms and 2022 floods. The intangible costs of climate impacts from such disasters are at least equal to if not greater than physical costs.⁷⁹ Intangible costs include things such as death and injury, health, education and employment impacts, and loss of community connectedness.⁸⁰

LAW AND POLICY SETTINGS TO ADDRESS CLIMATE CHANGE IN VICTORIA

The Victorian Government's commitment to addressing climate change impacts is outlined in the *Climate Change Act 2017 (Vic)* (the Act). The Act is the legal foundation for Victoria's climate change policy framework and enshrines Victoria's goal of net zero greenhouse gas emissions by 2050. It also lists various policy objectives which includes support for vulnerable communities and the promotion of social justice and intergenerational equity.⁸¹ The inequality of climate change impacts was a finding of a 2021 parliamentary inquiry into tackling climate change in Victorian communities.⁸²

The *Climate Change Act* requires the Victorian Government to prepare adaptation action plans every five years. Adaptation action plans are currently in place across seven sectors.⁸³ Of the sector-wide plans, none explicitly address law and justice challenges or contemplate legal assistance services in supporting transformative, equitable and just adaptation. This suggests a disconnect between stated legislative policy objectives and the pursuit of justice concerns across Victoria's climate adaptation planning. The recently published National Strategy for Just Adaptation may serve to inform future Victorian adaptation plans with greater emphasis on law and justice themes.⁸⁴

VICTORIAN LEGAL ASSISTANCE SECTOR

The legal assistance sector in Victoria comprises three pillars of publicly funded legal assistance. These include Community Legal Centres, Aboriginal and Torres Strait Islander legal services and Victoria Legal Aid. Community Legal Centres are independent, community-based organisations that service local place-based communities or specific populations such as women, young people and people with disability. Aboriginal and Torres Strait Islander Legal Services are Aboriginal community controlled legal services that work to ensure First Nations people have equitable access to justice. Victoria Legal Aid is a statutory

⁷⁹ Lawrence et al (n 44) 1633; Deloitte Access Economics, *The Economic Cost of the Social Impact of Natural Disasters* (Australian Business Roundtable for Disaster Resilience & Safer Communities, 2 March 2016).

⁸⁰ Jon Barnett et al, 'A Science of Loss' (2016) 6(11) *Nature Climate Change* 976.

⁸¹ *Climate Change Act 2017 (Vic)*, s 22(e).

⁸² Legislative Assembly Environment and Planning Committee (n 77) Finding 1, 24.

⁸³ The seven sectors are: built environment, education and training, health and human services, natural environment, primary production, transport and water cycle systems.

⁸⁴ Future Earth Australia, *A National Strategy for Just Adaptation* (Australian Academy of Science, 2022).

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authority established under the *Legal Aid Act 1978 (Vic)*. A statewide legal assistance strategy informs how legal services are delivered in Victoria. The strategy recognises climate change, extreme weather event preparedness, resilience and response as priority areas for legal assistance.⁸⁵ Public interest environmental legal organisations working at the intersection of social and environmental justice have led climate justice legal work in Victoria for many years. Environmental Justice Australia (EJA) provides legal assistance to individuals and communities affected by environmental and climate harm, and advocates for law and policy reforms to further environmental and climate justice. Understanding how climate change impacts on access to justice must evolve with acknowledgement of this foundational work. An area for further research is to examine the interdependencies of environmental and social justice as seen in the work of EJA, and the implications for access to justice scholarship as it intersects with climate change impacts.⁸⁶ This is highlighted in the human rights discussion below, in Part Four.

The role of the Victorian legal assistance sector in helping people impacted by climate change and extreme weather events, as well as working with communities to strengthen their preparedness and resilience, has expanded in recent years.⁸⁷ The establishment of Disaster Legal Help Victoria (DLHV) following the Black Saturday bushfires in 2009 was a key development. DLHV is a coordinated partnership between the Federation of Community Legal Centres Victoria, Justice Connect, Law Institute of Victoria, Victoria Legal Aid, the Victorian Aboriginal Legal Service and the Victorian Bar. Since its establishment, DLHV has responded to various disasters including the northeast fires in 2014/15, the Docklands fire in 2014, the Grampians bushfires in 2014, the Waverley pit collapse in 2015, the 2019/20 bushfires, COVID-19 tower lockdowns in 2020, the Yarra Ranges storm in 2021 and the 2022 Victorian Floods.

CLIMATE DISASTERS IMPACTING ACCESS TO JUSTICE IN VICTORIA

Numerous Australian and Victorian commissions of inquiry and reports into bushfires and floods have found that legal assistance following a disaster is an important element in the recovery of impacted individuals and communities.⁸⁸ Evidence shows that legal need following disasters varies according to the nature and scale of the hazard. Disasters create new legal needs whilst also exacerbating underlying legal and financial stress. They also result in new cohorts seeking legal help, especially small business owners and farmers.⁸⁹

⁸⁵ *Legal Assistance Strategy Victoria 2022-2025: Building the Foundations* (State Government of Victoria, June 2022) 36.

⁸⁶ Environmental Justice Australia: <<https://envirojustice.org.au/>> and the Environmental Defenders Office: <<https://www.edo.org.au/>>.

⁸⁷ Federation of Community Legal Centres Victoria, *Inquiry into the 2022 Flood Event in Victoria: Submission to Legislative Council Environment and Planning Committee* (June 2023) 5.

⁸⁸ Disaster Legal Help Victoria, *Royal Commission into National Disaster Arrangements: Disaster Recovery and Coordinated Legal Assistance* (No NND.600.00292_0001, Royal Commission into National Disaster Arrangements, 8 May 2020) 4; *The Royal Commission into National Natural Disaster Arrangements Report* (n 69); Joel Townsend, 'Natural Disasters: Designing Services to Respond to Legal Need' [2016] *Australian Environment Review* 318; Justice Connect, 'Submission to the Royal Commission into National Natural Disaster Arrangements' 17.

⁸⁹ Disaster Legal Help Victoria (n 88).

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A recent monitoring and evaluation project from the 2019/20 bushfires in the Gippsland and Hume Riverina regions offers insight into what is needed to reduce barriers to accessing justice in a climate disaster context.⁹⁰ Prominent evaluation themes include the need for strong service coordination and trauma-informed practice so that people are not forced to re-tell their disaster story to different agencies.⁹¹ Preparedness and early intervention legal responses are very effective,⁹² and a 'no wrong door approach' will prevent people falling through gaps in a service network.⁹³ In rural and regional locations, mainstream and Indigenous communities both prefer face-to-face legal services.⁹⁴

EVIDENCE OF LEGAL PROBLEMS ASSOCIATED WITH CLIMATE DISASTERS

The 2023 Victorian Law Foundation Public Understanding of Law Survey (PULS) is a new dataset on legal needs in the Victorian community.⁹⁵ Findings reveal that the 2019/20 bushfires resulted in significant legal need, with bushfire-affected individuals more likely to experience problem clustering and to report adverse consequences flowing from those legal issues.⁹⁶ However, despite evidence of higher problem prevalence, only a small number of bushfire-affected individuals actually linked their legal problem to the bushfires, revealing a lack of cognitive connection.⁹⁷ Evidence about increased legal need from the bushfires aligns with peak body reports of increasing demand for disaster-related legal services across the Victorian community legal sector, including for new types of legal assistance.⁹⁸

As each climate disaster is unique and recovery non-linear, big evidentiary gaps remain in our understanding of legal need across different extreme weather events. Victorian legal assistance services report these common areas of law for disaster recovery legal work:

- ▼ Residential tenancy and other forms of housing law (manufactured homes, caravan parks, emergency relief accommodation),
- ▼ Insurance law
- ▼ Employment law
- ▼ Social security law (including accessing disaster payments).⁹⁹

Tree damage to property, houses, cars and fences was the most prevalent legal problem reported by Eastern Community Legal Centre following the 2021 Yarra Ranges storm. Building on the empirical findings generated by PULS, there is an opportunity to broaden data collection and analysis to finetune

⁹⁰ Social Impact Hub, *DLHV Monitoring and Evaluation Project: Outcomes and Lessons Final Report* (10 August 2023).

