

# Legal assistance and community recovery after the 2009 Victorian bushfires

The Bushfire Legal Help response

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**Bushfire help**

**Another dry argument**

**THE BIG ISSUE VICTORIA'S BUSHFIRES**  
**Lawyers just trying to help with the practicalities**



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Mr Bevan Warner  
Managing Director  
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Dear Mr Warner 

### **BUSHFIRE LEGAL HELP**

I would like to congratulate Bushfire Legal Help (BLH) on the outstanding service that the partnership has provided this year to victims and survivors of the 2009 Victorian bushfires.

Last year's Victorian bushfires were the worst in Australia's history. 173 people perished and 2,133 homes and many business premises were destroyed. Many more people suffered injuries, trauma and extensive damage to their properties.

On the first anniversary of the devastating bushfires, I would like to commend the number of legal services that came together to provide coordinated and free legal services to bushfire victims within days of the catastrophic events of Black Saturday. The collaboration between the Federation of Community Legal Centres, the Public Interest Law Clearing House, the Victorian Bar, the Law Institute of Victoria, the Victorian Law Foundation and Victoria Legal Aid was a swift, strategic, compassionate and unified response for which many are grateful.

One year on, BLH plays a critical role in the response and recovery for victims and survivors with an integrated approach to the timely and efficient resolution of legal issues. The efforts and active contribution of each BLH partner continues to be greatly appreciated.

Yours sincerely



**ROB HULLS MP**  
Attorney-General



# Executive summary

On 7 February 2009, Victoria experienced its worst natural disaster when bushfires of unprecedented ferocity swept through the state. One hundred and seventy three people lost their lives on 'Black Saturday', as it has since become known; many more homes and properties were destroyed, and entire communities shattered.

Thousands of Victorians faced the complexities of piecing their lives back together while still in a state of shock from the traumatic loss of family members and destruction of their homes and communities. Help with the maze of legalities left in the bushfires' wake was clearly going to be a vital component in the recovery of individuals and communities, and Victoria's legal community acted quickly to co-ordinate a unified response. A consortium was established which became known as Bushfire Legal Help.

The formation of Bushfire Legal Help, within two days of the bushfire disaster, was a unique collaboration of the Victorian legal profession's peak bodies. It was established to provide free legal assistance to bushfire victims and their communities under a single banner. Partners were Victoria Legal Aid, the Public Interest Law Clearing House (PILCH), the Victorian Bar, the Victoria Law Foundation, the Law Institute of Victoria, and the Federation of Community Legal Centres.

In the aftermath of the bushfires, Bushfire Legal Help provided the following services:

- set up a free 1800 Hotline
- established triage legal clinics at bushfire relief centres
- delivered ongoing advice and assistance through local community legal centres
- organised a webcast to prepare volunteer lawyer for their roles
- developed a comprehensive website
- authored over 35 fact sheets on topics such as dealing with Wills and estates, insurance, coronial processes, insurance and property matters
- posted updated legal resources to the website and compiled information kits for lawyers, case managers and volunteers at relief centres
- established an Insurance Unit at Victoria Legal Aid to respond to complex casework
- facilitated pro bono legal referrals
- ran community legal education and media campaigns to inform Victorians about legal topics as they emerged

- initiated advocacy work to promote direct participation of people affected by the bushfires in the 2009 Victorian Bushfires Royal Commission.

In the months following the fires, Bushfire Legal Help responded to over 2165 enquiries, and provided ongoing legal assistance and resources to more than 800 Victorians affected by the bushfires.

Factors in the success of the partnership were:

**1. Creation of a strong single entity.** Legal assistance and pro bono services were provided under one banner. Quick processes were put in place to develop one logo, one name, strong branding, and a single spokesperson. Partners were willing to merge their own individual identities and deliver services through a 'one-stop-shop' model. This helped to avoid confusion for clients and other service providers.

**2. Quick mobilisation of existing resources.** An 1800 free Hotline was set up within only a few days because there was existing infrastructure and other resources from Victoria Legal Aid's phone service to build upon. Victoria Legal Aid was able to release lawyers and other support staff immediately to attend relief centres. Through the Law Institute of Victoria's database of 15000 members, a speedy process was put in place to recruit volunteer lawyers to attend the relief centres. Similarly PILCH drew upon skills and experience from lawyers at their member firms and barristers from the Victorian Bar. Community legal centres were already operating in most of the fire-affected areas, enabling them to quickly respond to community needs.

**3. Effective and open communication.** Rapid establishment of a project management team, provided through Victoria Legal Aid, meant there was a central point for information, communication, and decision-making. Through this channel, the partnership could organise regular briefing meetings, group emails with regular updates, and set up communication pathways with Department of Human Services' case managers, local government and other emergency services.

### Legal assistance services and community recovery: lessons for the future

Bushfire Legal Help played an important role in helping people recover from the bushfire emergency, particularly as victims turned to rebuilding their lives. Legal advice and help was able to ease some of the shock and trauma of victims by helping them to deal with a plethora of immediate needs which could have become overwhelming, such as Wills and estate administration, insurance claims, dealing with utility companies and replacement of lost documents.

The extent and breadth of issues that required legal intervention after disaster extended, however, well beyond these more immediate issues. Other, sometimes unforeseen, legal issues continued to emerge as communities faced rebuilding, new government planning processes, and the need for assistance in participation in the 2009 Bushfires Royal Commission.

Early intervention in these issues can help prevent family and relationship breakdown, while speedy resolution of financial, employment, housing and rebuilding problems can help avoid a downward cycle into unemployment, debt and financial hardship. The Victorian government's *Psychosocial recovery framework*, developed in the aftermath of the bushfire disaster, emphasises that recovery is multifaceted, and includes ensuring material and practical needs are met so that later mental health issues are minimised.<sup>1</sup>

The Bushfire Legal Help partnership believes that legal services play a critical role in each of the three components of emergency management: prevention, response and recovery.

The provision of legal assistance should be recognised in emergency management arrangements within Victoria and across Australia, as timely and efficient resolution of legal issues will ultimately assist government by limiting the burden on other social and health-related resources.

Bushfire Legal Help is a largely unfunded partnership, primarily resourced by the goodwill and generosity of each of its members. The response of community legal centres, who were already on the ground delivering services immediately after the fires, was assisted by \$220,000 in funding provided by the Commonwealth Attorney-General's Department in the weeks following the fires. This funding was distributed to six generalist centres and PILCH.

Each member of the partnership has recognised the success of this collaboration and each is willing to take a similar approach and response in the event of any future emergency. However, the ability of each agency to commit its resources to the fullest extent necessary for such a response is dependent on funding. The Bushfire Legal Help partnership has demonstrated the need for funding to be allocated at both the state and national level, so that the provision of legal services to resolve everyday problems is available to the same extent as other emergency management services in a crisis situation (such as relief centres, housing, health and medical services).

Lessons learnt from the Bushfire Legal Help experience also point to the need for legal assistance services to be integrated into existing and future emergency response plans, so that stronger collaboration can be developed with other services such as local councils and health and welfare agencies.

<sup>1</sup> Victorian Government Department of Human Services, (2009), *After the bushfires: Victoria's psychosocial recovery framework*

# Recommendations

1.

The provision of legal assistance services in the event of a natural disaster should be recognised as an integral and vital aspect of community recovery and included in emergency plans. Delivery of legal services should be integrated into the planning and funding of Emergency Management Australia (at a national level) and Victorian State Emergency Response Plan (DIS-PLAN) in the same way as other essential services.

2.

In delivering emergency response services, state and national governments should consider the development of innovative, collaborative models of service delivery, with co-location of services such as housing, health, counselling and legal services. This will enable a holistic, immediate multidisciplinary response to the complex needs people will experience.

3.

The legal assistance sector needs to be proactive in recognising and identifying the broad range of longer-term legal problems that arise in the aftermath of a major emergency, and take steps to bring these to the attention of governments and planning bodies so that solutions can be developed.

# 1. Reaching out into the community: the formation of Bushfire Legal Help

On 7 February 2009, Victoria was devastated by the worst bushfires in Australia's history. One hundred and seventy three people lost their lives. Around 78 communities were directly affected, entire towns were left unrecognisable, and thousands more left homeless. The bushfires burnt more than 2000 properties and 61 businesses. Police stations, schools, kindergartens, fire and emergency services facilities, churches, community halls and sporting clubs were also destroyed or badly damaged. Almost 430,000 hectares of land were directly affected, including 70 national parks and reserves and over 3550 agricultural facilities.

As the full scale of the devastation wreaked by the bushfires became clear, Victoria Legal Aid convened a meeting with other legal assistance providers.

At this initial meeting, held within two days of the bushfires, staff from Victoria Legal Aid, the Law Institute of Victoria and the Federation of Community Legal Centres came together to explore what legal services each organisation could offer to the victims of this major disaster. The meeting resolved to pool resources, skills and knowledge from across their organisations and provide a co-ordinated legal response. The partnership agreed to a triage model of services, with an initial single contact point including a telephone service, clinics at the relief centres that were being set up, and development of information packages.

To strengthen the consortium and broaden its influence, the Public Interest Law Clearing House, Victorian Bar, and Victorian Law Foundation were then invited to join the partnership. On 10 February, the consortium members agreed to establish the Bushfire Legal Help project. This early decision to operate under one umbrella ensured a collaborative approach and also assisted with raising awareness of the new service. Quick development of a logo and corporate branding for Bushfire Legal Help meant there was an easily recognised symbol that could be used for promotion.

Though provision of legal services had not been included in existing state or national emergency management plans, the partnership recognised that victims recovering from the bushfires would be confronting many complex legal issues, such as dealing with coronial processes, lost or destroyed Wills and recovery of identity documents, as well as insurance, mortgage and employment problems. The partnership viewed it as a major priority to reduce duplication and confusion for vulnerable people already suffering shock and trauma, who might otherwise have had to navigate a large and confusing number of different legal organisations. Bushfire Legal Help adopted the guiding principles of continuity of care, streamlining of referral pathways, and a rapid and user-friendly response to meet the challenge of these unique circumstances.

At first the partner members had agreed to provide an initial response for seven to ten days, and intended to develop a joint proposal for government funding for any ongoing work. However when the overwhelming response and level of need became evident, the Bushfire Legal Help partnership extended its work indefinitely.



### How the response was managed

The Bushfire Legal Help partners formed a steering committee that met regularly initially for the first three weeks. These regular meetings strengthened communication avenues between partners, and also provided a sounding board to address issues or risks to the project as they emerged. The steering committee also provided daily support to the project staff team.

Victoria Legal Aid was the lead agency and committed resources to assist with project management and infrastructure support. A team of administrative support staff was recruited from within Victoria Legal Aid to support a project manager with operational responsibility.

Victoria Legal Aid's project managers had overall responsibility for initiation of services during the crisis period. It was their task to assess and execute the plan and make critical decisions such as scaling back some activities and diverting resources elsewhere. In the first few chaotic days, access to regions hit by the bushfires was severely restricted and basic services and infrastructure had been destroyed. Practical systems for work in the relief centres had to be developed from scratch, such as organising space and access permits, sourcing resources and equipment, co-ordinating advice records and data collection, and rostering and deploying the hundreds of legal volunteers that were willing to help.

