

# PRO BONO GUIDE

# TO THE CLIMATE CRISIS



AUSTRALIAN  
PRO BONO CENTRE

# FOREWORD

The world faces a climate crisis. Rising levels of greenhouse gases in the atmosphere, driven by the combustion of fossil fuels, industrial agriculture and deforestation, have caused global average temperatures to increase 1.1°C above pre-industrial levels. This level of warming is unprecedented in the last ten thousand years, an interglacial period of climate stability that enabled the rise of human civilization. Today's levels of atmospheric carbon dioxide last occurred three million years ago, during the Pliocene epoch before homo sapiens evolved. Our species is in uncharted, dangerous waters.

Billions of people are already suffering adverse effects caused by the increased frequency, intensity and duration of extreme weather events, melting of glaciers, rising sea levels, storm surges, saltwater intrusion, ocean acidification, changes in precipitation, floods, heatwaves, droughts, wildfires, desertification, the destruction of ecosystems, biodiversity loss and the spread of water-borne and vector-borne disease. Climate change interacts with poverty, conflict, resource depletion and other factors to threaten human rights including the rights to life, health, food, water and sanitation, a healthy environment, culture, an adequate standard of living, housing, property and development.

Despite 28 years of commitments dating back to the United Nations Framework Convention on Climate Change, the world is not yet headed in the right direction, let alone addressing the crisis with the requisite urgency. Since 1990, global energy consumption has increased by 57 per cent, the

**Dr. David R. Boyd,**  
United Nations Special Rapporteur  
on human rights and the environment

share of the world's energy supply provided by fossil fuels has remained stubbornly unchanged at 81 per cent, and global greenhouse gas emissions are up 60 per cent. ▶

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

**Zali Steggall OAM**  
Federal Member of Parliament  
for Warringah, Australia



*“The challenge of the climate crisis is colossal, and its impacts will be pervasive.*

*At the EDO we’re seeing a rapidly growing desire from firms, big and small, to do pro bono work connected with helping solve the challenge of climate change. The impacts are here and now and our profession, and the pro bono world in general, is waking up to that reality.*

*This important guide highlights the great variety in opportunities for lawyers to contribute through pro bono work. Those opportunities are exciting and growing. Most importantly, lawyers across the profession want to – and can – make a difference.”*

**David Morris**  
CEO of the Environmental  
Defenders Office, Australia



IMAGE BY SUNGROW EMEA / UNSPLASH

Addressing climate change raises issues of justice and equity, between and within nations and generations. The main contributors to the crisis have reaped immense economic benefits and thus have the greatest responsibility to resolve it. The adverse impacts of climate change disproportionately harm people whose contribution to the problem is minimal and who lack the resources to adapt to the changes.

The Intergovernmental Panel on Climate Change has identified “rapid and far-reaching transitions” in energy, land use, infrastructure and industrial systems, stating that these changes would be unprecedented in terms of scale and would require deep emission reductions across all sectors. To meet the 1.5°C target set in the 2015 Paris Agreement requires reducing emissions 45 per cent below 2010 levels by 2030, phasing out unabated fossil fuel burning by mid-century, transforming the global food system, and reversing deforestation.

There is some good news. Dramatic declines in the cost of renewable energy are accelerating the implementation of clean energy. Solar electricity generating capacity now exceeds 600 gigawatts globally, more than 600 times higher than in 2000. Total wind electricity generating capacity has soared from 17 gigawatts in 2000 to over 600 gigawatts

today. Some 49 countries, responsible for 36 per cent of global emissions, have already seen their greenhouse gas emissions peak and begin declining. Concurrently addressing climate change and air pollution, since the sources of these problems overlap, could prevent millions of premature deaths every year while securing trillions of dollars in benefits.

**This informative and inspiring publication describes the many ways that lawyers and the legal profession can dedicate their extensive expertise, experience and resources to tackling the climate crisis. Law in its many variations is an essential element of creating, implementing and enforcing climate solutions, from legislative and policy reforms to litigation, from the local to global levels. Some lawyers are already engaged, as illustrated in this report, but far more are needed.**

Ultimately, climate change is not just about science or technology. It's about justice. The legal profession has a moral obligation to stand up and join the movement for a cleaner, greener, healthier future. Everyone, everywhere, has the right to live in a healthy environment, which necessarily includes a safe climate.

Dr. David R. Boyd



# INTRODUCTION

Climate change is one of the defining issues of the 2020s. The actions we take now will affect the world for generations to come.

The overwhelming scientific consensus is that the Earth's climate is warming significantly, and that this warming is attributable to human activity.<sup>1</sup> Climate change is having – and will continue to have – catastrophic effects on our natural environment, and will severely impact the health, the lives and livelihoods of people across the globe. Further, the adverse impact on the disadvantaged will be far greater than on the wealthy. Indeed, climate change has been characterised as a human rights issue.<sup>2</sup>

It has been predicted that taking a 'business as usual' approach to tackling climate change, rather than a more sustainable development pathway, will cost the world US\$9.87 trillion by 2050.<sup>3</sup>

Under the 2015 Paris Agreement, numerous countries have committed to the objective of limiting the global average temperature increase to well below 2°C, and to assisting nations to adapt to climate change. Many lawyers want to make a meaningful contribution to mitigating this crisis. This guide aims to provide those lawyers with concrete ideas and information about how they can undertake pro bono work to help combat climate change.

*Why should I do pro bono work to help combat the climate crisis?*

## Professional responsibility

It is the view of the Australian Pro Bono Centre (**the Centre**) that lawyers have an ethical professional responsibility to provide legal assistance to those who would otherwise be unable to access justice.<sup>4</sup> For many individuals, not-for-profit organisations (**NFPs**),<sup>5</sup> and social enterprises<sup>6</sup> battling climate change, limited resources mean that pro bono assistance is their only path to access to justice and legal advice. Lawyers who undertake climate-related pro bono work will not just contribute to mitigating the risk or impact of climate change, but also to improving access to justice.

<sup>1</sup> 'Scientific Consensus: Earth's Climate is Warming,' NASA (2020), accessible [here](#).

<sup>2</sup> See Case Study 1 in Activity #1: Running strategic climate litigation below.

<sup>3</sup> Toby Roxburgh et al, *Global Futures: Assessing the Global Economic Impacts of Environmental Change to Support Policy-Making* (Report, February 2020) 3.

<sup>4</sup> For that reason, the Centre encourages all Australian lawyers to sign up to our National Pro Bono Target. For more information about the Target, see 'National Pro Bono Target', Australian Pro Bono Centre (2020), accessible [here](#). For a definition of 'pro bono legal services' please see the Appendix to the guide.

<sup>5</sup> For a definition of a 'not-for-profit organisation', see: Australian Pro Bono Centre, *Pro Bono Partnerships and Models – A Practical Guide to What Works* (2016) Chapter 13, accessible [here](#).

<sup>6</sup> For a definition of a 'social enterprise', see 'Guidance notes on reporting 'pro bono legal services'', Australian Pro Bono Centre, accessible [here](#).