⁹¹ *Ibid* 29–31, 38, 40.

⁹² *Ibid* 50–53.

⁹³ *Ibid* 63.

⁹⁴ *The Justice Project Final Report* (n24) 33; Social Impact Hub (n 90).

⁹⁵ Nigel J Balmer et al, *The Public Understanding of Law Survey Report Volume 1: Everyday Problems and Legal Need* (Victoria Law Foundation, 2023).

⁹⁶ *Ibid* 95–97.

⁹⁷ *Ibid* 97.

⁹⁸ Federation of Community Legal Centres Victoria (n 87) 10.

⁹⁹ Disaster Legal Help Victoria (n 88); Gippsland Community Legal Service and Anglicare Victoria, 'After the Fires: Problems with Insurance'; 'SSRV Letter to DLHV Re Impact of Victorian Floods' Letter from Social Security Rights Victoria, 19 October 2022; Victoria Legal Aid, *Legal Assistance and Community Recovery after the 2009 Victorian Bushfires: The Bushfire Legal Help Response* (2010) 1.

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understanding of how legal needs evolve and shape across the full cycle and diversity of extreme weather events in Victoria.

VICTORIA'S EXPERIENCE REFLECTED IN INTERNATIONAL LITERATURE

The evidence above reflects Victoria's frontline service delivery experience. However, it is reinforced by international research about the impact of extreme weather events on legal assistance, in particular from the USA, Japan and New Zealand.¹⁰⁰

Extreme weather events generate novel legal questions about rights, duties and options for disaster recovery.¹⁰¹ They also challenge legal assistance services to quickly upskill in areas of law that are not standard practice.¹⁰² Barriers to service delivery are created through the destruction of physical infrastructure, including courts and other justice agencies.¹⁰³ This can also result in precarious employment arrangements, with accounts of US lawyers working in tents or from their car because work premises had been destroyed. Extreme weather events aggravate the shortage of lawyers in rural areas; the spike in demand for legal work reveals the undersupply of lawyers in rural communities caused by state funding formulas that concentrate lawyers in urban areas.¹⁰⁴

The long tail of legal need that follows an extreme weather event is acknowledged, in part because problems may not initially appear to be legal, but eventually require engagement with legal processes.¹⁰⁵ There is also evidence of community legal services expanding their intake criteria to service wealthier clients in the immediate aftermath, where such clients would not usually qualify for free legal assistance.¹⁰⁶

Australian literature also documents an association between disasters and increased domestic and family violence, which can have a knock-on effect across many areas of civil law.¹⁰⁷ Anecdotally the rise in family violence-related legal problems alongside an extreme weather event is not being reflected on the ground in Victoria, with few services reporting an increase in demand for services in this area of law. However, this may be due to a data deficiency. Further research is required to better understand how legal assistance providers identify climate-related legal needs.

¹⁰⁰ United States (Hurricanes Katrina and Rita hitting the Greater New Orleans area one month apart in 2005, Sandy in 2012, California wildfires); Japan (2011 tsunami); New Zealand (2011 Christchurch earthquake).

¹⁰¹ Sara Debus and Seri Irazola, *Delivering Legal Aid after Katrina: The Equal Justice Works Katrina Legal Initiative* (Urban Institute Justice Policy Center, 2009) 74.

¹⁰² Jordan Ballard et al, 'Natural Disasters, Access to Justice, and Legal Services' (2013) 17(1) *CUNY Law Review* 1, 5.

¹⁰³ Debus and Irazola (n 101) 64.

¹⁰⁴ California Commission on Access to Justice, *Disasters in Rural California: The Impact on Access to Justice* (July 2019) 14.

¹⁰⁵ *Ibid* 4.

¹⁰⁶ Ballard et al (n 102) 18.

¹⁰⁷ Debra Parkinson, 'Investigating the Increase in Domestic Violence Post Disaster: An Australian Case Study' (2019) 34(11) *Journal of Interpersonal Violence* 2333.

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The role of vicarious trauma and post-traumatic stress for both clients and legal staff is also documented.¹⁰⁸ In Victoria, publications suggest that disaster recovery legal work can result in vicarious trauma.¹⁰⁹ Early findings from an Australian PhD study also indicate the prevalence of trauma accompanying disaster-related legal problems for both clients and their lawyers who are impacted by the same extreme weather event.¹¹⁰ In Victoria, occupational health and safety concerns have prevented Community Legal Centre staff from undertaking legal outreach during times of extreme heat and smoke pollution.

As an immediate to short-term response, mobile outreach legal clinics can reduce barriers to justice by accessing hard-to-reach populations.¹¹¹ While undocumented in the literature, this has been occurring in Victoria since Black Summer and the 2022 floods, illustrating the need for assertive outreach for people who do not present for assistance.¹¹² Finally, the international literature also documents the role of law schools and pro bono services in marshalling legal supports for low-income and at-risk communities in post-disaster settings.¹¹³ Australian law schools are beginning to engage in climate justice-related legal work such as Monash University Climate Justice Law Clinic. However disaster-specific clinics are not yet a feature of Australian clinical legal education.¹¹⁴

¹⁰⁸ Debus and Irazola (n 101) 66.

¹⁰⁹ Kirrily Schwarz, 'Code Red: Bushfires Spark High Legal Demand' [2020] (63) *Law Society Journal of NSW* 28, 33.

¹¹⁰ Monica Taylor, PhD Candidate QUT, *Striving for Climate Justice: the role of the Legal Assistance Sector in responding to climate change-informed civil law needs in Australia* HRE:5983. While this study has a national focus, the data is consistent with the Victorian legal assistance sector experience.

¹¹¹ Britane Hubbard et al, 'Taking Justice to People in Crisis: Mobile Legal Clinics Asia-Pacific' (2019) 44(1) *Alternative Law Journal* 76.

¹¹² Social Impact Hub (n 90).

¹¹³ Davida Finger et al, 'Engaging the Legal Academy in Disaster Response Legal Education Reform: Skills Building, Economic Justice, and Community Engagement' (2011) 10(1) *Seattle Journal for Social Justice* 211; Debus and Irazola (n 100); Jeffrey R Baker et al, 'In Times of Chaos: Creating Blueprints for Law School Responses to Natural Disasters' (2019) 80(2) *Louisiana Law Review* 421.

¹¹⁴ Monica Taylor, 'Climate Crisis, Legal Education and Law Student Well-Being: Pedagogical Strategies for Action' (2021) 40(3) *The University of Queensland Law Journal* 459, 472.