Victoria Legal Aid had primary responsibility for liaison and communication with the other partners and ensuring that there were channels for opinions, feedback and concerns to be collated.

Local co-ordinators at the relief centres provided co-ordination, administration and management support. In the first three weeks, this co-ordination role was very intense and required considerable negotiation and work to bring services together.

As the work evolved, subcommittees and working groups were formed to deal with issues as they arose and share information. The set-up of the Community Legal Centres Bushfire Working Group was an example of one of these sub-groups, which enabled staff working in fire-affected areas to discuss casework and trends in assistance. A community legal education working group was another example of a group which evolved in order to pool expertise and knowledge about what was needed in this area.

'The scale of the tragedy galvanised people into action and forced people to identify the practical needs of bushfire survivors and their families, and to work together to problem-solve how to best meet that need.

'It forced people and organisations to co-operate with each other, within and outside the legal assistance sector – and to ensure that offers of support with legal advice and telephone advocacy were sensitive to the individual needs of survivors, who approached the task of reclaiming control of their lives, in very different ways. We learnt more about ourselves and the importance of co-operation than we otherwise would, so some good has come out of the disaster. The partnership cemented ties between staff and agencies and helped us think about how best to deliver services to people where and when they need it.

'We also learnt from family case managers and humanitarian agencies that practical help and easy access to legal advice is an important component of any recovery response. We thought this was true ourselves, but it was nice to have it validated through all the informal feedback we received and we hope this will be reflected in future emergency management plans.'

Bevan Warner, Managing Director, Victoria Legal Aid

## 2. Overview: the Bushfire Legal Help response

With the creation of a single, unified response from the legal sector, the Bushfire Legal Help service was able to provide a 'one-stop' single entry point for legal advice. It was vital to provide a trusted, respected source of help at a time when searching through a confusing maze for reliable and trustworthy advice would have added to the burden and trauma that individuals were already experiencing.

As the partnership evolved in the weeks following the bushfires, the emphasis continued to be on sensitivity to the needs of the community, responsive and flexible services, and respect for the grief and sense of loss in the bushfire-affected communities.

The main components of the response were:

- setting up the Bushfire Legal Help Hotline, an 1800 Hotline which provided advice, information and referral services for people affected by the bushfires
- compiling and distributing resources and information kits for lawyers that would be working in the bushfire-affected areas
- the provision of advice at relief centres
- the development of community education materials, including fact sheets and a manual
- creating a recognisable 'brand' which could become a trusted source of advice and information for people who were overwhelmed by the tragedy
- setting up a Bushfire Insurance Unit with expertise in the complex areas of insurance-related law that arose in the fire's aftermath.

Over the following weeks and months, more than 6000 services, including advice sessions, Hotline services, and distribution of written and online community education materials, were provided to people affected by the bushfires.

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*'Most of the early work was about listening and talking to people, putting them in contact with the right person. People needed replacement documents, help filling out forms. It was very practical help, and was mainly about reassurance for people.'*

Emma Aldersea, co-ordinator at Kinglake bushfire relief centre

### The Bushfire Legal Help Hotline

The establishment of a single 1800 number for those affected by the bushfires was an important frontline response. Callers to this line were given verbal legal information, and Hotline staff made a preliminary assessment of their needs and legal issues, carried out initial research, and sent out written information if needed.

Victoria Legal Aid already operated a well-established telephone advice line, the Legal Information Service, and so was well-placed to host and staff the hotline. It already had infrastructure in place for call distribution and statistical reporting, and Legal Information Service staff had extensive experience in providing legal information and referrals and expertise in a call centre environment. The Hotline took its first calls within four days of the bushfires.

The Bushfire Legal Help Hotline has responded to more than 2943 calls since it began operating on 11 February 2009.

### Advice clinics at the relief centres

An early decision of the partnership was that legal assistance should be provided directly on site at the 13 relief centres established by the Department of Human Services in Victoria. These centres in the early stages were providing basic services such as food, shelter, clothing, and financial support. It was important for lawyers to be a visible presence at the frontline services alongside other agencies such as Centrelink, health services, and local governments. The partnership recognised, too, that victims were still in shock and their lives had been turned completely upside down; thinking of their legal problems, or recognising that their issues had a legal solution, was unlikely to be their top priority in the early days.

*'We were shattered to come back to our home and find the whole place burnt down. Thank God we were safe. We met the legal staff at the Kinglake relief centre who helped us with all our paper work – right from getting a birth certificate for our little baby, who was only four days old, to sorting out issues with our landlord. The lawyers worked around our needs and even called us out of hours. I am so grateful.'*

#### TH and MH, a young couple\*

Before services were established, partnership leaders visited bushfire relief centres in order to identify potential legal needs, assess appropriate responses, and work out the best possible methods for co-ordinating activities and contact points at each centre.

Good relationships were quickly established with staff from the Department of Human Services and Centrelink staff. Local co-ordinators (staff and volunteers from Victoria Legal Aid and community legal centres) developed strong and effective links with other community organisations and government and local authorities.

*'It was shocking to take the drive, in the aftermath of the bushfires, through Whittlesea and up to Kinglake. The landscape was blackened, and the community was reeling in shock.'*

#### Joel Townsend, Victoria Legal Aid lawyer

By 17 February 2009, just ten days after the bushfires, volunteers and lawyers had already provided over 76 advice sessions at the relief centres. Bushfire Legal Help's presence had been welcomed, and strong relationships established with other services at the centres. Initial queries coming

through at the centres were focused on insurance issues, fencing, business, rental property, statutory declarations, family law issues and Wills.

In the first four months after the fire, Bushfire Legal Help provided around 800 advice sessions at relief centres and community legal centres.

#### Development of information and resources

The Bushfire Legal Help partnership worked quickly to identify what information and resources were required to support staff visiting relief centres. The first priority was to develop a resource kit to assist volunteer lawyers. The resource kit included forms, information and resources on legal issues they were likely to encounter.

A briefing session to help volunteer lawyers prepare for their work with bushfire-affected communities was hosted at Victoria Legal Aid. Topics covered included how to deal with victims who were grieving and traumatised, as well as information on looking after their own wellbeing. This briefing was taped and web-streamed to outreach locations for practitioners who were not able to attend in Melbourne. Technological support for this web-streaming was provided by the co-ordinated efforts of Victoria Legal Aid and the Supreme Court, and the volunteer assistance of Mr Greg Sneddon.

A logo and other promotional material were created to clearly 'brand' the new identity as a recognisable and trustworthy symbol of where to get legal help.

In the following weeks, a series of factsheets was developed, on topics such as insurance, fencing, coronial processes and the 2009 Bushfires Royal Commission. These were used throughout the initial emergency legal response, and formed the basis of a handbook which was launched by July 2009.

\*All client names in this report have been changed to protect their confidentiality

Online information was also quickly made available, through the Bushfire Legal Help website which was established within weeks after the bushfires. This site provided legal fact sheets and links to events such as legal clinics and insurance roadshows, as well as media releases and background on each of the partner agencies, and links to their websites.

More than 2500 printed factsheets were distributed in 2009. There were also at least 1200 visits to the factsheets page on the web, where information could be downloaded. The most popular pages viewed were factsheets pages on the Royal Commission, fencing issues, and information on replacing lost and destroyed documents.

In total, the Bushfire Legal Help website received almost 7000 visits in 2009.

### **Bushfire Insurance Unit**

After the immediate crisis had passed, a sustainable and effective model to deal with work generated through the on-site services and the hotline was needed. To manage the high volume of enquiries on insurance, banking and credit issues, Victoria Legal Aid established a Bushfire Insurance Unit. The Unit consisted of four lawyers dedicated to insurance and banking issues, who were able to undertake casework and advocate on behalf of clients. This specialist unit was the logical next step in Bushfire Legal Help's evolution from crisis management to the provision of quality legal work with a focus on individual problem solving.

More than fifty people attended 'roadshows' organised by the Bushfire Insurance Unit.

'It was wonderful to see legal staff from Bushfire Legal Help working alongside families in a supportive manner to help them resolve the problems as soon as possible. I was really humbled by their compassion.'

A relief centre case manager from the Department of Human Services

'From involvement in the Bushfire Legal Help response at relief centres, through to working for the Bushfire Insurance Unit, I felt increasingly a sense that the people I was dealing with were recovering, and rebuilding their lives. It was satisfying to have an involvement, however marginal, in that process.'

'For all that, there were some frustrations in our work. There were people we couldn't help – people who, for a range of reasons, hadn't insured themselves appropriately. The experience seemed to have a paralysing effect, so there were some people who, no matter what encouragement, advice and guidance we gave them, seemed unable to take steps to advance their claim or resolve their dispute. Bureaucratic rigidity was sometimes a hurdle in dealing with insurance claims and claims for compensation, though it was satisfying when we were able to break the logjam.'

'It is disappointing, but was probably inevitable, that some 12 months after the fires we are still dealing with a small number of difficult or intractable cases, typically matters of emotional complexity, rather than legal puzzles.'

Joel Townsend, bushfire relief centre co-ordinator

THE BIG ISSUE VICTORIA'S BUSHFIRES  
Lawyers just trying to help with the practical

YOUR front-page launch  
action for class actions.  
People can also call the Bushfire  
line on 1800 113 432 on weekdays for  
confidential advice. The service is sup-  
Victoria Legal Aid, Federation of Victo-  
ria Law Centres, the Law Institute of Victo-  
Public Interest Law Clearing House.  
People may choose to pursue their leg-  
rights through class actions further down t  
track. But in our experience, their more  
immediate legal needs are to do with insura-  
sues, lost documents and other practical  
problems.

KERRY O'SHEA, Bushfire Legal He

### Bushfire help

LEGAL centres will get an  
extra \$220,000 to help bushfire  
victims, federal Attorney-  
General Robert McClelland  
said yesterday.  
Community legal centres  
offer advice on housing,  
tenancy, lost documents and  
other matters. For details,  
phone the Bushfire Legal  
Helpline on 1800 113 432.

...one fire-affected farmer  
...is reportedly very grateful to the fire-  
...saver for saving his property and knows that at the time  
...using all his water was the only option. But now he has a  
...lot of stock and no water to keep them alive. It's not a case  
...of who to blame or who to sue but who can help?

# 3. Project partners and their contribution

While much work was interdependent and relied on the alliances and shared work of all partners, the individual agencies also drew on their own unique strengths, connections, relationships and resources. This chapter outlines the contribution made by each of the partner agencies.

## VICTORIA LEGAL AID

### About Victoria Legal Aid

Victoria Legal Aid helps people with their legal problems. It is an independent statutory authority, which provides information, referral, advice and legal representation services in family, civil and criminal law. It has a focus on helping and protecting the rights of socially and economically disadvantaged Victorians. Victoria Legal Aid services are available through a network of 14 offices, and it also funds community legal centres in over 40 locations across Victoria.