## Skills and experience

Lawyers have the skills, opportunities and resources to tackle this challenge. While our individual actions may seem small, collectively the legal profession can show leadership – and have a substantial impact on the climate crisis.

Lawyers with a wide range of skills and experience can get involved in climate-related pro bono work. This is not just an opportunity for lawyers with knowledge of environmental and planning law – there are many ways that lawyers can use their existing skills and resources to work towards climate justice.

For example, you will find activities in this guide that match your expertise if you are a lawyer with skills in any of the following areas of law: employment, corporate, criminal, intellectual property, wills and estates, insurance, bankruptcy, litigation, family, taxation, immigration, and human rights (among many others).





You also do not need to be a practising lawyer. There are opportunities to contribute by providing legal education, conducting training, and undertaking law reform and legal research.

This guide does not purport to include every possible type of climate-related pro bono work. We encourage lawyers to be creative, and determine how they can adapt their skills and expertise to contribute to this important cause.

As with pro bono work generally, undertaking this work provides a sense of empowerment through addressing a problem that will personally affect lawyers themselves, their places of work, their families and their communities.

### Responsible business and social purpose

The Ethics Index 2019, published by the Governance Institute of Australia, found that 91% of Australians think that Australian businesses – such as law firms – have an ethical obligation to take action on climate change.<sup>7</sup> There is also a growing expectation that protection of our planet should be integrated into the responsible business practices of organisations in the private sector around the world. The objectives of corporate governance are shifting from shareholder primacy (profit maximisation) to incorporating social purpose, stakeholder focus and long term sustainable growth.<sup>8</sup>

This is reflected by the development of Environment Social and Governance (ESG) policies, which aim to bolster the role of the private sector in creating a more equitable and sustainable world. Involvement in pro bono legal work that responds to climate change and promotes sustainability is a clear demonstration of an organisation's commitment to work with social purpose.

Other benefits of undertaking this work may include:

- *Building organisational and individual knowledge in growing areas of law, with increasingly significant commercial implications*
- *Attracting good publicity for being a leader in an area of public concern (and avoiding negative publicity associated with being perceived as indifferent to this global crisis)*
- *Attracting and retaining talented lawyers – by offering them the opportunity to undertake pro bono work on an issue that is important to them.*

<sup>7</sup> Governance Institute of Australia, Ethics Index 2019 (Report, 2019) 44.

<sup>8</sup> Larry Fink, 'A Fundamental Reshaping of Finance', BlackRock (January 2020), accessible [here](#); Klaus Schwab, 'Davos Manifesto 2020: The Universal Purpose of a Company in the Fourth Industrial Revolution', World Economic Forum (2 December 2019), accessible [here](#).

## Ready to get started?

Page 6 has a list of each of the pro bono activities covered in this guide. Review the list, and read more about the activities that sound interesting to you and your organisation and, where appropriate, align with your expertise. Gather some inspiration from the case studies. Then, if you're ready to get involved, each section of the guide has advice about how to get started.

If you need professional indemnity insurance for your pro bono work, there is more information about the [National Pro Bono Professional Indemnity Insurance Scheme](#) on page 39. If you would like information about obtaining an appropriate practising certificate, see [here](#). And if you are looking for guidance on [how to manage concerns regarding commercial conflicts of interest](#), see page 37.

Lawyers are uniquely placed to shape laws, alter business and community practices, hold decision-makers accountable, and ensure climate issues receive the attention and prominence they deserve.

**Best of luck on your journey to help combat the climate crisis!**

## HERE ARE 15 DIFFERENT WAYS THAT LAWYERS *(AND THE PLACES WHERE THEY WORK)* CAN GET INVOLVED IN PRO BONO WORK TO HELP COMBAT THE CLIMATE CRISIS:

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# #1. RUNNING STRATEGIC CLIMATE LITIGATION

*Climate litigation can influence government decision-making and hold corporations “directly accountable for the climate change implications of their actions”.<sup>9</sup> When lawyers work pro bono on strategic climate litigation, they contribute to the development of climate law around the world.*

Pro bono lawyers can engage in pro bono climate litigation most effectively through co-counselling. This is when pro bono lawyers partner with a civil society organisation to undertake litigation for a client. By contributing expertise, skills and other resources, the pro bono provider can increase the capacity of a civil society organisation to undertake important public interest litigation.<sup>10</sup> It is important for pro bono lawyers to consult with civil society organisations before undertaking climate litigation, to ensure they are working in harmony (and not in conflict) with the litigation being run by those organisations.

Traditionally, climate litigation has involved filing administrative law challenges to government decision-making under planning and environmental legislation. However, there is increasing interest in using alternative areas of law (such as corporations law, negligence, and human rights law) to underpin novel approaches to strategic climate change litigation.<sup>11</sup>

This creative approach is on display in Case Study 1 below, where the Environmental Defenders Office (EDO) discusses launching the first ever human rights challenge to an Australian coal mine. Case Study 2 is an example of how judicial review proceedings continue to be an important way to influence government policy.

For further inspiration, you can browse the following databases of climate litigation worldwide:

- **Climate Change Litigation of the World**  
(run by the Grantham Research Institute at LSE)
- **Climate Change Litigation Databases**  
(run by the Sabin Center for Climate Change Law at Columbia Law School and Arnold & Porter).

**HOW TO GET INVOLVED:** Reach out to a civil society organisation that works on climate-related matters and ask if you can assist with current or future strategic litigation. For a list of these organisations in Australia, [see here](#).

IMAGE BY  
SIMON MIGAL/  
UNSPLASH

### CASE STUDY 1 ENVIRONMENTAL DEFENDERS OFFICE: AUSTRALIA

EDO is the largest environmental legal centre in the Australia-Pacific, providing community access to justice, running ground-breaking litigation and advocating for environmental law reform.

In May 2020, EDO launched the first ever human rights challenge to an Australian coal mine on behalf of clients Youth Verdict Ltd and The Bimblebox Alliance Inc. Youth Verdict is a diverse group of young people, while The Bimblebox Alliance is a community group of local landholders and farmers who want to protect the Bimblebox Nature Refuge. Both groups have filed objections to the Mining Lease and Environmental Authority for Clive Palmer's Galilee Coal Project with the Land Court of Queensland.

EDO will argue that the coal from the mine will fuel climate change and therefore infringe upon six human rights: the rights of the child; the right to life; the right to be free from discrimination; the cultural rights of Aboriginal and Torres Strait Islander peoples; the right to property; and the right to privacy.

EDO's team, led by Brisbane Principal Solicitor Sean Ryan, draws on EDO's extensive work for clients challenging the climate change impacts of Australian coal mines. Pro bono support is provided by legal and scientific volunteers.

If the case is successful, the Land Court of Queensland will recommend that the Minister refuse the Mining Lease and Environmental Approval. The case is expected to conclude in 2021.



AUSTRALIAN COAL MINE / NEEDPIX

### CASE STUDY 2 BAKER MCKENZIE: UNITED KINGDOM

Baker McKenzie is acting for the Good Law Project and environmental activists Dale Vince and George Monbiot in an action against the UK Secretary of State for Business, Energy and Industrial Strategy. This action aims to force the UK Government to update its national energy policy to reflect and comply with the UK's commitments and legal obligations in relation to climate change, including the Paris Agreement and the UK Parliament's declaration of a climate emergency in 2019.