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KEY POINTS

- ▼ Victoria has experienced some of the nation's worst climate disasters in recent years. More frequent, compounded extreme weather events over the coming years will result in increased economic and intangible costs.
- ▼ Victoria has legislative and policy frameworks for addressing climate change impacts, and prioritising legal assistance for climate change-related matters.
- ▼ There is increasing demand for extreme weather-related legal services across the Victorian community legal sector to address new areas of law and a greater complexity and clustering of legal problems.
- ▼ A new empirical dataset (PULS) provides a foundation for ongoing data collection and analysis to fine-tune our understanding of how legal needs evolve and shape across the full cycle and diversity of extreme weather events in Victoria.
- ▼ International literature documenting issues and themes arising from disaster legal work mirrors the experience of Victorian legal assistance providers.

OPPORTUNITIES FOR FURTHER EXPLORATION

- ▼ There is an opportunity for greater focus on law and justice themes across Victoria's climate adaptation planning.
- ▼ Another area for further research is to examine the interdependencies of environmental and social justice as seen in the work of EJA, and the implications for 'access to justice' scholarship as it intersects with climate change impacts.
- ▼ Build on the empirical findings generated by PULS to scale data collection and analysis of how legal needs move across the full spectrum of extreme weather events in Victoria.
- ▼ There is a need for more research on the capability of clients, communities, and legal assistance providers to identify climate-related legal needs.

PART THREE: JUSTICE ISSUES ARISING FROM CLIMATE CHANGE IMPACTS

This section presents literature themes that relate to how climate change impacts exacerbate traditional access to justice issues, and new issues that are emerging.

Common legal needs appearing in the legal assistance sector in relation to identifiable climate impacts such as extreme weather events are tenancy, insurance, consumer credit and financial rights, social security and disaster payments, human rights and discrimination, wills and probate as well as local council and emergency services liabilities. It is also important to reiterate that all legal needs are compounded by climate change impacts, however this is an area needing further research.

HOUSING PRECARITY AND THREATENED HABITABILITY

Climate change impacts affect the habitability of all environments through the risk they pose to biodiversity, human health (in terms of food, water security, pollution, extreme heat, smoke and ash), and housing security. These impacts are already being seen in Victoria as climate change compounds pre-existing inequities and precarities as well as exposing new population cohorts to climate harm.¹¹⁵

In Victoria, exposure to environmental hazards and climate harms is manifesting most visibly in the issue of habitable shelter. This is evidenced by the heightened demand for climate safe housing, a rise in tenancy and insurance law issues, and increased pressure on the state to provide habitable social housing, prisons, schools and other public buildings. A recent report by the Special Rapporteur on the right to adequate housing documents the impact that the climate crisis is having on the enjoyment of this foundational human right that enables the realisation of many other human rights.¹¹⁶ Those most exposed to the impact of climate change on housing include persons experiencing homelessness, elderly people, women, children, LGBTIQ+ people, racial and ethnic minorities, refugees, internally displaced peoples, people living in detention, Indigenous peoples, and people with disabilities.¹¹⁷

¹¹⁵ See for example, Victorian Council of Social Service, *A Climate of Fairness: Making Victoria's Climate Change Transition Fair and Equitable* (Victorian Council of Social Service, October 2019).

¹¹⁶ Human Rights Council, *Towards a Just Transformation: Climate Crisis and the Right to Adequate Housing - Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in This Context, Balakrishnan Rajagopal* (No A/HRC/52/28, United Nations General Assembly, 23 December 2022).

¹¹⁷ *Ibid* 21.

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Since the Victorian bushfires of 2019/20 by October 2022 only 15% of those who lost houses had rebuilt in the East Gippsland region.¹¹⁸ These statistics hide the long tail of mental health and financial impacts on these communities. As extreme weather frequency and severity increases, Victoria risks seeing many communities living in substandard conditions for years without redress. To prevent this scenario, place-based and state-wide equitable adaptation and mitigation policies and approaches are vital to enable community resilience and prevent compounding livelihood and legal needs.

LAND USE PLANNING, COLLABORATIVE ACTION PLANNING

Recent severe climate-induced bushfires and floods have sparked existential questions about how and where we live. Evidence of what we need to do to rebuild and relocate is documented but there are many unanswered questions about how to achieve 'climate resilient development principles' without causing injustice.¹¹⁹ In Victoria, the need for collaborative, community-driven planning initiatives has been identified and many community service organisations, Community Legal Centres, local councils and activist groups are currently using a place-based, participatory approach to address the need for embedded climate justice actions.¹²⁰

Land use planning is an area of legal practice starting to be undertaken by Victorian Community Legal Centres in recognition of the significant human rights and equity considerations at play.¹²¹ A Victorian parliamentary inquiry found that the planning system, building codes and regulation all present substantial opportunities for mitigating and adapting to climate change impacts such as heatwaves and other extreme weather events.¹²²

DISPLACEMENT

Climate-induced extreme weather events are drivers of human displacement.¹²³ They can force people to leave their communities and places of residence, resulting in huge non-recognition and procedural injustices.¹²⁴ Human rights law and international legal standards reflected in the Guiding Principles on

¹¹⁸ East Gippsland Bushfire Recovery Committee, Third Progress Report, October 2022, 26.

¹¹⁹ Barbara Norman, Peter Newman and Will Steffen, 'Apocalypse Now: Australian Bushfires and the Future of Urban Settlements' (2021) 1(1) *npj Urban Sustainability* 1.

¹²⁰ *Collaborative Action Plan: Mobilising Climate Just and Resilient Communities in Melbourne's West* (Centre for Just Places, Jesuit Social Services, November 2022).

¹²¹ Monash Climate Justice Clinic and Gippsland Community Legal Service, *Guidebook to Public Land Management in Victoria* (March 2023) 66; Federation of Community Legal Centres Victoria (n 87) 15.

¹²² Legislative Assembly Environment and Planning Committee (n 77) Finding 21, 178.

¹²³ International Organization for Migration, 'Environmental Migration Portal' <<https://environmentalmigration.iom.int/environmental-migration>> accessed 19 October 2023.

¹²⁴ Julie-Anne Richards and Simon Bradshaw, *Uprooted by Climate Change: Responding to the Growing Risk of Displacement* (Oxfam Briefing Paper, Oxfam International, 2017); Gonzalez (n 43).

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Internal Displacement are relevant to protecting people and ensuring governments are held to account.¹²⁵ But critical analysis of domestic evacuations in Australia is lacking, with evacuees rarely being considered 'internally displaced persons' with rights and entitlements under international law.¹²⁶

A recent large scale systematic literature review on managed and planned retreat concluded there has been a marked increase in this scholarship in the past five years, with a strong emphasis on local case studies exploring governance, policy and institutional settings, and social and environmental justice impacts.¹²⁷ A form of managed relocation, government-administered volunteer buyback schemes are a risk reduction technique with significant procedural justice challenges.¹²⁸ Since the 2022 floods, buyback schemes currently operate in Queensland and New South Wales.¹²⁹ A buyback scheme in Victoria was previously administered in the aftermath of the 2009 Black Saturday fires.