### Victoria Legal Aid's role in Bushfire Legal Help

Victoria Legal Aid was one of the founding members of Bushfire Legal Help and took a proactive role in establishing the project and co-ordinating its management. Its key roles included:

- providing resources for the ongoing co-ordination and resourcing of the response
- hosting and staffing the Bushfire Legal Help Hotline
- developing marketing and promotional materials
- co-ordinating the production of fact sheets and a handbook
- setting up and staffing the Bushfire Insurance Unit
- project management.

Victoria Legal Aid also offered volunteers and staff from other partner agencies access to its employee assistance support services so that any possible impact of the distressing nature of the work could be addressed.

*'It was a huge challenge to ensure timely and accurate advice to large numbers of people across such a large geographic area. Fortunately, Victoria Legal Aid as an organisation, together with its staff, have amazing networks that allowed us to connect our services and our people to where they were needed.'*

Jenny Lawton, Bushfire Insurance Unit lawyer

### Bushfire Legal Help Hotline

One of the early initiatives of Bushfire Legal Help was the speedy establishment of an 1800 Hotline. Victoria Legal Aid has for the past 20 years operated a phone advice service (the Legal Information Service) so already had a call centre structure in place, and experienced staff trained to deal with crisis calls and a wide variety of legal issues.

The 1800 number, which became known as the Bushfire Legal Help Hotline, took its first calls four days after the bushfires. The number was secured from the Department of Justice, and operated on Mondays to Fridays from 8.45 am to 5.15pm. It was promoted extensively through the media, business cards, community outreach, website and community legal education publications.

The role of the Hotline staff was to assess the initial legal needs of callers, provide legal information, and make active referrals to Bushfire Legal Help partner agencies. They also helped callers by providing additional written information or referred them to the Bushfire Legal Help website once it was established.

Two staff members were released from their usual roles with the Legal Information Service to deal with incoming calls and follow-up work. The establishment of these positions continued until the end of March 2010.

Bushfire Legal Help Hotline staff and managers met regularly with staff from the partner agencies to establish and review protocols to meet the community's emerging needs. Links were also established with the Department of Human Services' case managers, the Financial Ombudsman and other relevant agencies.

Workload was an issue that needed to be closely monitored, as every episode of media coverage (especially regarding the Royal Commission) caused a spike in calls. The managers of the Hotline were also acutely aware of the vicarious trauma that could have arisen from staff's exposure to the distressing nature of some of the calls they received, and supported and encouraged them to be aware of this potential impact.

### Negotiating the legal maze

Staff on the Bushfire Legal Help Hotline needed to deal sensitively with a range of complex and inter-connected legal problems. They drew on a wide range of skills to help people who phoned in, whose grief and pain was often still very raw. The story of Louise and her grandfather Jack was an example of the sort of assistance that was provided, and the resources from within Victoria Legal Aid that were drawn upon:

*Jack, an elderly man, rang the Bushfire Legal Help line with an enquiry. Tragically, his adult daughter had died in her car in the bushfires while she was out visiting away from home. His teenage granddaughter Louise was living alone in her mother's house and was struggling to deal with matters after her mother's death.*

*Jack was concerned that Louise had not yet received any financial assistance from the Bushfire Appeal Fund. She had not been able to get access to her inheritance and was having trouble getting her drivers' licence because all her identity documents were lost in the fire. Staff on the Hotline provided some preliminary information and sent Jack some written resources. They encouraged Jack to ask Louise or her case manager to call back for further help.*

*About a week later Louise called. Her grandfather had helped her sort out her licence problems using the information that Hotline staff had sent out. Louise was given more information about Appeal Fund grants, the legal process for a deceased estate (the executor's role, why there may be some delays, and mortgage repayment). Hotline staff also suggested other issues she should look into, such as whether her mother had any life insurance policies or superannuation, and payments from the Transport Accident Commission (TAC).*

*The Hotline staff encouraged Louise to ask her case manager for help in following up on this information and suggested that she seek counselling. Louise was very confused about how to obtain TAC payments. Hotline staff directly contacted the TAC and found out the name of her TAC case manager and the status of her case. Louise was encouraged to keep in touch, either directly or through her case manager, if she had any more questions or needed ongoing legal help so that arrangements could be made for her to see a lawyer at a community legal centre in her area.*

### A 'warm referrals' model

The Hotline worked to establish a 'warm referral' system. Under this model the referrer introduces the client to the referee either verbally over the phone or in person. This avoids the need for traumatised people to have to re-tell their story again and again.

Development of a 'warm referral' system involved considerable discussion and negotiations within the Bushfire Legal Help partnership. As individual organisations, each agency had different protocols and criteria for intake. With the needs of the people affected by the bushfires as a priority, a cohesive referral system was worked out. It required partnership members spending a lot of time gaining understanding of each other's process, and developing trust, goodwill and a commitment to adhere to agreed processes.

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*'I think these people would have given up fairly quickly if they felt they were going to be given the run-around or got a recording to leave a message.'*

#### Hotline worker

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The later establishment of a Bushfire Insurance Unit (see page 15) was a further step in assisting Hotline staff to provide referrals quickly and seamlessly.

#### Marketing and promotion materials

Victoria Legal Aid's design team created an identity for the Bushfire Legal Help partnership. The concept behind the brand was regrowth and rebirth; this was developed using a simple icon within the logo and a fresh, clean colour scheme. This brand was used as a unifying symbol for all the organisations involved.

The use of blue and green in all supporting materials developed by the consortium, further reinforced the identity and recognition of the partnership.

Victoria Legal Aid developed posters, fact sheets, templates for business cards, media releases, letterhead, word templates, caps, postcards, logo design, press ads, power-point presentations and clinic flyers. These were also tailored to accommodate the needs of different regional areas.

*'I spent a lot of time putting up the posters around the centres. They were an excellent resource, they provided a good visual cue for people affected by the fires, and built up a picture of what we were there for.'*

**Bushfire relief centre co-ordinator, Emma Aldersea**

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#### Communications and community education

Victoria Legal Aid's communications and community education team convened a working group from across the partnership, to quickly identify what information was required to support staff visiting relief centres, and develop kits. The main outcomes of this work were the Bushfire Legal Help Handbook and a series of legal factsheets.

The working group, which initially met on a monthly basis, looked at similar projects that had responded to legal needs after large-scale catastrophes. They examined handbooks that had been compiled after the September 11 disaster and the Southern Californian Wildfires in 2007. In the wake of these disasters, resources had been developed that were designed to set out some of the legal issues victims needed to consider, help them understand the basics about each issue, and to point people in the right direction for help.

The community legal education group adopted a similar approach, firstly developing a series of factsheets. These were a valuable resource for victims dealing with the crisis, and lawyers and case managers trying to respond meaningfully and efficiently to some of the immediate legal issues arising from the crisis. They covered topics such as debt, family law, the coronial process and dealing with insurance and utility companies. The eleven fact sheets were later developed into the Bushfire Legal Help handbook.

Victoria Legal Aid allocated a staff member to co-ordinate the production of these materials. A project officer was also recruited with funding support from Victorian Law Foundation

for the development of a handbook. Staff from Victoria Legal Aid focused on scoping, researching, drafting, editing, proofing, formatting and printing fact sheets and the handbook.

The handbook was launched on the Bushfire Legal Help website on 1 July 2009. The site recorded its highest number of visitors during the week of the launch.

#### From the foreword to the Bushfire Legal Help Handbook

*'The handbook provides practical advice on how to cope with many of the issues arising as a consequence of the fires, and provides links to countless other useful organisations and resources. I commend all those involved in compiling this handbook, which I am confident will be of great assistance to those engaged in the difficult and ongoing work of re-establishing their lives.'*

John Brumby, Premier of Victoria

#### Advice clinic co-ordination and roadshows

Victoria Legal Aid lawyers, together with community legal centre staff, took up roles as co-ordinators at the relief centres. As well as directly providing advice to bushfire-affected people, they organized volunteers from the partners, set up rosters, and later organized 'roadshows'. The roadshows included other services such as the Insurance Council of Australia and the Financial Ombudsman Service, and covered specific issues which were becoming apparent through the Hotline. The most well-attended roadshow was at Kinglake, one of the areas most devastated by the bushfires, but the shows also visited Whittlesea, Yarra Glen, Gippsland, and Flowerdale. More than 50 people were directly assisted by the roadshows.

Emma Aldersea, a senior lawyer at Victoria Legal Aid, worked for five months co-ordinating the legal response at the Whittlesea and Kinglake relief centres. She describes the Bushfire Legal Help response as *'quite phenomenal. Given that we'd never done anything like this before, it was amazing how well the legal community worked together.'*

*'The early days were very confronting. When we first went in there (on the Thursday after Black Saturday), there were still burnt-out cars on the side of the road. It gave you a very real sense of the scale of the devastation. We were given wristbands to enter the area as access was very restricted for the first four weeks or so.'*

*'The relief centres were chaotic—but it was a supportive kind of chaos. Things moved so quickly. New announcements were being made constantly, things changed from the morning community meetings to the afternoon ones. Attending those meetings was a really important way of learning first hand what was going on.'*

*'The work was like there was a whole new area of law happening. People didn't always realise their problem was a legal one, but with the agencies all being located together, it was easy for a person who had gone to the Red Cross table, for example, to be walked over to us if they had a query about a missing Will.'*

*'I think our background at Victoria Legal Aid was a real advantage. We are used to dealing with people who are disadvantaged, traumatised and distressed. You had to be patient, and let a story unfold, instead of trying to get a person to sum their situation up in three quick sentences.'*

*'We had a setback when a story appeared in the paper suggesting that lawyers would be launching a class action. That did hurt us a little until people realised what Bushfire Legal Help was all about. Laying blame just wasn't*

where people in the community were at. Everyone was philosophical, and felt “we live here, these things happen”. They were just thankful to be alive.

*‘The whole experience of working for Bushfire Legal Help was an inspiring one. You recognise how much can be achieved when people work together. On Valentine’s Day, a week after the fire, a bank brought in red roses for all the women. I was overwhelmed by the sense of community and the response of so many people.*

*‘I learnt a lot about Victoria Legal Aid and felt incredibly proud to work here. The response was about so much more than the lawyers, everyone here helped one way or another, even if it was picking up the workload of the people that were out at the relief centres. Our senior management were just fantastic, and were very supportive in helping us recognise when we were working too many hours. But in some ways, you have to run on adrenalin, and in a crazy, crisis situation like that, there is really no other way to approach it’.*

### **Bushfire Insurance Unit**

Rebuilding is a major priority of bushfire-affected people, and insurance issues are inextricably interconnected with that work. Seven weeks after the creation of Bushfire Legal Help, Victoria Legal Aid established a Bushfire Insurance Unit to deal with the large number of insurance-related matters emerging from the Hotline and relief centres. The Bushfire Insurance Unit also aimed to work on systemic advocacy for the range of issues they were seeing.

The Bushfire Insurance Unit, consisting of four lawyers – three full time and one part time – began work on 6 April 2009. Its staff had considerable knowledge, skills and experience in the areas of insurance matters, credit, debts and other complex legal matters. Two lawyers with backgrounds in insurance, one from New South Wales,

were seconded to the Unit. This was partly to assist with the workload and partly to build interstate expertise in helping disaster victims with insurance issues.

The Unit established close ties with the Federation of Community Legal Centres’ Bushfire Working Group so that a clear understanding of roles and purposes could develop and enable streamlined services and referrals.