The current UK energy policy framework is based on outdated national policy statements implemented in 2011. They form the primary basis upon which energy projects in the UK, including oil, gas and coal energy projects, can be approved. Baker McKenzie's clients' aim is to force the UK Government to revisit and then update these national policy statements based on underlying legislation requiring the national policy statements to be reviewed in certain circumstances, which their clients argue are applicable here.

The timing of the claim has been prompted by a high profile ruling of the English courts in relation to the UK Government's decision to expand Heathrow Airport, where the Court ruled that the Government's decision failed to take into account current UK climate change policy, and therefore could not stand. Baker McKenzie's clients argue that that ruling is directly applicable to the status of the UK's national policy statements on energy.

Failing an adequate response by the Secretary of State to Baker McKenzie's letter before action, the clients will commence judicial review proceedings.

<sup>9</sup> Jacqueline Peel, Hari Osofsky and Anita Foerster, 'Shaping the 'Next Generation' of Climate Change Litigation in Australia' (2017) 41(2) Melbourne University Law Review 793, 793.

<sup>10</sup> For more information, see Australian Pro Bono Centre, *Pro Bono Partnerships and Models: A Practical Guide to What Works* (2016) Chapter 24, accessible [here](#).

<sup>11</sup> Peel, Osofsky and Foerster (n 9) 816.



## #2. WORKING ON LAW REFORM ACTIVITIES

*A powerful way lawyers can advocate for action on climate change is to undertake pro bono law reform activities.*

There are many ways to get involved. Examples include:

- drafting model laws and regulations aimed at fighting climate change, to provide to lawmakers (see Case Study 1 below)
- providing drafting assistance for – or feedback on – proposed climate legislation (see Case Study 2 below)
- drafting law reform submissions which outline the need, for example, to strengthen environmental protection legislation or take emergency action to address climate change (see Case Study 3 below)
- providing drafting assistance for written submissions to the United Nations or other international organisations
- providing advocacy assistance to organisations campaigning for changes to environmental laws.

Case Study 1 demonstrates a creative approach to law reform. The Chancery Lane Project has mobilised the legal profession to not only draft model laws, but also to rewrite precedent clauses in everyday commercial contracts to drive climate action.

It is often effective for pro bono lawyers to undertake law reform activities in partnership with a civil society organisation, such as a community legal centre, charity or other not-for-profit organisation. This has several advantages:

- **civil society organisations** that work on climate change matters have significant expertise, have been undertaking law reform for many years, and are involved in strategic and impactful projects
- your work can be done '**behind the scenes**', if your employer is unwilling to publicise its pro bono work.

*“There was magic in the room... a real sense that together we can use our expertise to reshape the legal landscape so that every contract and law leads to tangible progress towards a net zero emissions economy”*

*- Ellie Mulholland, The Chancery Lane Project*

**HOW TO GET INVOLVED:** Contact a civil society organisation that works on climate matters to ask if you or your firm can contribute to their law reform work. For a list of these organisations in Australia, [see here](#).



### CASE STUDY 1 THE CHANCERY LANE PROJECT: UNITED KINGDOM

The Chancery Lane Project (TCLP) is a collaborative pro bono initiative that mobilises the legal profession to rewrite contracts and laws to tackle the climate crisis.

Born out of conversations during London Climate Action Week 2019, the founders recognised that the legal profession is in a unique position to address the climate crisis as lawyers write the contracts and laws which influence decisions made by individuals and businesses.

In less than a year, solicitors, barristers and academics from over 80 firms and organisations, including MinterEllison, Slaughter & May, Hogan Lovells, Norton Rose Fulbright, Clyde & Co and Airbnb, have set aside their professional rivalries to collaborate on the project.

After the first legal hackathon in November 2019, TCLP published the Climate Contract Playbook with precedent clauses for lawyers and businesses wishing to drive climate action in their everyday contracts, such as building in green improvement obligations in supply contracts or back-to-back net zero targets with suppliers and customers. The Green Paper of Model Laws sets out model laws to accelerate the transition to net-zero emissions. Each of the precedent clauses and laws has been given a child's name to connect to the next generation for whom the changes are so important.



Drafting is just one part of the project, with lawyers then amplifying the clauses with their clients and across their networks. Since being launched in February 2020, the publications have been downloaded over 8000 times by users in over 60 countries. The clauses have been embedded in precedents of global law firms and multinational companies and incorporated into university law courses. In response to the COVID-19 pandemic, TCLP has pivoted to virtual events and online collaborative drafting as they continue to grow the community and its positive impacts across the globe, including in Australia.

Ellie Mulholland, Director of the not-for-profit Commonwealth Climate and Law Initiative, Senior Associate at MinterEllison and member of TCLP steering group said, *“I think there are a lot of commercial lawyers who want to do something about the climate crisis, but don't know where to start. The Chancery Lane Project creates a safe space to innovate. There was magic in the room at our first hackathon – a real sense that together we can use our expertise to reshape the legal landscape so that every contract and law leads to tangible progress towards a net zero emissions economy.”*



## CASE STUDY 2

### DLA PIPER: ETHIOPIA

Since March 2020, DLA Piper lawyers from offices in Europe and England, along with their relationship firms in Ethiopia and Kenya, have been advising the Ethiopian Environment, Forest and Climate Change Commission (EEFCCC). The EEFCCC is a Federal Executive Organ of the State of the Federal Democratic Republic of Ethiopia. One of the aims of the EEFCCC is to build a climate resilient green economy by 2025 by ensuring sustainable environment and forest management, development and utilisation.

The EEFCCC is mandated to formulate strategies, policies, laws and standards as well as procedures in regard to the environment. Upon approval of these policies and laws, EEFCCC then monitors and enforces their implementation. DLA Piper lawyers are assisting EEFCCC with legislation and the establishment of the Environmental Tribunal for Ethiopia. This will improve access to justice and enhance enforcement of international and domestic environmental laws, policies and principles.

## CASE STUDY 3

### WOTTON + KEARNEY: AUSTRALIA

As part of Wotton + Kearney (W+K) 's commitment to demonstrating environmental leadership, the firm has provided legal research and drafting support to Climate Justice Programme (CJP), an organisation which brings together lawyers and academics for the purpose of developing strategic initiatives to address climate change.

One of W+K's lawyers, Johanna Lawlor, assisted CJP with the preparation of its submission to the Australian Royal Commission into National Natural Disaster Arrangements, which was due on 4 May 2020. The work focused on the section in relation to the use of emergency powers, explaining how climate change poses a national emergency. The submission highlights increased bushfire risk as one manifestation of the climate emergency and the need for emergency action to address climate change, while also ensuring human rights safeguards. With the limited human rights protections that currently exist in Australia, the submission suggests that a national bill or charter of human rights would be appropriate along with safeguards integrated

into any emergency legislation. In preparing this draft, the W+K lawyer identified relevant emergency laws at both Commonwealth and state levels and how this may have reduced the efficiency of the government response to the bushfire emergency.