Retreating from high-risk areas is necessary in the Australian context but gives rise to complicated issues about identity and place attachment, and cultural rights to connect to Country for First Nations peoples.¹³⁰ Scholarly and scientific consensus on the need for planned relocation often collides with the reality that people do not want to leave. This can frustrate the implementation of laws and policies on retreat and relocation and is an area of research that needs to be better understood.¹³¹ There are examples of how to approach these issues in a human rights-respecting way, such as Fiji's planned relocation guidelines¹³² and the New Zealand National Adaptation Plan, which embeds equitable adaptation approaches in partnership with Māori principles.¹³³ In Victoria and Australia no such comprehensive law or policy frameworks exist regarding managed retreat, although recent industry publications from the insurance industry suggest this issue will grow in prominence.¹³⁴ Ultimately the State is responsible for planned relocation and land use planning. An area for further consideration is how the State can guarantee procedural, distributive and recognition justice to all Victorians in these complex, evolving justice areas.

¹²⁵ Jane McAdam, *Exploring the Legal Basis in Australia for Evacuations from Disasters: Avoiding Arbitrary Displacement* (SSRN Scholarly Paper No 4046445, Social Science Research Network, 1 March 2022) 3; Ishrat Jahan, 'Climate-Induced Displacement: Protection under the Current International Legal Frameworks' (2020) 37 *Environment and Planning Law Journal* 225.

¹²⁶ McAdam (n 125).

¹²⁷ Tayanah O'Donnell, 'Managed Retreat and Planned Retreat: A Systematic Literature Review' (2022) 377(1854) *Philosophical Transactions of the Royal Society B: Biological Sciences* 20210129.

¹²⁸ Bethany Patch, 'Rising to the Challenge of Post-Disaster Buybacks and Rebuilding' (2023) 38(2) *Australian Journal of Emergency Management*; Mel Taylor et al, *Community Experiences of the January - July 2022 Floods in New South Wales and Queensland. Final Report: Policy-Relevant Themes* (Natural Hazards Research Australia, May 2023).

¹²⁹ Queensland Resilient Homes Fund: <<https://www.qld.gov.au/housing/buying-owning-home/financial-help-concessions/resilient-homes-fund>> New South Wales Resilient Homes Fund: <<https://www.nsw.gov.au/regional-nsw/northern-rivers-reconstruction-corporation/resilient-homes-fund>>.

¹³⁰ Norman, Newman and Steffen (n 119) 7.

¹³¹ Alexander B Lemann, 'Stronger than the Storm: Disaster Law in a Defiant Age' (2018) 78(2) *Louisiana Law Review* 437, 442–443.

¹³² *Planned Relocation Guidelines: A Framework to Undertake Climate Change Related Relocation* (Ministry of Economy, Republic of Fiji, 2018).

¹³³ *Adapt and Thrive: Building a Climate-Resilient New Zealand – New Zealand's First National Adaptation Plan* (Ministry for the Environment, 3 August 2022).

¹³⁴ Rhys Thomson, *Planned Relocation: Protecting Our Communities* (Rhelm and IAG, March 2023).

SLOW ONSET CLIMATE IMPACTS

Bushfires, floods and storms reveal the devastating impact that climate change is having on our environment and society. However, the pervasiveness of climate change and its less noticeable impacts also presents new justice challenges. Literary theorist Robert Nixon coined the term ‘slow violence’ of climate change. It is violence “that appears gradually and out of sight, a violence of delayed destruction that is disbursed across time and space, an attritional violence that is typically not viewed as violence at all”.¹³⁵ Slow violence as a concept is explored by Australian legal scholar Julie Dehm, who references the challenges associated with making visible the violence of climate change impacts and how they manifest in the day-to-day.¹³⁶

EXTREME HEAT AS SLOW VIOLENCE

The disproportionate impact of extreme heat on certain population groups is an example of a climate impact that could be regarded as slow violence. Extreme heat is a ‘silent killer’, and climate change is driving longer, hotter, and more intense heatwaves.¹³⁷ Extreme heat is particularly dangerous for many priority population groups assisted by legal assistance services including the elderly, the very young, people with disabilities and outdoor workers. In Victoria there is evidence of the impact of extreme heat on at-risk population groups in public housing settings.¹³⁸ The effects of extreme heat in low-paid workplaces and industries is also documented.¹³⁹

Scholarship from the United States documents the effect of high heat on prisoners and incarcerated populations.¹⁴⁰ It describes exposure to extreme temperatures in incarceration settings as an overlooked injustice.¹⁴¹ Academic literature on climate harm in carceral settings is generally less developed in Australia, but there are calls by Victorian advocacy organisations to achieve ecological justice through decarceration,¹⁴² and interstate human rights commentary about the weaponisation of weather against

¹³⁵ Rob Nixon, *Slow Violence and the Environmentalism of the Poor* (Harvard University Press) 2.

¹³⁶ Julia Dehm, ‘Climate Change, “Slow Violence” and the Indefinite Deferral of Responsibility for “Loss and Damage”’ (2020) 29(2) *Griffith Law Review* 220.

¹³⁷ Lesley Hughes, Elizabeth Hanna and Jacqui Fenwick, *The Silent Killer: Climate Change and the Health Impacts of Extreme Heat* (Climate Council of Australia, 2016).

¹³⁸ J Lander et al, *Extreme Heat Driven by the Climate Emergency: Impacts on the Health and Wellbeing of Public Housing Tenants in Mildura, Victoria* (Mallee Family Care, 2019).

¹³⁹ Elizabeth Humphrys, James Goodman and Freya Newman, “‘Zonked the Hell out’: Climate Change and Heat Stress at Work’ (2022) 33(2) *The Economic and Labour Relations Review* 256; Freya Newman and Elizabeth Humphrys, ‘Construction Workers in a Climate Precarious World’ (2020) 46(4–5) *Critical Sociology* 557.

¹⁴⁰ Daniel Holt, *Heat in US Prisons and Jails: Corrections and the Challenge of Climate Change* (SSRN Scholarly Paper No ID 2667260, Social Science Research Network, 1 August 2015); Kristen N Cowan et al, ‘Overlapping Crises: Climate Disaster Susceptibility and Incarceration’ (2022) 19(12) *International Journal of Environmental Research and Public Health* 7431.

¹⁴¹ Julianne Skarha et al, ‘An Overlooked Crisis: Extreme Temperature Exposures in Incarceration Settings’ (2020) 110(S1) *American Journal of Public Health* S41.

¹⁴² Jesuit Social Services, *Prisons, Climate and a Just Transition* (Jesuit Social Services, August 2021).

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juvenile detainees in the Northern Territory.¹⁴³ An area for further inquiry is to identify the areas of law relevant to the impacts of extreme heat, including possibilities of health justice, housing, access to public spaces, planning, employment law and other civil law jurisdictions.

Other slow onset climate change impacts likely to form barriers to accessing justice include drought, air pollution, environmental depletion, and sea level rise. Currently there is a paucity of evidence about how slow onset events materially shape access to justice concerns. There is an opportunity for access to justice scholars and practitioners to examine how slow onset climate change results in injustices for the clients and communities they assist (despite challenges of a lack of justiciability that was previously addressed in Part One). The lack of justiciable rights is in part because law is not sufficiently adaptive to address the polycentric nature of climate change; this itself can be regarded as a barrier to justice.¹⁴⁴ The theme of adaptive law is discussed next, in Part Four.