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*‘Black Saturday was an opportunity for insurance companies to demonstrate their bona fides. Unfortunately, once some insurers had packed up their trestle tables and umbrellas and left the relief centres, an overwhelming number of people were confronted by call centre mentality resulting in claims escalating into disputes.’*

**Jenny Lawton, Bushfire Insurance Unit lawyer**

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### **Activities undertaken by the Bushfire Insurance Unit**

**Reviewing legal records:** In the first four weeks after the Unit was established, staff reviewed all legal advice records of clients who had already attended clinics at the relief centres, to ensure they had been provided with the right advice on insurance matters. They also made follow-up phone calls to clients. Working on these cases also helped lawyers develop their understanding of the systemic issues that people were facing.

**Outreach clinics:** As full access to bushfire-affected communities was not granted until late March, some people affected by the fires had limited access to legal services during the initial crisis stage. The Bushfire Insurance Unit staff established outreach clinics at different relief centres and community hubs in fire-affected areas.



**Roadshows:** The Bushfire Insurance Unit organised ‘insurance roadshows’ in the areas most affected by the bushfires. Four such roadshows were held at Yarra Glen, Healesville, Kinglake and Marysville, in partnership with the Financial Ombudsman Service and the Insurance Council of Australia. The roadshows, which were well-attended, were conducted under the banner of Bushfire Legal Help, but the individual legal advice sessions were conducted exclusively by Insurance Unit staff. Training sessions were also provided on insurance matters to Victoria Legal Aid and community legal centre staff to increase their capacity to provide legal support to clients on insurance matters.

**Training:** The Unit also conducted training for the Victorian Bushfire case managers (who were funded by the Department of Human Services), and financial counsellors, on insurance and other financial issues.

**Appeal fund:** Staff from the Bushfire Insurance Unit met with the Executive Director of the Bushfire Appeal Fund to advocate for access to grants by people who had lost a house that was under construction. According to the Appeal Fund’s eligibility criteria, people were only eligible for a grant relating to loss of a dwelling if it was the person’s ‘principal place of residence’. This criteria excluded those who were renting or boarding while in the process of building their intended principal place of residence. Based in part on recommendations provided by the Unit, the Appeal Fund developed new guidelines concerning people affected by this type of loss.

**Financial Ombudsman Service Terms of Reference:**

The Bushfire Insurance Unit also liaised with the Financial Ombudsman Service about the Code Compliance Committee. The Unit prepared a submission to the review of the Financial Ombudsman Service Terms of Reference. Its concerns were that bushfire victims were unable to access this dispute resolution forum in relation to business interruption claims when the source of the dispute was the insurer. The Terms of Reference were not, however, amended to encompass business interruption insurance disputes, despite the Unit’s submission.

**General Insurance Code of Conduct Review:**

The Insurance Council of Australia announced a review of the General Insurance Code of Conduct which sets out the standards applying to all general insurers in Australia regarding the conduct of its business, including claims management. A challenge for the Bushfire Insurance Unit was that the review’s timelines allowed only one month for submissions and the review was being conducted without an issues paper. The Bushfire Insurance Unit prepared a submission and were able to negotiate significant changes which were to clients’ advantage.

The contribution made by Denis Nelthorpe towards Bushfire Legal Help was an example of how the partnership could tap into existing expertise and knowledge in the field.

Denis works at the West Heidelberg Community Legal Service. As a consumer lawyer with long-standing experience in insurance problems, he had invaluable understanding of this area, which, it quickly became apparent, was a major problem for bushfire-affected people as they began the slow and complex process of building their lives.

Denis says, 'Initially I provided training materials for other lawyers and consumer information for affected individuals. However, as the recovery efforts gathered pace, it was becoming obvious that insurance problems were making up to 70 per cent of the problems being encountered. As increasing demands were made on my time I felt that it was a privilege to be in a position to help so many of the fire-affected residents.'

'Callers needed information on the application and interpretation of insurance policies and the process for dealing with delays and complaints against insurers, despite an impressive response from that industry, and so the Bushfire Insurance Unit was set up by Victoria Legal Aid.'

'Through the Unit we assisted hundreds of people, either directly or through providing information to bushfire case managers and financial counsellors. Many victims of the fire received increased pay-outs and many more were helped to understand claims and complaints processes. It continued to be a privilege to be able to assist residents and their advisors through the work of the Unit.'

'Personally it has been a humbling experience to play a part in the response. The stoicism of many of the survivors reminds me of the capacity for survival required by early settlers in this country.'

## PUBLIC INTEREST LAW CLEARING HOUSE

### About the Public Interest Law Clearing House

The Public Interest Law Clearing House (PILCH) is a not-for-profit organisation which is committed to furthering the public interest, improving access to justice and protecting human rights. PILCH does this by facilitating the provision of pro bono legal services and undertaking law reform, policy work and legal education.

PILCH's main role is to receive, assess and refer requests for pro bono legal assistance. PILCH generally assists individual clients who satisfy legal merits and means tests and who are ineligible for legal aid. In response to the unprecedented circumstances, PILCH and its member and supporting firms and barristers relaxed these eligibility criteria to ensure pro bono assistance was extended to Victorians affected by the bushfires.

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*'A tragic and unprecedented surge in demand for legal assistance emerged from Australia's worst ever natural disaster. Who could have predicted that thousands of Victorians would suddenly face the loss of a family member, their town and property and, in addition to dealing with the trauma and grief that followed, would have to deal with the complexities of piecing their lives back together, for which legal assistance would prove invaluable? It was in these circumstances that the legal profession's extraordinary commitment to pro bono shone brightest.'*

**Mat Tinkler, Acting Executive Director, PILCH**

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### Role of PILCH in Bushfire Legal Help

PILCH dedicated significant internal resources to the Bushfire Legal Help response. These included:

- collaborating with stakeholders to establish Bushfire Legal Help
- staffing and triaging advice clinics in fire-affected communities
- arranging an expert panel of barristers with expertise in relevant areas to provide secondary consultations to triage clinic lawyers
- co-ordinating referral pathways and referrals to pro bono lawyers and barristers from the Hotline
- sourcing and disseminating fact sheets.

### Clinics at the relief centre

Legal clinics at relief centres were intended to provide immediate responses and triage support to fire victims. The clinics were staffed primarily by community lawyers and private lawyers from local areas who had generalist expertise and experience in dealing sensitively with grief and trauma. PILCH co-ordinated additional lawyers to fill the roster, both through its own lawyers and its Homeless Persons Legal Clinic (HPLC).

PILCH firstly circulated a 'call to arms' to HPLC firms, requesting their assistance in providing team leaders and senior lawyers to attend the clinics and take on referred clients. The response from firms was tremendous and individual firms were directly matched with relief centres in Myrtleford, Alexandra, Kinglake, Yea, Arthurs Creek/St Andrews, Diamond Creek, Healesville/Yarra Glen, Eaglehawk and Traralgon.

The lawyers who volunteered advised generally on a broad range of issues, and referrals were made back to Bushfire Legal Help Hotline for matters requiring additional assistance.

PILCH arranged an expert panel of barristers with expertise in relevant areas to provide secondary consultations to triage clinic lawyers. Each lawyer was provided with a senior barrister who co-ordinated enquiries on a particular area of law. The lawyers at relief centres could directly call an 'area of law co-ordinator' to obtain advice about legal questions that fell outside their own practice expertise. The role of the law co-ordinator was either to provide the advice directly or refer the question to a barrister with particular expertise.

### Complexity of bushfire-related legal issues

The devastating impact of the bushfires also led to many difficult and complex legal issues arising for people who died unexpectedly and had no Will. An example was the tragic situation of Michael, who lost his two children, Amy and Martin, in the bushfires. Also killed in their Kinglake home was the children's mother, Josephine, from whom Michael was divorced. Josephine died without a Will.

Daniel, who claimed to be Josephine's domestic partner at the time of her death, then applied to State Trustees for letters of administration.

Michael contacted State Trustees some time after the fires as his children's next of kin, and learnt that Daniel had already applied for letters of administration. There was significant dispute as to the nature of Daniel's relationship with Josephine. Michael believed that Josephine's relationship with Daniel had ended at the time of Josephine's death, that Daniel had moved out of their home in Kinglake, and that Josephine was living with her new partner (also deceased) at the time of the fires. Michael explained that he was the father of the children and was asked by State Trustees to provide supporting documentation as proof. Michael provided copies of the children's birth certificates, together with information about his relationship with Josephine, their

marriage, separation and divorce, as well as documentation about his relationship with his children. State Trustees, however, later informed Michael that it intended to apply for letters of administration based on the authority provided to it by Josephine's domestic partner, Daniel, as the material provided by Michael was insufficient in proving Daniel and Josephine's relationship was at an end.

Michael contacted Bushfire Legal Help in October. He was very concerned about the administration of Josephine's estate and was considering whether or not to challenge Daniel's application to State Trustees as Josephine's domestic partner. Michael was seeking assistance to understand the legal framework of administration and wanted to assess what, if any, legal rights he might have to Josephine's estate as the next of kin of the children. He also sought to understand the procedures relating to letters of administration and what was involved in contesting Daniel's application. PILCH referred Michael to pro bono lawyers for some preliminary advice on whether to begin proceedings in the Victorian Supreme Court to challenge the letters of administration. The matter is ongoing.

Another complex matter involved Josephine, an 83-year-old woman. Her son, Greg, who lived in their family home during the week when he worked in metropolitan Melbourne, was building a property in Kinglake with his partner, Wendy. Before the fires, Josephine was expecting she would move with Greg into the Kinglake property when it was ready. Greg lost his life at the Kinglake property on Black Saturday. Greg's Will named Wendy as the executor and left her all his assets. There was no provision made for Josephine. Following Greg's death, Josephine was invited by the trustee of Greg's super fund to make a claim on his death benefit, which required Josephine to show a relationship of interdependency. She believed she was dependent on Greg

as he held a power of attorney her financial affairs; she was dependent on him for the maintenance of the home and he often gave her cash to pay for utility and medical bills, as well as driving her to all doctor and other appointments.

However, the super fund trustee made a decision, based on the definition of dependent under the relevant legislation, that 100% of Greg's death benefit would be paid to Wendy. Josephine had 28 days to challenge this decision and she contacted Bushfire Legal Help. She was referred to Minter Ellison for pro bono advice and assistance with an appeal. Ultimately, the trustee's decision was upheld and 100% of the death benefit was paid to Wendy, who in the trustee's view was Joe's only dependant. As Josephine was not able to provide further evidence to support how she was financially dependent on her son, there was not a sufficient prospect of success to justify taking the matter to the Superannuation Complaints Tribunal.

### Referrals

Overall there were 303 enquiries to PILCH, and these resulted in 181 referrals to PILCH member and supporting firms and barristers. The three main areas of law were insurance (23%), matters to do with the Royal Commission (18%), and property law (15%). Enquiries relating to Wills, probate and family maintenance of deceased persons were another significant area of work, accounting for eight per cent of total queries.