The assistance W+K provided to CJP's submission drew on earlier research conducted by another W+K lawyer to assist CJP with drafting an article on the impact of climate emergency on human rights and the human rights frameworks needed to address identified risks, using case studies from both a domestic and international perspective.

*"This legal work is incredibly important – climate change increasingly poses one of the biggest threats to our planet. It is a collective endeavour and collective accountability which should be the forefront of all companies and firms."*

- Johanna Lawlor, Associate

# #3.

## OFFERING COMMERCIAL LEGAL ADVICE TO NOT-FOR-PROFIT ORGANISATIONS AND SOCIAL ENTERPRISES

*There are many not-for-profit organisations (NFPs) and social enterprises working to combat climate change. These organisations often require commercial legal advice to function. By providing NFPs and social enterprises with pro bono commercial legal advice, pro bono lawyers allow these organisations to direct their limited resources towards furthering their mission, rather than paying for legal services.*

Commercial law firms and corporate in-house teams are well suited to this work, as the legal issues faced by NFPs are often similar to those faced by commercial organisations. NFPs and social enterprises may require legal advice in relation to:

- Charity and deductible gift recipient status applications
- Commercial agreements (such as leases)
- Corporate law
- Governance
- Intellectual property
- Tax
- The potential legal duty of boards to act on climate change risk.<sup>12</sup>

The case studies below provide several examples of how pro bono legal work can assist NFPs and social enterprises, and allow them to focus on activities central to their mission.

### HOW TO GET INVOLVED:

- For information about how to source pro bono opportunities, [see here](#).
- For advice about how to partner effectively with a NFP, [see here](#).
- Individual lawyers and in-house legal teams wanting to assist NFPs and social enterprises who are not covered by any other professional indemnity insurance might be eligible for coverage by the National Pro Bono Professional Indemnity Insurance Scheme. See page 39 of this guide for more information.

## CASE STUDY 1 ALLEN & OVERY: BELGIUM / AFRICA

The Jane Goodall Institute (JGI) is a global community conservation organisation that focuses on protecting chimpanzees and inspiring communities across the world to take action for people, animals and the natural world we all share.

One of JGI Belgium's primary focuses is reforestation projects to combat climate change. Through its Forest in One Day planting event, trees are planted in Belgium with the help of local forestry partners. To further increase the success of this annual planting event and add to its visibility, JGI Belgium recently chose to enter into a strategic partnership with Luminus.

Allen & Overy assisted JGI Belgium in forming this strategic partnership by providing pro bono advice and contract drafting expertise. The partnership with Luminus is now formalised for a three-year period whereby Luminus provides significant sponsoring to support JGI Belgium's tree planting commitments. Yearly, a minimum of 12,000 trees will be planted in Belgium at three different locations during the annual planting event. In addition, JGI Belgium will plant another 1,200,000 trees per year in Africa.

JGI Belgium also collaborates with local forestry partners for this purpose. To smoothly manage these relations and extend cooperation with different forest groups in Flanders and Wallonia, Allen & Overy has provided JGI Belgium with framework agreements that can be specifically tailored to all parties' interests.

The first planting event since JGI Belgium and Luminus joined forces yielded incredible results. On 2 February 2020, JGI Belgium, Luminus and forestry partners planted 18,000 trees in Belgium and 1,200,000 trees in Burundi.

<sup>12</sup> For more information on this topic, see: Alexia Staker and Alice Garton, *Directors' Liability and Climate Risk: United Kingdom - Country Paper* (Report, April 2018); 'New legal opinion and business roundtable on climate risks and directors' duties', Centre for Policy Development (30 October 2016), accessible [here](#).



## CASE STUDY 2 HALL & WILCOX: AUSTRALIA

Conservation Ecology Centre (CEC) has been a strategic pro bono partner of Hall & Wilcox since 2012. CEC is a registered environmental organisation based at Cape Otway, Victoria, Australia. CEC's purpose is to generate knowledge to nurture country. The organisation conducts leading conservation and ecological research programs in the Great Otway National Park, working to develop and deliver solutions to the most urgent conservation challenges in the Otways region.

PHOTO BY KEITH HARDY ON UNSPLASH



Since 2018, CEC has been developing a new ecotourism social enterprise, Wildlife Wonders, at Apollo Bay. Wildlife Wonders is due to open to the public in late 2020. The venture will offer a world class nature-based experience to visitors to the Great Ocean Road, provide new local employment opportunities and build capacity for conservation work across the Otways region. Hall & Wilcox has advised on all legal aspects including not-for-profit structuring and charity registration, governance, funding (including debt and government grants), property, planning and employment issues. The project is supported by the Commonwealth and Victorian governments as well as a number of philanthropic investors. Extensive pro bono support has been provided by Tanarra Philanthropic.

CEC Co-Founder and Chief Executive, Lizzie Corke OAM, commented that, *'Hall & Wilcox has taken the time to develop a deep understanding of our organisation which has proved invaluable to our development. In recent years, Hall & Wilcox has provided fabulous support as we have worked to deliver Wildlife Wonders. This project has required considerable negotiation with a range of project partners and their advisors and provided us with some insight into the way in which other professional services firms operate. Hall & Wilcox has invariably offered great expertise, delivered quickly and taken a thoughtful, problem-solving approach which has strengthened our partnerships across a range of sectors and contributed significantly to the project's success.'*

## CASE STUDY 3 DLA PIPER: CHINA / FRANCE / JAPAN

In 2018, the DLA Piper lawyers from Shanghai and Paris undertook research for the Renewable Energy Institute, a not-for-profit organisation based in Tokyo engaged in studying the realisation of a cross-border renewable energy power grid in Asia, called the Asia Super Grid. The Asia Super Grid initiative aims to interconnect electric power systems of Asian countries, enabling mutual benefits by exchanging abundant natural renewable energy resources such as wind, solar and hydropower. As the Paris Agreement enters the implementation stage, the development of an international power grid like the Asia Super Grid is critical to achieving 100% renewable energy.

The research undertaken by the lawyers related to renewable energy legislation in China as well as the legal arrangements for cross-border electricity supply in European countries.

The client publishes their research on the development of a super grid in an annual report on their website. To date, the published research is focused on the economic perspectives of an Asia Super Grid. DLA Piper research will be included in a future report looking at the legal aspects of the project.



## **CASE STUDY 4 LANDER & ROGERS: AUSTRALIA**

In 2018, Lander & Rogers was engaged to provide advice on a pro bono basis to an international, investor-focused not-for-profit company which was working on mobilising the bond market for climate change solutions. The organisation promotes investment in projects and assets necessary for the rapid transition to a low carbon and climate resilient economy.

The organisation had representatives in Australia with no formal employment contracts in place. They required assistance in reviewing their template employment agreement, which was drafted for use in the United Kingdom, so that it could be used for Australian employees.

Lander & Rogers assisted in identifying whether the representatives were employees or contractors, and then assisted in drafting the necessary Australian-jurisdiction specific agreements for each representative. Additionally, the firm assisted with advice about intellectual property issues under the contractor agreements.

The work assisted the organisation in lawfully engaging representatives in Australia who could work towards carrying out the organisation's purpose.