TRANSFORMATIVE ADAPTATION

For substantial access to justice to be realisable in a climate changed world, transformative adaptation is required.¹⁴⁵ Climate change mitigation and adaptation can be viewed as technical, infrastructural and social actions. A climate change transformations approach takes both adaptation and mitigation, but also addresses the root drivers and fundamental attributes of a system that creates vulnerabilities and marginalisation.¹⁴⁶ Transformative adaptation is an evolving approach most recently defined by the IPCC as "actions aiming at adapting to climate change resulting in significant changes in structure or function that go beyond adjusting existing practices."¹⁴⁷ It can bring about systemic changes that alter a society's conception of risk, the social contract, and human security.¹⁴⁸ This type of structural reform is particularly challenging for the institution of law, for reasons that are discussed later in Part Four.

¹⁴³ Stella Maynard, 'Weaponised Weathers: Heat, Don Dale, and "everything-1st" Prison Abolition', *Right Now* (13 August 2019) <<https://rightnow.org.au/opinion-3/weaponised-weathers-heat-don-dale-everything-1st-prison-abolition/>>.

¹⁴⁴ Elizabeth Fisher, Eloise Scotford and Emily Barritt, 'The Legally Disruptive Nature of Climate Change' (2017) 80(2) *The Modern Law Review* 173.

¹⁴⁵ Robyn S Wilson et al, 'From Incremental to Transformative Adaptation in Individual Responses to Climate-Exacerbated Hazards' (2020) 10(3) *Nature Climate Change* 200.

¹⁴⁶ HO Portner et al, *Summary for Policymakers, in Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Intergovernmental Panel on Climate Change, 2022); Mark Pelling, Karen O'Brien and David Matyas, 'Adaptation and Transformation' (2015) 133(1) *Climatic Change* 113.

¹⁴⁷ IPCC Working Group II Author Team, 'Concepts, Approaches and Examples of Transformational Adaptation, Based on the Key Findings of the AR6 Report on Impacts, Adaptation and Vulnerability' <https://unfccc.int/sites/default/files/resource/FINAL_IPCCContribution_GGA_5thWorkshop_IPCC.pdf>.

¹⁴⁸ Pelling (n 36); Pelling, O'Brien and Matyas (n 144); Roger Few et al, 'Transformation, Adaptation and Development: Relating Concepts to Practice' (2017) 3(1) *Palgrave Communications* 1.

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The evolving justice issues presented above are examples of climate adaptation strategies. They are reinforced by a large body of literature on what constitutes fair, just and community-based adaptation.¹⁴⁹ A recurring theme across adaptation scholarship is the need for broad civic participation in adaptation planning by individuals and impacted communities. Lack of participation or inadequate community consultation exacerbates inequality and injustice, and risks maladaptation that can worsen existing social, racial, class, gender or ethnic injustices.¹⁵⁰ For example, calls to achieve disability-inclusive climate justice reiterate the need for participation by people with disabilities to determine adaptation approaches that are "efficacious for, successfully implementable by, and accountable to disabled people."¹⁵¹

Prominent climate adaptation scholar Neil Adger highlights that adaptation to climate change "presents formidable dilemmas of justice ... ones which are more complex and no less important than those presented by mitigation."¹⁵² From an equity perspective, adaptation should include measures to reduce poverty and increase access to resources.¹⁵³ Adaptation requires structural change; it cannot be limited to treating incremental effects from climate change to simply maintain or bring people back to their "pre-change deprived state".¹⁵⁴ Australian legal scholars Jeremy Moss and Robyn Kath suggest that reducing inequality ought to be a key goal for informing and bringing about a just climate transition.¹⁵⁵ They demonstrate how climate justice principles are needed to ensure social justice goals are achieved in the transition to a low carbon society.¹⁵⁶

MALADAPTATION

The IPCC defines maladaptation as "actions that may lead to increased risk of adverse climate-related outcomes, increased vulnerability to climate change, or diminished welfare, now or in the future".¹⁵⁷ It refers to actions to adapt to climate impacts that increase rather than reduce vulnerability.¹⁵⁸

¹⁴⁹ Colette Mortreux and Jon Barnett, 'Adaptive Capacity: Exploring the Research Frontier' (2017) 8(4) *WIREs Climate Change* e467.

¹⁵⁰ Shi et al (n 36); Isabelle Anguelovski and David Pellow, 'Towards Emancipatory Urban Climate Justice Through Adaptation' (2020) 21(2) *Planning Theory & Practice* 308.

¹⁵¹ Penelope JS Stein and Michael Ashley Stein, 'Disability, Human Rights, and Climate Justice' (2022) 44(1) *Human Rights Quarterly* 81, 81.

¹⁵² Jouni Paavola and W Neil Adger, 'Fair Adaptation to Climate Change' (2006) 56(4) *Ecological Economics* 594, 594.

¹⁵³ Rosemary Lyster, 'Climate Justice, Adaptation and the Paris Agreement: A Recipe for Disasters?' (2017) 26(3) *Environmental Politics* 438, 441.

¹⁵⁴ Ribot, 'Vulnerability Does Not Just Fall from the Sky: Addressing the Vulnerability Conundrum' (n 59) 226.

¹⁵⁵ Jeremy Moss and Robyn Kath, 'Justice and Climate Transitions Special Issue: Imagining a Different Future, Overcoming Barriers to Climate Justice' (2018) 37(2) *University of Tasmania Law Review* 70.

¹⁵⁶ *Ibid* 92.

¹⁵⁷ R Noble et al, '2014: Adaptation Needs and Options' in CB Field et al. (eds), *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part A: Global and Sectoral Aspects. Contribution of Working Group II to the Fifth Assessment Report*.

¹⁵⁸ Jon Barnett and Saffron O'Neill, 'Maladaptation' (2010) 20(2) *Global Environmental Change* 211; Jonathan Verschuuren, 'Introduction to Climate Change Adaptation' in *Research Handbook on Climate Change Adaptation Law* (Edward Elgar Publishing, 2022) 1 <<https://www.elgaronline.com/edcollchap/book/9781800371491/book-part-9781800371491-6.xml>>.

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Calls to prevent maladaptive adaptation are framed as a need to avoid 'climate adaptation privilege' for the wealthy and unjust adaptation outcomes for people living in poverty.¹⁵⁹ Although recognised in adaptation frameworks, First Nations approaches to adaptation have not been prioritised in the granular policy levers of adaptation and disaster risk reduction initiatives in Victoria. This risks entrenching colonial structures. First Nations peoples and communities in Victoria hold deep knowledge from observing and living in a changing climate. This knowledge provides vital insights to inform approaches about how to adapt to climate change.¹⁶⁰

One of the guiding principles of the *Climate Change Act 2017 (Vic)* is community engagement, especially the involvement of "vulnerable or marginalised communities and future generations in decisions that affect them."¹⁶¹ In 2021, the Victorian Government fully accepted a parliamentary inquiry recommendation to strengthen its approach to community engagement.¹⁶²

The above literature sits outside the access to justice scholarship but is nonetheless instructive of how legal assistance services can work towards achieving fair, just and transformative adaptation for clients and communities. How the legal assistance sector can draw on human rights principles and frameworks to address evolving justice issues in pursuit of transformative adaptation is a further avenue of research. Human rights are addressed next in Part Four.

¹⁵⁹ Anguelovski and Pellow (n 150).

¹⁶⁰ Lawrence et al (n 44) 1650.

¹⁶¹ *Climate Change Act 2017 (Vic)* (n 81), s 27.