### **Funding and resources**

PILCH was allocated \$24,000 from the funding provided to community legal centres from the Commonwealth Attorney-General's Department, together with a small grant of \$5000 from the Victorian Department of Planning and Community Development, and a donation of \$15,000 from a member law firm. This enabled PILCH to employ a full-time Bushfire Referral Lawyer/Policy Officer. The position was responsible for the ongoing co-ordination of PILCH's role within Bushfire Legal Help and the broader bushfire response. The role commenced on 2 April 2009 for a term of six months.

At the time of the expiry of this position, budgetary pressures were leading some partner agencies to scale back their financial commitment to the project. Bushfire Legal Help decided that continuation of the PILCH position was essential to the ongoing viability of the project as a whole. Bushfire Legal Help believed there remained a significant role to play beyond the initial six months in terms of case work, referrals and policy responses.

Bushfire Legal Help therefore sought a contribution of \$40,000 from the Bushfire Appeal Fund, to be received by PILCH and applied towards costs of the continuation of the Bushfire Referral Lawyer/Policy Officer. Funding the continuation of the position ensured centralisation of the expertise and knowledge which had been gained over the first six months as well as continuity of services for existing clients, case managers and Bushfire Legal Help partners.

*'Our clients were each suffering from not only grief and loss, but with the added difficulty of an unfamiliar legal landscape. For many, this was their first interaction with the legal profession and it was a very fulfilling experience to be able to connect these individuals with specialist private lawyers who could assess and manage the legal issues for these clients free of charge. I am proud to be a part of a group of lawyers and barristers who are dedicating their knowledge and skills to helping communities recover and rebuild.'*

**Anna Krasnostein, Bushfire lawyer, PILCH**

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### **2009 Bushfires Royal Commission**

On 9 February 2009, Victorian Premier John Brumby announced a Royal Commission into the bushfires. PILCH worked closely with the Bar to co-ordinate the partnership's response to, and involvement in, the Royal Commission. PILCH facilitated 47 referrals to barristers for assistance with 'leave to appear' applications and written submissions to the Royal Commission. Together with the Victorian Bar, PILCH was active in lobbying the Victorian government and Royal Commission, on behalf of bushfire victims, to improve public participation in the inquiry process. (See Chapter 4).

### **Communications and community education**

Using its network of member firms and affiliated organisations, PILCH was instrumental in sourcing and editing over 30 legal fact sheets in 17 areas of law relevant to the crisis. PILCH sourced many of the fact sheets from member firms who prepared the materials on a pro bono basis. The materials on the website were produced with the pro bono assistance of Clayton Utz, Blake Dawson, Russell Kennedy, Telstra, Transport Accident Commission, Holding Redlich, Herbert Geer, Mallesons Stephen Jaques, DLA Phillips Fox and McKean Park Lawyers.

### **Community Legal Centre Bushfire Working Group**

PILCH was involved in the Community Legal Centres Bushfire Working Group, which met on a monthly basis to discuss issues, share information and knowledge, and keep abreast of developments at the partnership level. These meetings were a powerful tool in managing and encouraging the sharing of knowledge between community legal centres and providing additional support where it was needed.

One good example of this is the information that was shared about applications for financial assistance to the Bushfire Appeal Fund. The Working Group was able to talk about different problems facing their clients in accessing the grants, discuss issues regarding eligibility criteria, and assist each other to provide the most appropriate and targeted assistance to clients. PILCH established a relationship with a senior officer at the Bushfire Appeal Fund and could work through that connection to seek clarification and raise issues. Information was then filtered back through the partnership and benefited those assisting clients with grant applications. This led to efficiencies and time savings for both the legal service providers, as well as the Bushfire Appeal Fund, as they were not approached by many different agencies asking similar questions.

Issues with the clean-up processes initiated by the Victorian government, Victims of Crime Assistance Tribunal, the Royal Commission, and the Kinglake-Kilmore East Class Action were managed and co-ordinated in much the same way. A co-ordinated response enabled information to be shared regularly across organizations, and assisted the delivery of efficient and up-to-date client services.

## **THE VICTORIAN BAR**

### **About the Victorian Bar**

The Victorian Bar is an association of independent barristers based in Victoria providing legal representation and assistance to the community. There are around 1800 counsel in practice in Victoria.

### **The Victorian Bar's role in Bushfire Legal Help**

The Bar reacted quickly to the bushfires, undertaking the following activities:

- within two days of the bushfires, offered support and commitment to provide advice to victims, co-ordinated through the Victorian Bar pro bono scheme administered by PILCH
- compiled a register of over 240 barristers willing to act pro bono in response to the bushfires
- mobilised a panel of senior barristers with expertise in relevant areas for secondary support and specialist advice for lawyers providing advice at relief centres
- established an executive consultation group to assist the Bar's involvement in Bushfire Legal Help.

### **Pro bono legal advice and assistance**

The Bar accepted 47 referrals for pro bono legal advice from PILCH, on behalf of Bushfire Legal Help. Members of the Bar provided advice in relation to issues such as destroyed property, insurance entitlements and disputes, bushfire class action costs agreement, and commercial transactions that had been disrupted by the bushfires

### **The Bar and the 2009 Bushfires Royal Commission**

Bushfire Legal Help recognised there was likely to be a need for assistance from individuals wishing to appear before the Bushfires Royal Commission, after the Victorian government announced its formation on 9 February 2009. The Bar was



instrumental in efforts to assist people wanting to appear before the Commission and in general advocacy to improve the Commission's processes.

Individuals who wished to appear before the Commission needed to lodge a Notice of Application to Appear before the Commission before 9 April 2009. Notices required a statement about the terms of reference relevant to the individual's issue and a description of the reasons why a person should be granted 'leave to appear'.

On 26 March 2009, the Bar placed an advertisement in daily newspapers, offering free legal help for people affected by the bushfires who wanted to appear before the Royal Commission. The Bar offered to provide free assistance to people to complete formal 'leave to appear' applications and assisted with advice to those considering whether they should appear before the Commission.

Thirty-eight enquiries were received in response to the advertisement, with 30 of these resulting in referrals to barristers for assistance in drawing up and settling notices of 'leave to appear'.

Through Bushfire Legal Help, the Bar, together with PILCH, co-ordinated a process through which individuals could get help in completing their notices. Eight senior members of the Bar were each designated a bushfire-affected region.

As enquiries about preparing notices were received by the Bushfire Legal Help hotline, PILCH co-ordinated referrals to the appropriate Bar co-ordinator for assistance. It was decided that referrals would be made on a regional basis so that the Bar co-ordinators could keep abreast of common issues and themes arising in particular areas.

Twenty-three notices were drafted and settled by counsel. Six clients were advised by their counsel that submissions would be more appropriate to their circumstances, and eight referrals were accepted from PILCH for assistance with submission.

Notices were prepared on behalf of individuals and community groups who wished to give evidence to the Commission on a range of issues: from the adequacy of early warning systems and emergency service responses, to council planning, fuel reduction and native vegetation policies.

The Commission encouraged individuals and community groups to participate through written submissions. The Bar accepted eight referrals from PILCH for assistance with submissions.

The Commission did not grant leave to appear to anyone assisted by the Bar and PILCH, and similarly rejected leave applications of most other individuals and community groups who lodged applications with the Commission. This issue is discussed further in Chapter 4.

## VICTORIA LAW FOUNDATION

### About Victoria Law Foundation

Victoria Law Foundation is a not-for-profit, community benefit organisation, which aims to enhance awareness and understanding of the law, and improve access to Victoria's legal system. It is an independent statutory body, established in 1967 and funded from the Legal Services Board Public Purpose Fund. Victoria Law Foundation plays a valuable role in driving and supporting innovative projects, modernising the legal system and promoting best practice across the legal sector.

The Foundation awards grants which support individuals and organisations to develop and deliver innovative projects for the community and the legal profession.

The Foundation also produces plain language resources about the legal system, and has a role in education through targeted campaigns and events.

#### **Victoria Law Foundation's role in Bushfire Legal Help**

At the time of the disaster Victoria Law Foundation was well placed to support the co-ordinated legal effort through the distribution of legal information, and the development and co-ordination of the Bushfire Legal Help website.

The Foundation worked collaboratively with all partners to ensure a timely delivery of services. Given the Foundation's expertise in the development and distribution of legal information, its response focused on this area of work.

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*'The Bushfire Legal Help partnership is a great example of what can be achieved when all the key organisations within a sector work together. Although Victoria Law Foundation does not provide legal advice, we were able to draw on the information and experience of those at the frontline to ensure that the information on the Bushfire Legal Help website was current, clear and addressed the immediate and ongoing legal needs of those affected.'*

**Joh Kirby, Executive Director, Victoria Law Foundation**

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#### **Communications and community education**

Victoria Law Foundation played an important co-ordinating role in the development of factsheets for the website, working with other organisations to reduce duplication and ensure that all agencies were informed of developments in this area.

Victoria Law Foundation agreed to work with other partners to co-ordinate the development of the Bushfire Legal Help website. In addition to the Foundation's contribution to the development of the website, a small grant (\$5000) was

provided to Victoria Legal Aid to assist with the development of the fact sheets.

The website provided a central location for written information on specific bushfire legal issues, as well as timetables of events and seminars relevant to bushfire-affected communities.

The website went live within weeks of the bushfires, thanks to the support of the Centre for eCommerce and Communications at the University of Ballarat, the commitment of partner organisations, and the generous contribution of many legal professionals.

There have been around 7000 visits to the website since its launch in March, where people have viewed free legal information, regular updates on the 2009 Bushfires Royal Commission, and information on free legal clinics and insurance roadshows in affected areas.

The Foundation continues to refine and develop the site, maintain existing factsheets and upload new ones, update the events page and homepage, and improve the website's functionality and search engine results.

Victoria Law Foundation worked with the Community Legal Education working group to develop a protocol to ensure content on the website remained accurate and relevant. The protocols also clarified the rights, obligations and authority vested in the site administrator and agency contributors.

The Foundation actively promotes awareness of the site, and ensures that links are established to websites such as Department of Human Services, Victoria Legal Aid and the Victorian government's own website for bushfire victims.

## LAW INSTITUTE OF VICTORIA

### About the Law Institute of Victoria

The Law Institute of Victoria is the state's peak body for lawyers and those who work with them in the legal sector. Its aim is to provide dynamic leadership and innovation in the legal profession; support and inform members; raise the profile and standing of the legal profession; and advocate justice for all. The Law Institute has more than 15,000 members and aims to shape the nature and reputation of the legal profession, and influence reforms to the justice system so it better serves the needs of the Victorian community.

### Role of Law Institute of Victoria in Bushfire Legal Help

The Law Institute of Victoria played a pivotal role in ensuring communication and co-ordination with the private legal profession.

A media release was issued within two days of the bushfires, saying the Institute's members would be available to provide advice to bushfire victims. This assistance was available from 9 am that day and used the existing infrastructure of the Law Institute's Referral Service.

After the Bushfire Legal Help project was initiated, this Referral Service was then specifically tailored to meet the requirements of the response. The Institute sent an email to its members seeking volunteer support to provide assistance to bushfire victims. An immediate response was received with over 400 members registering to provide pro bono advice via the Bushfire Legal Help Hotline. This service was only provided for a short while, until Bushfire Legal Help established its own referral pathways.