## **CASE STUDY 5 NORTON ROSE FULBRIGHT: AUSTRALIA**

In 2018, Norton Rose Fulbright provided pro bono advice to an environmental organisation on the introduction of a scheme designed to improve water quality and land management practices and ultimately, reduce the amount of pollution caused by nutrient, pesticide and sediment entering the Great Barrier Reef catchment. The scheme helps to build the resilience of the Reef to assist it to cope with climate change. Under the proposed scheme, land managers would be able to undertake projects that incorporate improved water and land management practices and generate a tradeable unit of pollutant reduction (a quantifiable volume of nutrient, pesticide or sediment).

Norton Rose Fulbright's advice covered:

- the initial considerations associated with secretariat and governance requirements for the reef credit scheme, including identification requirements in respect of the credits
- an assessment as to whether the reef credits would comprise financial products, and general AFS licensing implications arising from the scheme
- the tax implications arising from the scheme, with a focus on Australian Taxation Office registration requirements and goods and services tax treatment
- counter-terrorism and anti-money laundering requirements arising from implementation of the scheme.



# #4. ESTABLISHING A CLIMATE JUSTICE CLINIC IN COLLABORATION WITH A UNIVERSITY

In recent years, several climate justice clinics have been established at Australian universities. The clinics typically operate on a model where:

- law students provide advice to clients (such as environmental organisations, activist groups, or other not-for-profit organisations working towards climate justice) on climate-related legal issues, or they work on law reform activities
- pro bono lawyers supervise the work of the law students and/or prepare resources to assist the clinic.

The case studies below provide excellent examples of how these clinics can assist social enterprises and not-for-profit organisations working towards climate justice, and contribute to meaningful environmental policy reform. Support from pro bono lawyers is often crucial to the success of the clinics.

The benefits of a climate justice clinic are twofold. First, it provides the opportunity for clients with limited resources to obtain free legal advice, which will help facilitate their mission to combat climate change and improve sustainability. Secondly, pro bono lawyers can

*“Prior to participating in the clinic, I didn’t know how to direct my passion towards the climate fight... Through my work with climate lawyers and seminars with other climate professionals, I made tangible contributions and learned how to continue making an impact after my placement concluded.”*

**- Rahul, student**

help give the law students a better understanding of climate justice issues and provide them with valuable work experience. Many students are passionate about social justice. Working at a climate justice clinic introduces them to the pro bono sector early in their careers, and encourages them to continue making an impact after the conclusion of their placement.

**HOW TO GET INVOLVED:** Ask a university law school if they would be interested in collaborating on the establishment of a climate justice clinic. Alternatively, ask if you can contribute resources to an existing clinic.

IMAGE BY  
EDWIN ANDRADE /  
UNSPLASH





### CASE STUDY 1 RUSSELL KENNEDY LAWYERS: AUSTRALIA

The Pro Bono Practice at Russell Kennedy Lawyers has partnered with Monash Law School's clinical program in running a new Climate Justice Clinic (CJC). Russell Kennedy Lawyers have seconded supervising lawyers to the clinic and assisted in preparing the reading and seminar program. The firm has worked alongside clinical supervisors and senior environmental lawyers Ariane Wilkinson (of Environmental Justice Australia) and Hubert Algie (of Kellehers).

A pilot clinic ran from August-October 2019, and its success has meant that the CJC is now featured within Monash Law School's In-House Clinical Placement unit. The CJC gives students the opportunity to expand and apply their knowledge of climate law, develop practical lawyering skills, and contribute to legal interventions that mitigate climate change. Importantly, the clinic also engages students with the ethical and political dimensions of climate justice. In the words of CJC founder, Professor Adrian Evans of Monash Law School, a climate justice clinic is a perfect means of targeting our future lawyers, and should "play a part in strengthening the political and social consciousness of the law students who pass through it." Students are divided into project teams and assigned a "real client" such as a non-governmental organisation, a grass-roots organisation and an Indigenous-led organisation. They are also working on developing a client base among some Pacific Island states. They attend

seminars with specialist presenters, and carry out research and prepare legal advice for their clients, under close supervision. Projects have included advising on opportunities for climate litigation, and strategic policy and legislative analysis to advance climate justice in policy and government practice. It is hoped that some of the CJC research will convert into strategic litigation, perhaps co-initiated by firms such as Russell Kennedy Lawyers.

Rahul, a past student of the CJC, said, *"The CJC space is incredible as it marries the energy of University students with the expertise of professionals to create an incredibly powerful force driving action. Prior to participating in the clinic, I didn't know how to direct my passion towards the climate fight... Through my work with climate lawyers and seminars with other climate professionals, I made tangible contributions and learned how to continue making an impact after my placement concluded."*

### CASE STUDY 2 ASHURST: AUSTRALIA

Since 2014, Ashurst has partnered with the University of Melbourne's Sustainability Business Clinic. The Sustainability Business Clinic supports law students, under the guidance and supervision of Ashurst lawyers, to provide free legal advice to social enterprises and not-for-profit organisations that are working in sustainability fields such as renewable energy, urban planning, farming, food production and conservation.

Law students from the University of Melbourne participate in the Sustainability Business Clinic as part of a subject, including interviewing clients, attending a site visit, identifying legal issues and drafting advice. Ashurst lawyers assist the students in scoping the legal questions, provide feedback on the students' draft advice and settle the final product.

Some notable examples of clients of the clinic include:

- The owner and operator of a community-owned wind farm. The Sustainability Business Clinic provided legal advice on two separate occasions to this client. In 2016, the Clinic provided advice relating to suitable co-operative structure arrangements. In 2019, further advice was provided relating to use of land as a community asset and proprietary interests in the underlying land.
- A regional community organisation promoting food security and social inclusion through community garden and green space. The Sustainability Business Clinic provided property and planning advice to enable the establishment of a community green space, which commenced operation in 2018.

The subject is taught by academic and former commercial lawyer Brad Jessup, and runs approximately once a year, starting mid-year.



### CASE STUDY 3 UNIVERSITY OF QUEENSLAND PRO BONO CENTRE: AUSTRALIA

The UQ Pro Bono Centre recognises the importance of students using their emerging legal skills to advocate on climate change issues that will most acutely impact their generation.

The UQ Pro Bono Centre established a student-led Climate Justice Initiative in 2019 to support its strategic goal of environmental sustainability through legal work. The Climate Justice Initiative is a group of senior law students who have a demonstrated commitment to environmental law and climate justice, and who wish to undertake pro bono legal research on climate justice matters. This includes research to support law reform, pro bono legal work and internal capacity building for the legal assistance sector.

Recent projects include:

- A submission to the statutory review of the *Environment Protection and Biodiversity Conservation Act 1999*, emphasising the need to incorporate climate change considerations into existing legislative provisions.
- A response to the Royal Commission into National Natural Disaster Arrangements, contending that federal law reform can improve resilience and adapt to changing climatic conditions.
- The development of a case-law database to identify legal issues faced by climate activists in Queensland. In collaboration with Caxton Legal Centre, this project will be updated periodically as litigation in the area develops.
- Legal research briefs to support pro bono litigation relating to summary criminal charges arising from climate protest. This work has been done for and on behalf of Brisbane-based law firms.