¹⁶² *Victorian Government Response to the Inquiry into Tackling Climate Change in Victorian Communities* (Victorian Government, 24 June 2021) 9.

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KEY POINTS

- ▼ Land use planning is a new area of legal practice for Community Legal Centres.
- ▼ The literature suggests that displacement, planned relocation and managed retreat will generate climate-induced legal need and justice challenges.
- ▼ Evidence of the slow violence of climate change and its impact on certain population groups is well documented in international literature, but less established in Australia except for the impact of extreme heat on certain population cohorts.

OPPORTUNITIES FOR FURTHER EXPLORATION

- ▼ There is an opportunity for access to justice research to consider how other slow onset climate change impacts such as drought, air pollution and sea level rise can result in injustices for clients and communities.
- ▼ A further avenue of research is how climate justice and human rights principles and frameworks can be used to address evolving justice issues in pursuit of transformative adaptation and the avoidance of maladaptation.
- ▼ More research is needed in the areas of displacement, planned relocation and managed retreat, particularly how procedural, distributive, recognition and substantial justice can be guaranteed as more communities become climate impacted.

PART FOUR: CLIMATE CHANGE IMPACTS ON LAW AND PRACTICE

The final section of this literature review considers how climate change affects the practice of law and service delivery in the context of access to justice.

ORGANISATIONAL ADAPTIVE CAPACITY OF THE LEGAL ASSISTANCE SECTOR

To deliver legal assistance, organisations need to be resilient and capable of withstanding climate shocks. Community Legal Centres have recently experienced devastating direct climate impacts, such as flood waters inundating both offices of the Northern Rivers Community Legal Centre and the homes of their staff.¹⁶³

In 2014, a major commissioned work on adapting the community sector for climate extremes found that organisations like Community Legal Centres lack the resources to effectively adapt to both incremental and extreme impacts of climate change.¹⁶⁴ A key finding from the report's integrative literature review was that there is an almost "universal blind spot" in connecting the precarity of people experiencing poverty and disadvantage with the adaptive capacity and climate resilience of the community organisations that work with them. In an organisational context, adaptive capacity refers to the extent to which an organisation can make well-informed, strategic short and long-term decisions in planning for and responding to the negative and positive implications of climate change.¹⁶⁵

A 2017 Victorian study considered how to optimally support the adaptive capacity of community organisations with limited resources.¹⁶⁶ The researchers found that building the knowledge, learning and confidence of small, modestly resourced community organisations to undertake adaptation planning was best achieved through co-inquiry processes.¹⁶⁷ This study and its participatory design may inform capacity building work within the legal assistance sector around climate resilience. Other considerations include the

¹⁶³ *Living under Threat: Northern Rivers Community Legal Centre and the 2022 Floods* (Community Legal Centres NSW, 2022) <<https://www.clcnsw.org.au/film-northern-rivers-disaster-response>>.

¹⁶⁴ Karl Mallon et al, *Adapting the Community Sector for Climate Extremes* (National Climate Change Adaptation Research Facility, 31 October 2014) 286.

¹⁶⁵ Hartmut Fünfgeld et al, *Facilitating Adaptation: Lessons Learnt from Engaging and Supporting the Primary Health and Community Services Sector in Climate Change Adaptation* (RMIT University, Monash University, Victorian Centre for Climate Change Adaptation Research, 2014) 39.

¹⁶⁶ Hartmut Fünfgeld, Kate Lonsdale and Karyn Bosomworth, 'Beyond the Tools: Supporting Adaptation When Organisational Resources and Capacities Are in Short Supply' (2019) 153(4) *Climatic Change* 625.

¹⁶⁷ *Ibid.*

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capability of boards and senior management to identify and mitigate climate change risks to infrastructure and operations.¹⁶⁸ Victorian Community Legal Centres are encouraged to use various toolkits in support of climate resilience and governance planning.¹⁶⁹

CLIMATE CHANGE LITIGATION – A TOOL FOR TRANSFORMATIVE ADAPATION?

Litigation as a strategy to drive climate mitigation and prevent or reduce carbon emissions has rapidly increased over the past decade.¹⁷⁰ In 2023, Australia was the jurisdiction with the highest number of climate change litigation cases globally outside the United States of America and the European Union.¹⁷¹ While analysis of how climate change litigation achieves mitigation outcomes is well established, there is less understanding of how litigation can be used as a tool to achieve justice in adaptation contexts.¹⁷² There are calls to broaden the scope of climate litigation to include legal actions and cases that extend to more everyday issues such as tenancy and consumer credit law.¹⁷³ Widening the scope will allow for less visible, domestic climate change disputes to be recognised.¹⁷⁴ An illustrative example in the Australian context is a case study describing how discrimination law might be used to challenge climate injustices arising from structural racism against First Nations peoples.¹⁷⁵

More research is needed to document and identify climate adaptation litigation across the access to justice sector. Discrimination, social security, and tenancy law disputes all potentially fit this characterisation, but are typically viewed as conventional civil law matters. It has been previously noted that further research and data is needed to make the association between climate change impacts and legal needs. Addressing failures to adapt has been identified as a trend for future climate change

¹⁶⁸ Ray Walker and Wendy Mason (eds), *Climate Change Adaptation for Health and Social Services* (CSIRO Publishing, 2015).

¹⁶⁹ Australian Council of Social Service, 'Resilient Community Organisations Toolkit' (2015) <<https://resilience.acoss.org.au/>>; Climate Governance Initiative Australia, Australian Institute of Company Directors and PricewaterhouseCoopers, *Climate Governance for NFP Directors - Starting the Journey to Net Zero* (May 2023) <<https://www.aicd.com.au/content/dam/aicd/pdf/news-media/research/2023/NFP-Climate-Governance-Guide.pdf>>.

¹⁷⁰ Jacqueline Peel and Hari M Osofsky, 'A Rights Turn in Climate Change Litigation?' (2018) 7(1) *Transnational Environmental Law* 37; Jacqueline Peel, Hari Osofsky and Anita Foerster, 'Shaping the "Next Generation" of Climate Change Litigation in Australia' (2017) 41(2) *Melbourne University Law Review* 793.

¹⁷¹ Michael Burger and Maria Antonia Tigre, *Global Climate Litigation Report: 2023 Status Review* (Sabin Center for Climate Change Law, Columbia Law School & United Nations Environment Programme).

¹⁷² Jan McDonald and Phillipa C McCormack, 'Rethinking the Role of Law in Adapting to Climate Change' (2021) 12(5) *WIREs Climate Change* e726, 284; *ibid* 13.

¹⁷³ Birsha Ohdedar, 'Climate Adaptation, Vulnerability and Rights-Based Litigation: Broadening the Scope of Climate Litigation Using Political Ecology' (2022) 13(1) *Journal of Human Rights and the Environment* 137, 145.

¹⁷⁴ Kim Bouwer, 'The Unsexy Future of Climate Change Litigation' (2018) 30(3) *Journal of Environmental Law* 483, 23.

¹⁷⁵ Beth Goldblatt, 'Climate Change, Inequality and Discrimination Law: The Example of Swimming Pool Access in Moree' (2023) 46(1) *University of New South Wales Law Journal* 56.

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litigation.¹⁷⁶ This suggests an opportunity to deepen the interdependence between environmental and social justice both in the literature and through legal casework.