The Law Institute made arrangements with lawyers, with expertise in working with traumatised clients, to volunteer and attend bushfire relief centres. The roster of lawyers

was sufficient to maintain this service for weeks following the bushfires.

The Institute also worked closely with Victoria Legal Aid in resolving potential practice, ethical and confidentiality issues that could have emerged and hindered the timeliness of the Bushfire Legal Help response.

### Referral service

More than 400 members of the private profession volunteered to provide pro bono assistance, representing a broad range of expertise in all areas of legal practice, geographic location and practice size (from sole practitioners through to large firms with extensive pro bono programs).

Co-ordination of private profession volunteers involved the assessment of skill sets and experience, availability of time, and the form of assistance being offered: telephone support, face-to-face appointments with bushfire victims, or on-site assistance at regional relief centres.

To assist with the referral of callers from the Bushfire Legal Help Hotline to the Law Institute, a dedicated telephone referral line was created. Each call received through the Hotline was treated with priority, however it was not possible for the Law Institute to use a 'warm referral' method for each call (see page 12 for a description of this). Referral service staff implemented a procedure through which the needs of each caller were sensitively matched with a volunteer lawyer; staff would make the initial contact with the lawyer and the lawyer would subsequently contact the caller. This process was explained to each caller.

This system minimised delays and distress on callers as each request for assistance through the Hotline often required multiple calls to lawyers before a successful placement occurred. This was problematic when conflict of interest issues emerged.

Meetings between partner agencies, particularly PILCH and Victoria Legal Aid, were established to identify issues and to improve referral procedures.

Before the Bushfire Legal Help website was available, the referral service staff identified relevant information from government agencies and departments and located points of contact to assist callers.

### **Volunteer lawyers at bushfire relief centres**

The Law Institute initially approached three large plaintiff firms to assist with making available experienced lawyers at relief centres. It was made clear that the lawyers attending relief centres would not represent their firms but would be representing Bushfire Legal Help.

Senior staff along with other partner members visited bushfire relief centres to identify potential legal needs of bushfire victims and assess the co-ordination, activities and contact points of each of the bushfire relief centres. This information was presented in the briefing session for volunteer lawyers who would be attending the relief centres.

### **Media**

The media strategy involved appointment of a spokesperson to represent Bushfire Legal Help as a single entity. The Law Institute took on this role and carried out co-ordination and dissemination of information to the media, and publicity for Bushfire Legal Help.

Deputy Premier and Attorney-General Rob Hulls announced the provision of free legal advice in a media release on Wednesday 11 February. This release also promoted the Hotline and announced that lawyers would be available at bushfire relief centres.

Bushfire Legal Help issued its first media release on Friday 13 February, with details of the types of legal assistance offered

and the 1800 Hotline. This also included contact details and a mobile all-hours number for the group spokesperson.

Six media releases were issued about the service, the website and the online free legal handbook, as well as local information to media about onsite insurance clinics.

Bushfire Legal Help did many media interviews, including Red Symons on ABC radio and the 3AW evening show, and lined up lawyers in the field to talk to programs including the *Law Report*, ABC Kinglake, ABC Drive, *Statewide*, interstate and overseas radio programs.

Media reporting was overwhelmingly positive. An exception was a cartoon depicting lawyers as vultures, but the Law Institute responded with a positive letter which explained that 'lawyers are donating their time and legal knowledge. They will not be seeking to sign anyone up for class actions'.

Bushfire Legal Help was named in at least 50 different newspaper articles and radio interviews both locally and nationally.

## **FEDERATION OF COMMUNITY LEGAL CENTRES**

### **About community legal centres**

Community legal centres are independent community organisations that provide free legal services to the public. The 51 centres across Victoria provide free legal advice, information and representation to more than 100,000 Victorians each year. Generalist centres provide services to a defined area and assist clients who live or work in that area, while specialist centres focus on groups of people with special needs or particular areas of law.

The Federation of Community Legal Centres (Victoria) is the peak body for community legal centres across Victoria.

The Federation provides support and representation to the community legal sector, as well as initiating and resourcing law reform to develop a fairer legal system that is more responsive to the needs of people who are disadvantaged.

#### **The role of community legal centres in Bushfire Legal Help**

In the nine months to November 2009, community legal centres, through the Bushfire Legal Help partnership:

- assisted 351 clients
- provided 339 legal advice services
- provided legal representation in 123 ongoing matters.

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*'Bushfire Legal Help was an unprecedented collaboration in the legal sector. The partnership was flexible and responsive and drew on the strengths of the organisations involved. Against the backdrop of the tragedy of the fires, we were quickly able to provide accessible, practical assistance. The need for legal assistance has continued long after the immediate impact of the fires, as Victorians continue to negotiate legal issues involved in rebuilding their lives.'*

**Hugh de Kretser, Executive Officer, Federation of Community Legal Centres**

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In addition, community legal centres:

- co-ordinated a number of the Bushfire Legal Help relief centre clinics, including local pro bono co-ordination
- established several ongoing outreach clinics, in addition to providing services through permanent offices
- helped to develop and deliver community legal education workshops and contributed to the development of community legal education resources
- conducted community development work, working with local communities and agencies to identify and respond appropriately to local legal needs

- supported the Bushfire Insurance Unit by seconding expert insurance lawyers
  - provided assistance to individuals and community groups with the 2009 Bushfires Commission including applications for leave to appear and submissions.
- (Further details of the work are contained in Appendix 1).

#### **Snapshots from the work of the community legal centres**

People still in shock and overwhelmed by the experience of the fires faced enormous difficulties in dealing with bureaucracies and authorities on their own. Whittlesea Community Legal Centre, for example, helped to ease the burden for 'Joe', whose home was destroyed in the bushfires. His property was insured but Joe had a mortgage of over \$400,000. The bank suspended mortgage payments for three months, but Joe then learnt that the interest would continue to accrue during this period. Joe tried to negotiate about this with the bank with no success.

Whittlesea CLC assisted Joe by approaching the bank on his behalf. It took 14 calls with numerous departments within the bank, but eventually the legal service was able to arrange for the bank to suspend the accrual of interest, on the basis of Joe's good customer record.

Whilst this was a positive outcome, Joe's situation highlighted the difficulty that bushfire victims could experience by trying to resolve matters on their own. Many would not have the resources, time or knowledge to undertake such an arduous process.

A similar battle was waged on behalf of 'Tony'. On Black Saturday, he chose not to evacuate from his property though it came under attack and was damaged by spot fires. When power and phone services failed at the height of the firestorm, Tony relied on his mobile phone to maintain a link

with the outside world. The phone had a web-based feature, so he monitored the direction and severity of the bushfires through news reports, Country Fire Authority websites, and weather maps. He was able to charge his phone with the aid of his car charger.

While Tony expected a higher than usual bill because of the increased usage, he was astonished to discover that his first bill was for an amount of over \$7000.

Tony explained his situation to the phone provider who nonetheless insisted that he pay the full amount. He then went to the local bank to arrange for a personal loan to pay the bill. While the bank manager was prepared to grant him the amount it was suggested that he seek legal advice, through Bushfire Legal Help's services at Whittlesea.

In the following month, Tony received a further bill covering the bushfire period for \$3,000, which meant that he faced costs close to \$11,000. Whittlesea negotiated with the phone provider and helped to refer the matter to the Telecommunications Ombudsman. The phone company eventually agreed to accept a total payment of \$600, which Tony felt was reasonable.

### **Drawing on the experience of community legal centres across Australia**

Immediately after the bushfires, the Federation was in contact with the National Association of Community Legal Centres, as well as community legal centres in Canberra and North Queensland, to draw on their experience in responding to disasters such as the 2003 Canberra bushfires and 2006 Cyclone Larry. These discussions canvassed issues including:

- how legal services can best respond to natural disasters
- the likely range of legal issues that would be encountered, and the evolution of those issues as the response moved from immediate crisis intervention to the rebuilding phase

- community legal education needs and how best to deliver them. Townsville Community Legal Service in particular provided a range of useful legal education factsheets which were shared with the Bushfire Legal Help partnership.

These discussions highlighted the need for the legal response to be in place within two weeks of the disaster once people had dealt with their immediate needs around shelter, food and other support. The need for extreme sensitivity in delivering services to people suffering intense grief and trauma was also something emphasised in these consultations.

### **Referrals**

The Federation developed a Referral Guide which provided an overview of community legal centre services, and list of generalist centres in fire affected areas, their service areas and contact details. It also included a list of 25 legal issues (such as Wills and probate, information on the Royal Commission), and information on which generalist and specialist community legal centres could assist with each issue.

The Referral Guide was distributed to the Bushfire Legal Help partnership and community legal centres. The Referral Guide was updated and redistributed as new legal needs were identified (such as claiming entitlements from the Bushfire Relief Fund) or as circumstances changed (for example, once the Bushfire Insurance Unit was established). Each new version was clearly marked with the version number and date.

### **Expert Help List**

Because the Bushfire Legal Help clinics at the relief centres generally operated on a drop-in basis rather than by appointment, it was not possible to ensure that clients could be matched with lawyers with specialist expertise to advise on the specific legal issue facing them.



Accordingly, the focus was on staffing the clinics with lawyers with a broad range of relevant general expertise, and experience in dealing with distressed and grieving clients, and then triaging legal issues that could not be immediately resolved to more appropriate services.

To assist clinic lawyers to provide timely and accurate advice at the actual clinics, the Federation developed an Expert Help List. This document listed legal subject matter experts who were available to provide instant advice to clinic lawyers on particular legal issues, so that the clinic lawyers were then in turn able to provide timely and accurate advice to their clients.

The Expert Help List outlined a range of experts across 22 legal areas who were able to advise the clinic lawyers. In many cases, the experts provided their mobile phone numbers to enable weekend contact. The experts were drawn from Victoria Legal Aid, community legal centres, the Bar and the private profession. The Help List drew on the work of PILCH in compiling an expert list of barristers who were willing to assist.

The Expert Help List was distributed to the Bushfire Legal Help partnership and each clinic co-ordinator.

### **Co-ordination of community legal centre response**

The Federation attended Bushfire Legal Help partnership meetings and then distributed relevant information to the community legal centres.

It soon became apparent that it would be valuable for the affected community legal centres themselves to meet regularly to discuss common issues. The Federation formed the Community Legal Centre Bushfire Working Group to come together to exchange ideas and develop strategies to improve the effectiveness of their work.

The Community Legal Centre Bushfire Working Group initially met monthly, usually at Whittlesea Community Legal Centre in Epping. Some workers attended remotely via teleconference. The main community legal centres attending were Eastern, Whittlesea, Broadmeadows, Gippsland, Loddon Campapse and PILCH. The Bushfire Insurance Unit also attended.

The meetings allowed the community legal centres to:

- keep abreast of developments at the Bushfire Legal Help partnership level
- share information and knowledge including: how different communities were responding to the bushfires and the types of legal issues that were arising; how to best co-ordinate work with other agencies; and how to best deliver services including community legal education
- discuss common legal practice issues and responses. Some of these included: the definition of 'principal place of residence' for the Bushfire Appeal Fund; the approach of the Victims of Crime Assistance Tribunal to compensation claims for suspected arson; and the interaction between the Commission and the Coroner's jurisdiction.
- identify training and expertise needs
- plan responses to legal needs such as servicing Kinglake.