*“It is easy to feel helpless in our personal and professional lives as to how we can tackle climate change. We applied for the Initiative in the hope that we could channel our legal knowledge into a project that enables us to do something positive for the environment.”*

- Climate Justice Initiative students



### CASE STUDY 4 GREENLAW: AUSTRALIA

GreenLaw was established by law students at the ANU College of Law to connect law students with environmental organisations. Through legal research projects, it enables non-governmental organisations to better utilise and engage with the law in agitating for policy reform. In so doing, they equip tomorrow's

lawyers with legal research skills and a deeper understanding of how a changing environment will affect all areas of legal practice in the coming years.

Established in September 2019, GreenLaw has over 25 active members and the support of both ANU College of Law academics and private sector partners. GreenLaw recently made a submission to the Environmental Protection and Biodiversity Conservation Act 1999 statutory review panel based on empirical research into whether 'lawfare' (the use of legal processes to stall development proposals) is occurring. This research also forms the basis of a scholarly article which has been accepted by the *Environmental and Planning Law Journal* for publication in July 2020.

The GreenLaw team is also working with activist groups to develop a comprehensive guide to protestor rights in the ACT which will shortly be publicly available. GreenLaw is currently negotiating the final details of a project with Farmers for Climate Action to inform their law reform agenda on a National Strategy for Sustainable Agriculture.

GreenLaw believes that law students are a powerful resource for informing policy reform and furthering climate justice, and that this resource is being underutilised. The team's strengths lie in the diversity of their interests and knowledge and their passion for realising a more just, sustainable future.



# #5. PROVIDING A SECONDEE TO A CIVIL SOCIETY ORGANISATION WORKING TO COMBAT CLIMATE CHANGE

(OR, FOR INDIVIDUAL LAWYERS OR LAW STUDENTS, VOLUNTEERING AT SUCH AN ORGANISATION)

Civil society organisations experience significant demand despite limited resources. As a result, one of the most impactful actions a pro bono provider can take in light of the climate crisis is to provide a secondee to a civil society organisation working to combat climate change through legal advice or advocacy. There are a wide variety of organisations that can be assisted by secondees, including community legal centres, climate justice organisations and other not-for-profit organisations and charities.

Providing a secondee to a civil society organisation boosts the capacity of that organisation to undertake important legal work. There are a range of ways to provide a secondment:

- full-time or part-time for a fixed period (for example, three, six or 12 months)
- sessional (for example, operating an advice clinic one afternoon per week)
- short-term (for example, to cover a staff shortage)
- specific (for example, for the length of a project).

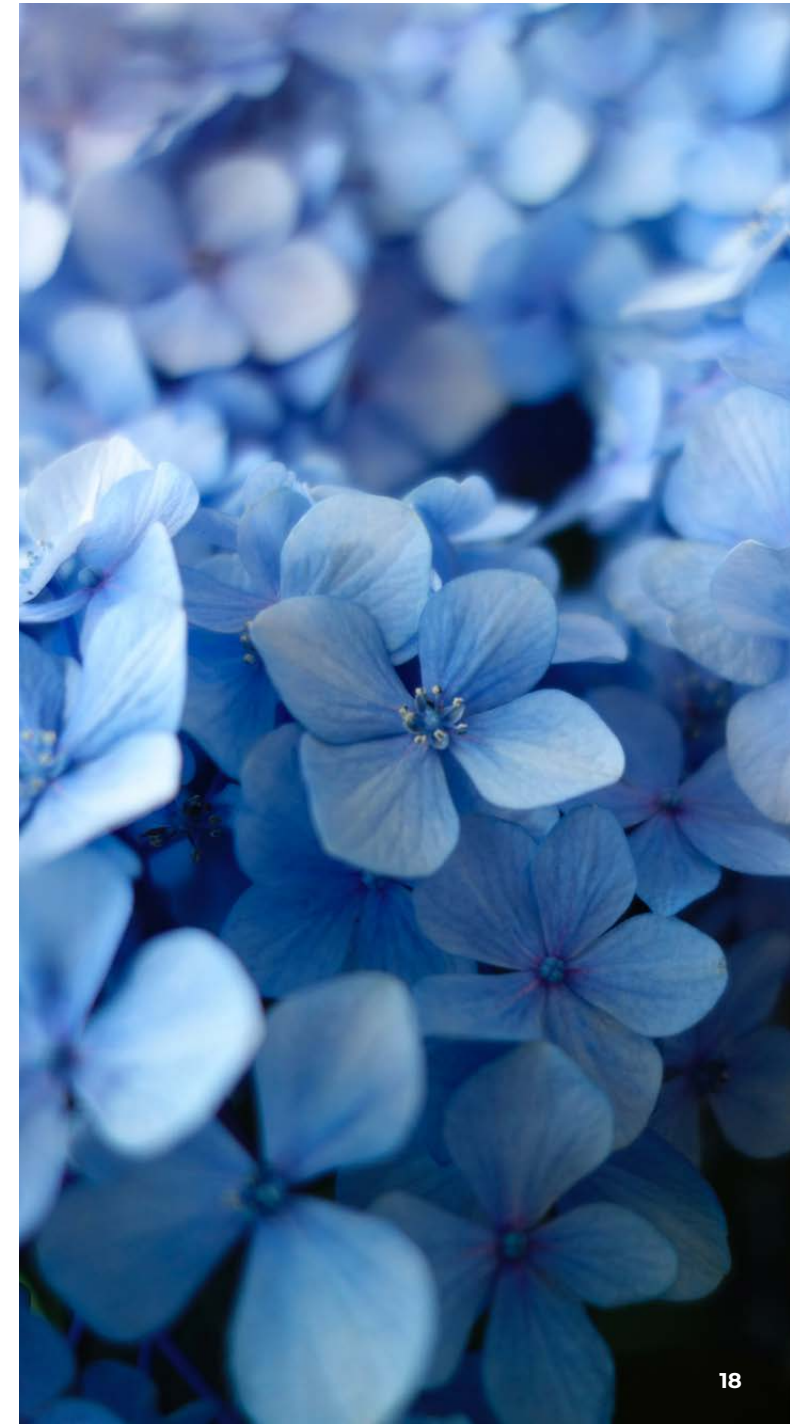
Both case studies below are examples of law firms providing a secondee to a civil society organisation to assist with a specific project at a time of significant legal need, following the 2019/2020 Black Summer bushfires in Australia.

Secondments also offer valuable benefits to the pro bono provider. They can contribute to the professional development of staff, raise awareness of climate change issues, strengthen the partnership between the pro bono provider and the civil society organisation, and improve employee morale.<sup>13</sup>

## HOW TO GET INVOLVED:

- To learn more about how secondments work, the benefits they offer, and how to establish an effective secondment arrangement, please see the following Australian Pro Bono Centre resources:
  - Australian Pro Bono Manual, [Chapter 1.7.7](#) and [Chapter 2.3](#)
  - Pro Bono Partnerships and Models: A Practical Guide to What Works, [Chapter 22](#).
- To volunteer as an individual lawyer, contact civil society organisations directly to ask if you can assist. Many have formal volunteering programs which provide training for volunteers. For a list of these organisations in Australia, see [here](#).