HUMAN RIGHTS AS A FRAMEWORK FOR PURSUING CLIMATE AND DISASTER JUSTICE

Climate justice is grounded in human rights, and climate change interferes with the enjoyment of many human rights recognised in international and domestic laws.¹⁷⁷ Recent scholarly attention points to how human rights-based approaches might provide a means of protecting future generations' interests from increasingly severe impacts of climate change.¹⁷⁸ Adaptive law scholars also encourage the deployment of human rights law as an important legal check on the design and implementation of adaptation policies.¹⁷⁹ The use of human rights instruments to protect First Nations interests in relation to climate change impacts must always be grounded in the perspectives, knowledge and rights of Indigenous peoples.¹⁸⁰ The Environmental Defenders Office (EDO) and Environmental Justice Australia (EJA) have led human rights-based climate litigation to bring complaints and proceedings grounded in the cultural rights of First Nations peoples, the protection of families and children, and the rights of persons with disabilities.¹⁸¹

The *Charter of Human Rights and Responsibilities Act 2006 (Vic)* (the Charter) provides a legal mechanism for the realisation of 20 human rights, including several provisions that are relevant to climate change and adaptation planning, such as the right to life and the right to property. To date the Charter has not been utilised to advance climate-change related actions. This contrasts with other jurisdictions like Queensland where a coal mine was refused by the Land Court due to its climate change impacts.¹⁸²

Australia does not have comprehensive national human rights protection or formal domestic legal recognition of human rights. However, human rights frameworks can still be a useful mechanism for

¹⁷⁶ Burger and Tigre (n 171) 74.

¹⁷⁷ Sumudu Atapattu, 'Chapter 3, Climate Change and Human Rights: A Justice Issue?' in *Human Rights Approaches to Climate Change: Challenges and Opportunities* (Routledge, 2015) 68.

¹⁷⁸ Bridget Lewis, 'Human Rights Duties Towards Future Generations and Achieving Climate Justice' in Deborah C Poff and Alex C Michalos (eds), *Encyclopedia of Business and Professional Ethics* (Springer International Publishing, 2020) 1.

¹⁷⁹ Jan McDonald, 'The Role of Law in Adapting to Climate Change' (2011) 2(2) *WIREs Climate Change* 283, 287.

¹⁸⁰ Narelle Bedford, Tony McAvooy and Lindsey Stevenson-Graf, 'First Nations Peoples, Climate Change, Human Rights and Legal Rights' (2021) 40(3) *University of Queensland Law Journal* 371.

¹⁸¹ *Environmental Justice Australia v Australia*: on 25 October 2021, EJA submitted a complaint on behalf of five young Australians between 14 and 24 years old to the United Nations Special Rapporteur on Human Rights and the Environment, Special Rapporteur on the Rights of Indigenous Peoples, and Special Rapporteur on the Rights of Persons with Disabilities over the Australian government's inaction on climate change. The EDO acted for Tiwi Senior Lawman Dennis Tipakalippa in a successful case to prevent drilling of fossil fuel gas: *Santos NA Barossa Pty Ltd v Tipakalippa* [2022] FCAFC 193 and for Youth Verdict and the Bimblebox Alliance to challenge a coal mine on human rights grounds: *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 6)* [2022] QLC 21.

¹⁸² *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 6)* [2022] QLC 21.

influencing policymaking because they position those most impacted by climate harm as rights bearers, not victims.¹⁸³

In future, the Charter may influence access to justice in the area of climate impacts by emphasising the importance of human rights considerations in adaptation planning and highlighting the need to protect the rights of all Victorians, particularly those who are most at risk of climate harms. Understanding the intersection of human rights, climate change adaptation and disaster response remains underdeveloped in Victoria; this is an opportunity for further research.

THE LEGAL PROFESSION'S CLIMATE CONSCIOUSNESS

Climate change is rapidly infiltrating all areas of mainstream legal practice, prompting calls that "we are all climate lawyers now".¹⁸⁴ The role of lawyers in effecting social change through legal work is a thriving area of legal research¹⁸⁵ but how legal assistance sector lawyers ought to integrate climate change into their practice is only starting to be considered. Monica Taylor and Bronwyn Lay identify climate justice as integral to community lawyering given the unique history and design of Community Legal Centres that deliver place-based, holistic, and integrated services.¹⁸⁶

In 2021, Australia's national peak representative body for the legal profession, the Law Council of Australia (LCA), issued a national climate change policy. The policy outlines an evidence-based policy position on climate change to inform the development of law, the role of the legal profession, legal practice and legal education.¹⁸⁷ Accompanying this national policy is a detailed background paper that outlines the scientific, social and economic context of climate change, the legal implications of climate change and implications for the legal profession.¹⁸⁸ This work suggests the gradual mainstreaming of climate change considerations across all areas of legal practice in Australia, but falls short of laying down a climate justice agenda like the LCA's global counterpart, the International Bar Association.¹⁸⁹

¹⁸³ Scott Walker, 'The Meaning and Potential of a Human Rights-Based Approach to Climate Change Post-Sharma' (2022) 47(3) *Alternative Law Journal* 194; Stein and Stein (n 151).

¹⁸⁴ Margaret A Young, 'Climate Change and Law: A Global Challenge for Legal Education' (2021) 40(3) *The University of Queensland Law Journal* 1.

¹⁸⁵ See for example, Carrie Menkel-Meadow, 'The Causes of Cause Lawyering: Toward an Understanding of the Motivation and Commitment of Social Justice Lawyers' in *Cause Lawyering: Political Commitments and Professional Responsibilities* (Oxford University Press, 1996); Mary Anne Noone and Stephen Tomsen, 'Service beyond Self-Interest? Australian Lawyers, Legal Aid and Professionalism' (2001) 8(3) *International Journal of the Legal Profession* 251; Paula O'Brien, 'Changing Public Interest Law - Overcoming the Law's Barriers to Social Change Lawyering' (2011) 36(2) *Alternative Law Journal* 82.

¹⁸⁶ Monica Taylor and Bronwyn Lay, 'Community Lawyering and Climate Justice: A New Frontier' (2022) 47(3) *Alternative Law Journal* 199.

¹⁸⁷ Law Council of Australia, *Climate Change Policy - Policy Statement* (27 November 2021).

¹⁸⁸ Law Council of Australia, *Legal Implications of Climate Change: Background Paper* (2021) 140.

¹⁸⁹ International Bar Association Climate Change Justice and Human Rights Taskforce (n 39).

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Seeking climate justice outcomes for clients requires lawyers to be professionally sensitised to undertake climate work in everyday legal practice.¹⁹⁰ A climate-conscious lawyer draws connections between legal problems and climate change and gives advice to resolve the legal problem whilst meaningfully addressing climate change issues.¹⁹¹ Lawyers working across the legal assistance sector need climate change literacy to deliver climate justice-related legal work.¹⁹² Yet reports indicate that more frequent and intensifying extreme weather events are leading to professional fatigue and vicarious trauma for those involved in disaster recovery legal work.¹⁹³

There is potential for despondency and despair to undermine the work and present a barrier to effective service system responses. Appropriate and sustained funding to equip climate change-related legal work is also necessary to ensure that the community legal sector is not compelled to "do more with less".¹⁹⁴

ADAPTIVE LAW

The pre-conditions that enable justice are changing. Climate volatilities are entering and disrupting social, cultural, economic and legal systems. Adapting to the impacts of climate change poses unique challenges for the discipline of law with its hallmark features of stability, certainty and predictability. Climate change is legally disruptive to business-as-usual legal practice and doctrine.¹⁹⁵ Laws and policies must become sufficiently reflexive, iterative and capable of responding to anticipated changes.¹⁹⁶ In other words, they must be climate proofed.¹⁹⁷

A considerable body of research examines the nature and scope of adaptive law in the context of climate change.¹⁹⁸ Legal academic Jan McDonald traces how law is both an enabler and a barrier to adaptation, describing various challenges for designing adaptive laws such as localised climate impacts, conflicts and tradeoffs, pervasive uncertainty, and irreversibility.¹⁹⁹

¹⁹⁰ Brian J Preston, 'Climate Conscious Lawyering' (2021) 95(1) *Australian Law Journal* 51.