### **Community legal education**

The Federation participated in the working group which co-ordinated and guided the development of community legal education resources for fire-affected Victorians. The Federation also assisted in scoping a provider to deliver the website, and provided some liaison and input around website content and the content of legal education resources.

## 4. Advocacy: the Bushfires Royal Commission

Within nine days of the bushfires, the Victorian government announced the establishment of a Royal Commission, with broad terms of reference and significant resources. The Commission is independent and has strong investigation powers. The Commission was set the challenging task to deliver an interim report by mid-August, in time for the 2009–10 fire season, and a final report by 31 July 2010.

The Commission's terms of reference were wide by design, and it was charged with the task of inquiring into and reporting on the following matters:

- causes and circumstances of the bushfires
- preparation and planning by government and community for bushfires, including current laws, policies and strategies for prevention, identification and communication of bushfire threats
- all aspects of the response to the bushfires, particularly measures taken to protect life and property
- measures taken to prevent or minimise disruption to supply of essential services
- any others matters deemed appropriate.

The Commission was directed to make recommendations on the following:

- preparation and planning for future bushfires
- land use planning and management
- fireproofing of housing and other buildings
- emergency response
- public communication and community advice systems
- training, infrastructure and resourcing needs.

These terms of reference, the Commission process, and the scope of the recommendations, had a direct and potentially emotionally distressing impact upon the lives of people and communities affected by the bushfires. There was significant community interest in becoming involved.

The Bushfire Legal Help partnership was very concerned to ensure the fullest possible involvement in the Commission by Victorians affected by the fires, and particularly those whose lives had been threatened or who had lost family and friends.

The Commission adopted some innovative means to promote participation by affected individuals and communities. It conducted 26 community consultations

across 14 locations. Over 1200 people attended. This was a good way of getting an overview of community experiences and concerns, but with on average perhaps two or three minutes per person, it was not a substitute for bushfire victims having an effective voice. Further, it did not constitute the formal gathering of evidence for the Commission's inquiry.

The Commission invited written submissions from individuals. Over 1200 submissions were received. The Commission's website also provided a useful means for the public to follow the proceedings through live audiovisual streaming of proceedings and by posting transcripts of the hearings.

### **Bushfire Legal Help advocacy role**

Bushfire Legal Help partners became concerned that victims were being excluded from direct participation in the inquiry process, contrary to indications by the Victorian government that the Commission would be 'for the people', and 'open to all Victorians'.

The partnership wrote to the Commission on 17 March 2009 to propose that the Commission fund a service to assist individuals to receive advice about, and participate in, the Commission's process. The Commission wrote back on 24 March 2009 supporting the work of Bushfire Legal Help but stating that it was unable to provide funding support.

Around the same time, the Federation of Community Legal Centres worked with members of the Victorian Bar, who provided the Federation with an advice on the impact of the *Victorian Charter of Human Rights and Responsibilities* (2006) on the Commission's obligations to promote the participation of individuals. The advice supported the view that the Commission has a legal duty to facilitate appropriate involvement by next of kin and families of those who died and those whose lives were endangered by the bushfires.



On 16 April 2009, the Bushfire Legal Help partnership again wrote to the Commission to outline concerns around how the Commission was communicating its proposed approach to applications for leave to appear before it. Drawing on the human rights considerations, Bushfire Legal Help urged the Commission to adopt a broad approach to applications for leave to appear.

As outlined in page 22, members of the Victorian Bar, working under the Bushfire Legal Help banner, also assisted individuals in the preparation of notices of 'leave to appear'.

Controversially, and in contrast to the position adopted by other similar inquiries, the Commission denied leave to appear before it to a large number of individuals and community groups, including bereaved families. The Commission applied the most restrictive legal test to decide whether an individual or community group could be represented at its hearings. Most of the applications for leave to appear were decided by correspondence, as opposed to an open hearing.

At the same time, the Commission granted leave to appear to federal, state and local government bodies, power companies, Telstra, the Insurance Council and other organisations. These were all resourced with an array of experienced lawyers.

Appearing with effective and resourced legal representation before the Commission is the most direct form of participation. It enables parties to seek to introduce their own evidence, test the evidence of others, emphasize issues of specific importance and influence the Commission's inquiry, outcomes and recommendations. This is what government and corporate businesses ensured for themselves in their participation.

Following the Commission's refusal of applications for leave to appear by individuals and community groups, Bushfire Legal Help representatives met with Counsel assisting and staff engaged by the Commission on 23 April 2009. They suggested public participation could be improved by:

- establishing a broad process within the Commission to obtain oral evidence, or oral submissions, from individuals affected by the 2009 bushfires
- establishing a Bushfire Public Advocate to advocate for the interests of individuals affected by the 2009 bushfires
- providing legal and interpreter support for individuals to make written submissions to the Commission.

Bushfire Legal Help prepared a paper outlining these proposals which was forwarded to the Commission on 1 May 2009 and also provided to the Victorian government.

The Commission did not formally respond to this paper. It did adopt a process of seeking direct oral evidence from a range of fire-affected Victorians, normally calling one person to give evidence each day. It also made improvements to its communications by:

- preparing a guide to writing submissions
- providing information about the Bushfire Legal Help service on its website
- clarifying that submissions received after the initial 18 May 2009 deadline could still be used for its final report
- providing improved information about how the Commission worked and how individuals could participate in the Commission.

After the Interim Report was delivered in August 2009, the Commission also granted limited leave to appear to individuals who were involved in the class action litigation and were seeking compensation from electricity companies in connection with the fires.

Funds were not provided to implement the Bushfire Public Advocate.

#### **Bushfire Legal Help recommendations about participation of individuals in inquiries after disasters**

The partnership agencies believed that direct and comprehensive participation by affected Victorians was critical to ensure the Commission's legitimacy and effectiveness and provide first-hand perspectives on preparations, warnings and emergency responses. Providing the chance for people affected by the bushfires to take part would have underscored the human cost of the disaster, and the dreadful impact of loss of life and property, and the after-effects of the fear and trauma people experienced. Allowing the compelling voices of those whose lives had been so fundamentally altered could assist in the healing process and underline the need for the future prevention of damage and death from bushfires. It was also important that the Commission was well-informed of communities' capacity to understand, accept and implement any policy changes recommended by the Commission.

Bushfire Legal Help partners played an important role in advocating that commissions established to investigate natural disasters where human lives have been lost or threatened should adopt a broad approach to permission to appear. The partnership also strongly put forward the view that free legal assistance should be provided to affected individuals and community groups who want to take part in the Commission process and cannot afford legal assistance at such inquiries.

Though Bushfire Legal Help was not able to fully achieve these outcomes for people in relation to this Royal Commission, it is hoped that these issues will be fully considered in the future, as direct and comprehensive participation by those most directly affected is critical to ensuring a Commission's legitimacy and effectiveness.

## 5. What was learnt from the Bushfire Legal Help response

The partner agencies of Bushfire Legal Help held a workshop in November 2009, nine months after its formation, to review how the collaboration had worked, analyse the factors that had been successful for future planning, and to develop recommendations for how legal assistance providers could work more effectively in future crisis situations.

### Factors in the success of the partnership

The partnership was successful because it quickly created a strong, single entity for the delivery of services. With a 'one-stop' shop model, confusion for clients and other service providers was reduced. Bushfire Legal Help was able to quickly mobilise existing resources, knowledge, skills and expertise among the partners, all of whom were willing to merge their own identity and act quickly to reduce any boundaries or barriers between their service models.

Effective and open communication was also identified as a key ingredient in making Bushfire Legal Help work, as the newly formed partnership was being set up in uniquely challenging circumstances, with no existing model or template to draw upon. The establishment of a project management team through Victoria Legal Aid was essential in providing a central point through which information could be co-ordinated, decisions could be made, and the partnership could respond flexibly to the needs of the community as they rapidly changed and evolved.

It was not surprising that, though the partnership worked extremely effectively given the circumstances in which it formed, there were several aspects of its operations where improvements could be made. Lessons were learnt with implications for future planning about legal assistance response.

### 1. Integration of legal services into emergency disaster strategies and planning is needed.

The response from the legal sector, though swift and empathetic, was developed without a framework which included provision for legal assistance in any emergency disaster response, state or national. The partnership was largely unfunded, and depended on the goodwill and

generosity of partner agencies, each of which committed significant resources in staff time; this in turn had an impact on delivery of other aspects of each agency's core services. Victoria Legal Aid, for example, has estimated that it has contributed over \$500,000 in staff time in the twelve months following the bushfire.

As the only provider of co-ordinated and free legal services, Bushfire Legal Help provided an avenue to pro bono services and advocacy that would otherwise have been unavailable to bushfire victims. A myriad of legal problems, many quite unpredictable, were thrown up in the chaos and confusion of this unprecedented disaster. If these were not quickly resolved, with a minimum of frustration and confusion, they could have compounded the sense of grief, loss and dislocation that victims were already experiencing. Delays in obtaining reliable legal advice in areas such as dealing with the coroner's office, employment and property rights, and insurance claims, could have led to the development of other problems such as depression and chronic health difficulties, family breakdown, and welfare dependence. Early intervention in sorting through these legal issues can help to limit the costly burden to social and health services that might otherwise be expected.

The partnership strongly believes that the potential impact of unresolved legal problems in hindering community recovery must be acknowledged by state and national governments, and that the provision of early legal assistance should be accorded similar importance to other services such as health, housing, and emergency relief centres. Planning for the provision of legal assistance should be incorporated into disaster and emergency strategies at both state and national level so that more effective collaboration between the legal sector and emergency services can develop.



**2. The development of holistic, collaborative service models, which draw upon a multidisciplinary approach, would lead to more effective ways to assist with the complex and diverse issues that arose in the aftermath of the bushfires.**

Bushfire Legal Help had limited engagement with the government, Royal Commission and the Victorian Bushfire Reconstruction and Recovery Authority. This made it difficult to establish appropriate channels for earlier feedback on issues being faced by clients, and helping to develop timely solutions.

There was a degree of confusion about Bushfire Legal Help's role, indicating the need to liaise better with local authorities, and initiate discussions on how the partnership's work fitted in with other emergency relief services. Work undertaken at the relief centres could have been better planned and more effective if these pathways had already been established by an agreed role for the legal sector within a multidisciplinary framework. It was recognised by the partnership that it would have been useful to have had stronger relationships with case managers from the Department of Human Services.

Future planning needs to consider planned co-location of legal services so that a multidisciplinary approach, which makes it easier for clients to navigate their way through the complexities of the problems they are facing, can be implemented.