PHOTO BY TOMOKO/UNSPLASH



<sup>13</sup> For more information, see: Australian Pro Bono Centre, *The Australian Pro Bono Manual* (2016) Chapter 1.7.7, accessible [here](#).



### CASE STUDY 1 MAKINSON D'APICE LAWYERS: AUSTRALIA

Following the devastating bushfires in NSW and Victoria in the summer of 2019/20, the legal community was called upon to provide pro bono assistance to the individuals and communities impacted by the tragedy.

Justice Connect agreed to coordinate the pro bono response by receiving all bushfire-related pro bono referrals from frontline workers across the two states and connecting them with one of the 163 law firms that had answered the call to help.

Makinson d'Apice Lawyers sent Pro Bono Senior Associate Ella Alexander on secondment to Justice Connect from February to June 2020 to be the dedicated bushfire response lawyer in the Public Interest Law team.

In this role, Ella was responsible for speaking to help-seekers to identify their legal issues and then finding appropriate lawyers to assist. This required collaboration with Justice Connect member and non-member firms, Legal Aid and a range of community legal centres and bushfire recovery centres across NSW and Victoria.

Having oversight of all bushfire-related pro bono matters meant that Ella was able to work with the team to identify and address systemic legal issues facing bushfire-affected communities; for example, through submissions to the Bushfire Royal Commission and preparation of community legal education resources in areas of need.

*"It was heartbreaking to talk to so many people who had lost their family members, homes and livelihoods in an instant. But I was amazed by their resilience and inspired to see the legal profession come together to support the community in times of crisis."* - Ella Alexander, Pro Bono Senior Associate

### CASE STUDY 2 ASHURST: AUSTRALIA

Ashurst has provided secondment support to Community Legal Centres NSW in light of the recent bushfires and pandemic.

The secondment is aimed at providing background support direct to Community Legal Centres NSW. The secondment was deployed in immediate response to the 2020 bushfires and has adapted into support during the pandemic. Community legal centres will be hard hit by surges in legal need and the secondment will remain in place while the work remains. Ashurst has assisted in the drafting and preparation of a sector response to the Bushfire Inquiry highlighting the need for funding to assist with disaster preparedness in light of the forecasted increasing severity of the environmental crisis. The placement of four part-time graduate secondments to both specialist and generalist centres continues at the time of writing.

*"When our centres are under pressure, our own workload as the peak body increases too. Getting pro bono support at this time has enabled us to do our bit to respond to this exploding demand for free legal assistance. What is needed when centres are responding to crises is pro bono support that is flexible and that can be deployed quickly and without it being a burden on the centre. We've been very lucky to receive this."*

- Tim Leach, Executive Director of  
Community Legal Centres NSW

## #6. PROVIDING LEGAL ASSISTANCE TO INDIGENOUS PEOPLES WHO ARE DISPROPORTIONATELY AFFECTED BY THE CLIMATE CRISIS

*“As custodians of cultures with holistic and enduring ties to the land dating back at least 65,000 years, Aboriginal and Torres Strait Islander people stand to be uniquely affected by accelerating climate change.”*

- 2020 Close the Gap Report<sup>14</sup>

Indigenous peoples across the world – including Aboriginal and Torres Strait Islander peoples in Australia – are disproportionately affected by the climate crisis, and are already feeling its effects.<sup>15</sup>

To contribute meaningful action on climate change, lawyers should therefore consider directing the focus of their pro bono work, at least in part, towards providing legal assistance to Indigenous peoples and Indigenous-owned not-for-profit organisations experiencing the effects of the climate crisis.

In Case Study 1 below, environmental law charity ClientEarth provides an excellent example of how to work with communities affected by climate change – in this case, Torres Strait Islanders whose homes, sacred sites and burial grounds have been damaged by rising sea levels. Case Study 2 demonstrates how a firm can provide practical pro bono assistance to an Indigenous-owned not-for-profit organisation.

Many Indigenous Australians ‘have demonstrated an assertive agency toward meeting the challenges of climate change and have instituted a diverse array of initiatives to combat climate impacts’.<sup>16</sup> It is crucial that lawyers listen to and learn from their clients, and contribute their expertise where it is sought.

The Centre strongly encourages all lawyers to undertake cultural awareness training before commencing this work. Reconciliation Australia recommends:

- using their ‘[Share Our Pride](#)’ resource as a way to start a cultural awareness journey
- visiting the [Supply Nation website](#) to find Aboriginal and Torres Strait Islander owned companies that can provide cultural awareness training.

**HOW TO GET INVOLVED:** You can start by reflecting your intention to provide climate-related pro bono assistance to Indigenous peoples in the strategic objectives of your pro bono program, which should be embedded in your pro bono policy. Guidance from the Centre on developing (or refreshing) your firm’s pro bono policy is available [here](#).<sup>17</sup> Then you can start sourcing relevant pro bono legal work.<sup>18</sup>

<sup>14</sup> The Lowitja Institute for the Close the Gap Steering Committee, *Close the Gap (Report, March 2020)* 40.

<sup>15</sup> Melissa Nursey-Bray et al, ‘Old ways for new days: Australian Indigenous peoples and climate change’ (2019) 24:5 *Local Environment* 473, 473.

<sup>16</sup> Melissa Nursey-Bray, ‘Not passive victims: Indigenous Australians respond to climate change’, *Foreground* (30 August 2019), accessible [here](#).

<sup>17</sup> Australian Pro Bono Centre, *The Australian Pro Bono Manual* (2016) Chapter 1.3, accessible [here](#).

<sup>18</sup> For more information about sourcing pro bono work, see *Sourcing Pro Bono Opportunities: Justice Project: Pro Bono Tool*, Australian Pro Bono Centre (2020), accessible [here](#) and Australian Pro Bono Centre, *The Australian Pro Bono Manual* (2016) Chapter 1.6.2, accessible [here](#).



### CASE STUDY 1 CLIENTEARTH: AUSTRALIA

In May 2019, lawyers with environmental law charity ClientEarth acted for a group of eight Torres Strait Islanders in submitting a complaint against the Australian Commonwealth Government to the United Nations Human Rights Committee in Geneva. This is the first climate change case to be brought against the Australian Government on human rights grounds.

The complaint alleges that climate inaction by the Australian Government violates the human rights of the Islanders under the International Covenant on Civil and Political Rights, as communities are suffering a range of climate-related impacts on their traditional way of life. These include rising seas damaging homes, sacred sites and burial grounds, as well as impacts on the marine environment, which is central to Islander livelihoods, culture and spirituality.

The complaint authors are calling for greater climate action from the Australian Government, including plans to mitigate greenhouse gas emissions, and for more funding for adaptation, such as coastal defences.

In December 2019, the Australian Government delivered a key ask – promising AU\$25 million in climate adaptation spending for the Torres Strait - yet the case itself is ongoing. The Human Rights Committee has requested a response from the Australian Government, after which the Islanders will respond, followed by a potential oral hearing, with a decision likely in 2021.