¹⁹¹ Ibid; Preston, 'The Effectiveness of the Law in Providing Access to Environmental Justice' (n 37); Brian J Preston, 'The Adequacy of the Law in Achieving Climate Change Justice - Some Preliminary Comments' (2016) 34(1) *Journal of Energy & Natural Resources Law; London* 45.

¹⁹² Monica Taylor, 'Why We Must Be Climate Conscious: How Legal Needs Are Changing' [2019] *Proctor* 40; Taylor and Lay (n 186).

¹⁹³ Social Impact Hub, *DLHV Monitoring and Evaluation Project - Outcomes and Lessons (Draft)* (31 May 2023) 44.

¹⁹⁴ Taylor and Lay (n 186) 202.

¹⁹⁵ Fisher, Scotford and Barritt (n 144) 174.

¹⁹⁶ McDonald (n 179) 289.

¹⁹⁷ Verschuuren (n 158) 13.

¹⁹⁸ Tim Bonyhady, Andrew Macintosh and Jan McDonald (eds), *Adaptation to Climate Change: Law and Policy* (The Federation Press, 2010); Craig Anthony Arnold and Lance H Gunderson, 'Adaptive Law and Resilience' (2013) 43(5) *Environmental Law Reporter News & Analysis* 10426; Barbara Cosens et al, 'The Role of Law in Adaptive Governance' (2017) 22(1) *Ecology and Society*; Joseph Wenta and Jan McDonald, 'The Role of Law and Legal Systems in Climate Change Adaptation Policy' in EC Keskitalo and BL Preston (eds), *Research Handbook on Climate Change Adaptation Policy* (Edward Elgar Publishing, 2019).

¹⁹⁹ McDonald (n 179) 283.

PART FOUR: CLIMATE CHANGE IMPACTS ON ACCESS TO JUSTICE

Jan McDonald and Phillipa McCormack lay down five design principles for adaptive laws. Laws must be: (1) responsive to change; (2) address equity dimensions of climate change; (3) implement innovative solutions; (4) maximise co-benefits; and (5) establish processes for managing tradeoffs.²⁰⁰ Laws with deep structural, philosophical and historical foundations such as private property law or insurance law are difficult to reform, but failure to do so will undermine transformative adaptation.²⁰¹ Resilience thinking is also suggested as an approach for understanding and managing change that can enhance the effectiveness of adaptation laws in addressing climate impacts.²⁰²

This conceptual work is yet to be applied to areas of law commonly associated with access to justice, for example tenancy, employment, discrimination and social security laws.²⁰³ The need for holistic adaptive law reform across all jurisdictions is an underdeveloped claim currently without a methodology or approach. This is an area needing attention if Victorian laws seek to achieve justice in a climate-changed environment.

Climate change also amplifies the risk of losing things that we value for which there are no commensurable substitutes.²⁰⁴ This includes landscapes, neighbourhoods, cultures and social cohesion, which cannot be remedied through legal proceedings; the law simply cannot compensate or provide suitable reparation for losses that are non-proprietary in nature. There is an existential question about accessing justice in circumstances where deep loss cannot be remedied by law. This is painfully relevant for First Nations peoples.²⁰⁵ International work on introducing ecocide law into the Rome Statute also recognises the limitations of domestic and civil law in accessing justice for the irreparable damage that climate change and unfettered emissions has caused to cultures, communities, environments and future generations.²⁰⁶ The issue of access to intergenerational justice and remedies for the irreparable damage to our common home is beyond the scope of this literature review but is an avenue for further consideration

²⁰⁰ McDonald and McCormack (n 172).

²⁰¹ Ibid 14.

²⁰² Joseph Wenta, Jan McDonald and Jeffrey S McGee, 'Enhancing Resilience and Justice in Climate Adaptation Laws' (2019) 8(1) *Transnational Environmental Law* 89.

²⁰³ Verschuuren lists tort law, property law, insurance law, disaster law, water law, marine law, planning law, biodiversity law, building and construction law, environmental law, migration law, agricultural and energy laws as categories of laws that must meet the challenge of adaptation: Verschuuren (n 158) 11.

²⁰⁴ Barnett et al (n 80).

²⁰⁵ Williamson, Weir and Markham (n 61); Phoebe Quinn, Bhiemie Williamson and Lisa Gibbs, 'Indigenous-Informed Disaster Recovery: Addressing Collective Trauma Using a Healing Framework' (2022) 16 *Progress in Disaster Science* 100257.

²⁰⁶ Bronwyn Lay et al, 'Timely and Necessary: Ecocide Law as Urgent and Emerging' (2015) 28 *Journal Jurisprudence* 431.

KEY POINTS

- ▼ It is important that community-based organisations have strong organisational adaptive capacity, but there is evidence that organisations such as Community Legal Centres lack the resources to effectively adapt to both incremental and extreme impacts of climate change.
- ▼ Widening the scope of climate litigation to include adaptation will help to categorise traditional access to justice work as climate-change related.
- ▼ Lawyers working in the access to justice sector need to be climate conscious, yet there is evidence of professional fatigue and vicarious trauma for those involved in disaster recovery legal work.
- ▼ Laws need to be adaptive to respond to climate change, and there are design principles to guide the creation of adaptive laws that include equity concerns. This conceptual design-thinking can be applied to everyday laws that the legal assistance sector deals with.

OPPORTUNITIES FOR FURTHER EXPLORATION

- ▼ Applying conceptual design-thinking to make everyday laws more adaptive is an avenue for further research.
- ▼ Better understanding of the intersection between human rights, climate change adaptation and disaster response is needed in Victoria and is an area for further inquiry.
- ▼ The issue of access to intergenerational justice and remedies for the irreparable damage to our common home is beyond the scope of this literature review but is an avenue for further consideration.

CONCLUSION

Climate change impacts demand an expansion of our understanding of access to justice. This literature review has identified a turning point in research, with considerable knowledge gaps about how to identify injustice in people's experience of climate change and extreme weather events.

New framings that can account for the collision of biophysical and social injustices will help expand access to justice thinking for a more interdependent and intersectional approach. More research is needed to understand the enablers of justice in a climate changed world. This will likely include the identification of systemic drivers of climate and disaster injustice, improved organisational resilience for the legal assistance sector, and greater application of human rights as a tool for bringing about transformative climate adaptation.

Victoria already has a legal foundation for addressing climate change impacts, and this literature review shows there is an opportunity to embed climate justice more fulsomely across all existing legal and policy frameworks. This will help shape legal assistance services in a future defined by intensifying global warming and compounding and accelerating climate impacts.

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