**3. The legal assistance sector needs to be proactive in recognising and identifying the broad range of legal and social problems that arise in the aftermath of a major emergency, and take steps to bring these to the attention of governments and planning bodies so that solutions can be developed.**

Of particular significance to future emergency management planning, both within and beyond the legal sector, is the breadth and diversity of issues that arose for individuals affected by the bushfires. Whilst the more immediate issues related to insurance, property and estate issues, the longer term recovery and rebuilding process brought a whole range of more complex issues, which are still unfolding. Beyond the first few crisis weeks of the response, the Bushfire Legal Help partnership found its clients began encountering problems with planning, rebuilding and dealing with local government authorities. These are highly specialised areas of law requiring particular expertise. The partnership also saw an emerging need to help clients with building and construction issues because as survivors turn to rebuilding, they were faced with complicated building contracts and permit application processes. These matters were further complicated by conflict issues, where some private law firms acting for local government were unable to accept pro bono referrals. Other matters that emerged as concerns were assisting people in dealing with media and publication topics which arose as the stories from the bushfires were captured by print media and book publications.



A further wave of legal problems more subtly connected to the bushfires is likely to arise. The fracturing of close-knit communities, and the stress and trauma of the bushfires, are predicted to be associated with depression, physical and mental illnesses, strain on family relationships, and potentially adverse outcomes in the areas of education, work and wellbeing. All of these factors can contribute to social exclusion and isolation and can then lead to a downward spiral of problems such as family breakdown, debt and poverty that may lead to involvement with the justice system.<sup>2</sup>

Together with government and other service providers, the legal sector needs to be aware of, and sensitive to, the wide range of problems, which will have a legal implication or solution, that can continue to arise for many years after a disaster. Legal assistance providers should be proactive in developing early intervention strategies that will assist individuals and communities to recover.

#### **4. The legal and human rights of individuals to appear at inquiries such as the Bushfire Royal Commission need to be strengthened and protected.**

Despite considerable advocacy work by Bushfire Legal Help, the Commission rejected 'leave to appear' applications for most individuals and community groups. The partnership was concerned by victims' exclusion from the process and believes enabling their voices to be directly heard would have provided a vital and compelling first hand perspective on both the causes of the disaster and strategies to minimise the risks of future similar disasters.

Bushfire Legal Help used its own resources to provide assistance to individuals and groups in connection with the Commission including 'leave to appear' applications and making submissions. A significant amount of this work was done on a pro bono basis by the Bar. The fact that neither government nor the Commission provided funds for legal assistance with the Commission created some tension as it effectively pushed a large part of work to respond to the legal needs of individuals and community groups onto the pro bono work of lawyers. This contrasted with the significant resources granted both to the Commission itself, and the Victorian government agencies for their own legal representation in the Commission.

The Bushfire Legal Help partnership believes that commissions established to investigate natural disasters where human lives have been lost or threatened should adopt a broad approach to leave to appear. Consideration also needs to be given to ensuring the provision of free legal assistance to individuals and community groups who are directly affected by a natural disaster and would not otherwise afford to participate in inquiry processes.

#### **5. Greater clarity should be developed around legal practice entity issues.**

Bushfire Legal Help was not an incorporated entity and did not have permission itself to conduct a legal practice. Accordingly the delivery of legal services relied on the legal practices of the partner organisations and their members. A consequence of the speed in deploying resources from

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<sup>2</sup> The Victorian Government Department of Human Services report, *After the bushfires: Victoria's psychosocial recovery framework* predicts long-term effects for bushfire victims, which may become obvious up to a year later, and include economic hardship, poor health, depression, relationship problems, developmental and behavioural problems in children (pp4-5).

multiple legal practices, at least in the initial stages, was a lack of clarity around which legal practice was delivering the actual advice and which consequently bore the range of professional obligations to the client.

For future responses, all legal services should be delivered under the legal practice of the entity which co-ordinates each clinic (such as Victoria Legal Aid or an individual community legal centre). It should be made clear that any lawyers delivering services at that clinic are doing so as volunteers under the legal practice of the co-ordinating entity. Ideally, there would be some form of volunteer agreement developed to clarify these obligations for each volunteer working at the clinics.

This would in turn clarify:

- which legal practice has the obligation to conduct conflict checks
- which legal practice has the obligation to comply with confidentiality and file storage and destruction requirements
- the responsibility of that practice's principal solicitor to appropriately supervise employed and volunteer clinic lawyers
- professional indemnity insurance coverage of the legal services
- any data collection requirements imposed by funding agreements.

Community legal centres are well placed to deliver services under these arrangements as they often conduct 'outreach' services, rely heavily on volunteer lawyers, and have systems in place for supervising volunteer lawyers to ensure the quality of advice. They also normally have professional indemnity insurance which covers services being delivered by volunteers.

## **6. The work of Bushfire Legal Help highlighted existing gaps in community legal centre coverage.**

The location of the bushfires highlighted gaps in community legal centre service areas in Victoria. Most of these service gaps are in rural areas.

Several of the areas most severely affected by the bushfires, such as Marysville and Kinglake, fell outside community legal centre designated service areas. Eastern Community Legal Centre's service area, for example, covers Healesville and Yarra Glen but does not extend as far as Marysville. Whittlesea's service area covers Kinglake West but does not extend to Kinglake itself nor areas that were badly hit by the bushfires such as St Andrews and Strathewen. The closest Victoria Legal Aid regional offices are located further afield in Ringwood and Preston.

The Commonwealth Attorney-General's Department made an early announcement of a one-off grant of \$220,000 to cover at least part of the costs of community legal centres' work in the Bushfire Legal Help partnership and allowed some of them to employ additional staff so as to minimise the disruption to non-bushfire services (details in Appendix 1). It was provided quickly and with appropriate accountability requirements that were not overly onerous on the relevant community legal centres. Without this funding, community legal centres would have had to significantly compromise either the scope of their Bushfire Legal Help work, or limit their regular non-bushfire services.

However, there remains a need to increase funding to address gaps in community legal centre service delivery areas. This is obviously an issue broader than the response to the 2009 bushfires, but does highlight an area of inequity and disadvantage that needs to be addressed.

# Appendix 1: Community legal centre responses

Community legal centres, located in or near fire-affected areas, were on the ground delivering services immediately after the fires. Their response was assisted by \$220,000 in funding provided by the Commonwealth Attorney-General's Department in the weeks following the fires. This funding was distributed to six generalist centres and PILCH.

The following generalist centres played key roles in the Bushfire Legal Help response. In addition, a number of other centres loaned staff to these local centres to assist in the initial response.

Organisation	Location, service area and response
Whittlesea Community Legal Service	Based in Epping. Services the Whittlesea Local Government Area (LGA) including Whittlesea township, Humevale and Kinglake West.
	<p><b>Response</b></p> <p>Initial relief centre advice and coordination. Provided ongoing legal advice and assistance. Conducted outreach services at Whittlesea and Kinglake and community legal education. Services continuing to July 2010.</p>
Eastern Community Legal Centre	Based in Box Hill and Boronia. Services six LGAs including Yarra Ranges which includes Healesville, Yarra Glen, Steels Creek and Dixon's Creek.
	<p><b>Response</b></p> <p>Initial relief centre advice and coordination. Provided ongoing legal advice and assistance. Conducted outreach legal clinics at Healesville and Yarra Glen. Conducted community development work including community legal education and coordination of local pro bono resources. Services continuing to at least March 2010.</p>
Broadmeadows Community Legal Service	Based in Broadmeadows. Services the City of Hume and the Hume Highway corridor including Broadford, Kilmore, Wallan and Wandong.
	<p><b>Response</b></p> <p>Initial relief centre advice and coordination. Provided ongoing legal advice and assistance. Conducted outreach legal clinics at Wandong, Wallan and Broadford. Conducted community legal education. Services continuing to May 2010.</p>
Gippsland Community Legal Service	Based in Morwell and Bairnsdale. Services six LGAs across Gippsland which include Boolara, Churchill and Bunyip State Park.
	<p><b>Response</b></p> <p>Initial relief centre advice and coordination. Provided ongoing legal advice and assistance and community legal education.</p>
West Heidelberg Community Legal Service	Based in West Heidelberg. Services the City of Banyule.
	<p><b>Response</b></p> <p>Seconded Denis Nelthorpe to the Bushfire Insurance Unit. Also arranged the secondment of a specialist insurance lawyer from Consumer Credit Legal Centre in NSW to the unit. Co-produced submissions on insurance issues to the Bushfire Royal Commission and other inquiries.</p>



Organisation	Location, service area and response
Loddon Campaspe Community Legal Service	Based in Bendigo. Services the Loddon Campaspe subregion including Bendigo and Redesdale.
	<p><b>Response</b></p> <p>Initial relief centre advice and coordination and some ongoing assistance. Developed legal help kits and conducted community legal education.</p>
Hume Riverina Community Legal Service	Based in Wodonga servicing the Hume Riverina area including Mudgegonga, Myrtleford and Beechworth.
	<p><b>Response</b></p> <p>Initial relief centre advice and coordination.</p>

In addition to the work of PILCH, the following specialist community legal centres assisted in the response.

Organisation	Service description and response
Consumer Action Law Centre	A consumer rights legal centre providing statewide assistance on consumer issues including credit and debt, electricity, gas and water and insurance.
	<p><b>Response</b></p> <p>Provided advice on consumer-related issues and assisted in the development of community legal education resources. Co-produced a submission on insurance to the Bushfire Royal Commission.</p>
Environment Defenders Office	An environmental law centre providing statewide legal advice and representation on public interest environmental matters.
	<p><b>Response</b></p> <p>Developed community legal education resources, provided advice and represented an environmental organisation in the Bushfire Royal Commission.</p>
Jobwatch	An employment rights legal centre which provides statewide assistance to Victorian workers about their rights at work.
	<p><b>Response</b></p> <p>Provided advice and assistance on employment law issues and contributed to community legal education resources.</p>
Tenants Union of Victoria	A tenancy rights legal services providing statewide advice and representation to residential tenants, rooming house and caravan park residents.
	<p><b>Response</b></p> <p>Provided advice and assistance on tenancy matters and attended relief centres to distribute information on services.</p>

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#### **University of Ballarat: Centre for eCommerce and Communications**









# Devastated town joins in solidarity and reflection

... and tireless, the retired judge is a sound choice to oversee the royal commission into the bushfires.

# Judgen

The role of the judge is to ensure the law is applied fairly and consistently. The judge is also responsible for ensuring the law is applied in a way that is consistent with the values of the community. The judge is also responsible for ensuring the law is applied in a way that is consistent with the values of the community.

By BARBARA FERROQUE

**B**ORIS JOHNSON, the prime minister, has appointed a retired judge to oversee the royal commission into the bushfires. The judge is a sound choice to oversee the royal commission into the bushfires. The judge is a sound choice to oversee the royal commission into the bushfires.

# Government action may be needed to support local councils

Local councils are facing a crisis. The government needs to take action to support them. The government needs to take action to support them. The government needs to take action to support them. The government needs to take action to support them.

## LEGAL ASSISTANCE

Legal assistance is available for those who are unable to pay for legal services. Legal assistance is available for those who are unable to pay for legal services. Legal assistance is available for those who are unable to pay for legal services.

## Bushfire help

Victims of bushfires can apply for help. Victims of bushfires can apply for help. Victims of bushfires can apply for help. Victims of bushfires can apply for help.

## Another dry argument

The debate over water rights is heating up. The debate over water rights is heating up. The debate over water rights is heating up. The debate over water rights is heating up.

Bushfire Legal Help