The region's peak native title body, Gur A Baradharaw Kod Sea and Land Council, is supporting the claim, and lawyers with ClientEarth are providing legal advice to the Islanders pro bono. Environmental campaigners 350 Australia are leading the local campaign, helping to spread the Islanders' story to audiences on the mainland.

### CASE STUDY 2 NORTON ROSE FULBRIGHT: AUSTRALIA

From March 2018 onwards, Norton Rose Fulbright (**NRF**) has been assisting an Indigenous-owned not-for-profit on an Australian Carbon Credit Units (Credits) venture. The client has custodial responsibility of the parts of Arnhem Land under active bushfire management, and supports traditional land management with funding generated through the production and sale of the Credits from savannah burning projects. The burning projects are registered under the Emissions Reduction Fund, a government program that provides incentives for organisations and individuals to adopt new practices and technologies to reduce their greenhouse emissions and store carbon.

NRF's work includes:

- drafting and advising on an agreement covering ownership and sale of the Credits on the secondary market
- providing advice in relation to Australian Financial Service License requirements for sale of the Credits.



PHOTO BY JOHN JASON / UNSPLASH





IMAGE BY ULET IFANSASTI / GETTY IMAGES

## #7. CONDUCTING LEGAL RESEARCH ABOUT THE INTERSECTION BETWEEN HUMAN RIGHTS AND CLIMATE CHANGE

Climate change affects a broad range of fundamental human rights, including the right to life, health, water, adequate food, security, and the rights of Indigenous peoples.<sup>19</sup> Governments often approach climate change as an ecological or economic problem.<sup>20</sup> However, it is also helpful to recognise that climate change directly threatens a variety of human rights – and doing so allows us to recognise its impact on disadvantaged and vulnerable communities.

Human rights and the environment are interconnected. The relationship between human rights and the environment has been increasingly recognised around the world, with the right to a healthy environment now protected in more than 100 constitutions.<sup>21</sup>

Environmental rights are comprised of:

- **substantive rights** – where the environment has a direct effect on the enjoyment or existence of the right itself (such as the right to life, health, food, and the right to access religious sites)
- **procedural rights** – which prescribe formal steps to be taken in enforcing legal rights (such as access to information, public participation, and access to justice).<sup>22</sup>

As a result, it can be valuable for lawyers to undertake pro bono legal research regarding the intersection between climate change and human rights. The case study below discusses how pro bono support from Clifford Chance facilitated a global research project to comprehensively analyse which United Nations (UN) Member States

<sup>19</sup> Jordan Elliott and Amy Maguire, 'Detouring "Business as Usual": Alternative Pathways through the Australian Legal System for Individuals and Communities Seeking Action' (2020) 94 Australian Law Journal 439, 443; 'Climate change and human rights', Australian Human Rights Commission (1 September 2008), accessible [here](#).

<sup>20</sup> 'Climate change and human rights', Australian Human Rights Commission (1 September 2008), accessible [here](#).

<sup>21</sup> 'What are environmental rights?', UN Environment Programme (2020), accessible [here](#).

<sup>22</sup> *Ibid*.



recognise the human right to a healthy environment in their domestic law.

Before commencing this research, it is important for lawyers to identify the outcome they are trying to achieve. For example, are you trying to conduct an evaluation of existing laws and policies? Are you undertaking the research to produce data to support law reform?

**HOW TO GET INVOLVED:** There are many ways to get involved in research regarding human rights and climate change. To start, consider collaborating on a research project with a university, research centre, or international organisation.

### CASE STUDY CLIFFORD CHANCE: GLOBAL

International law firm Clifford Chance carried out a major pro bono project in collaboration with the Cyrus R. Vance Center for International Justice in New York on behalf of the UN Special Rapporteur on Human Rights and the Environment, Dr. David Boyd. The project involved conducting a global survey to determine which of the 193 UN Member States recognise the human right to a healthy environment in their domestic law.

Beginning in November 2018, the project brought together over 90 Clifford Chance lawyers, trainees, paralegals and members of the Best Delivery team from 27 offices across five continents, working in collaboration with lawyers from over 100 firms globally. The team surveyed and researched approximately 140 UN Member States, with the remaining jurisdictions being analysed by the Vance Center, in coordination with other participating law firms, and Dr. Boyd.

The survey findings were used by Dr. Boyd to prepare a report, titled “Right to a healthy environment: good practices”, that was presented to the UN Human Rights Council in Geneva on 2 March 2020. Recognising this right (the substantive elements of which include a right to a safe climate) has important implications under both domestic and international law. It may support the use of human rights mechanisms in defence of the environment at local, national and international levels. In the context of the global environmental crisis, accelerated diffusion and adoption of good practices to protect human rights is imperative.

# #8. PROVIDING LEGAL ADVICE, INFORMATION AND ADVOCACY TO THOSE FIGHTING CLIMATE CHANGE

As an increasing number of concerned citizens become involved in protests and non-violent direct action to demand climate justice, there is a growing need for pro bono support for those activists.

There are a variety of ways in which pro bono lawyers can assist activists, including:<sup>23</sup>

- providing criminal law advice and representation to activists who have been arrested and/or are being charged in connection with protest action or non-violent direct action
- drafting plain language legal information for activists ahead of protests about their legal rights and police responsibilities (or delivering community legal education seminars to educate activists on these issues)
- advocating for laws that protect the right to protest, via law reform submissions and/or litigation
- conducting research and providing advice to activist organisations in relation to peaceful protest and police accountability
- volunteering as an independent legal observer at protest actions.

For example, Action Ready, a not-for-profit organisation based in Queensland, Australia, is attempting to expand their pro bono referral network for climate activists requiring legal representation. Anna Reynolds of Action Ready commented to the Centre:

*“With CLCs [community legal centres] often overburdened and under-resourced, there is*

*a serious need for private lawyers and firms to provide representation to climate activists... representing activists really can provide a very tangible benefit to the individual and also to the wider movement... the opportunity to lead a novel defence provides an exciting opportunity to amplify the very legitimate concerns of the individual and the collective in an arena that has the capacity to both reflect and influence broader society.”*

Many pro bono lawyers are already involved in this work. Case Study 1 is an example of a firm acting pro bono for a photographer, who attended a protest which resulted in one of the first SLAPP (Strategic Lawsuit Against Public Participation) cases in Australia. Case Study 2 shows how Action Ready, with the support of pro bono lawyers, was able to provide crucial legal information in flyers to activists attending protests.

**HOW TO GET INVOLVED:** There are a number of ways to get involved, listed below. Look for similar organisations and opportunities in your jurisdiction.

- Contact an activist organisation directly to offer your assistance, such as your local Extinction Rebellion office or, in Australia, Action Ready or Melbourne Activist Legal Support
- Send a request to join the Climate Justice Legals Network (Australia) [Facebook group](#) to be connected with those requiring legal support
- Attend training to become an independent legal observer.

IMAGE BY  
SYLVAIN  
HAUSER/  
UNSPLASH

<sup>23</sup> For more information, see: Anna Reynolds, Briana Collins, and Clare Scrine, ‘A climate change for lawyers: law, civil disobedience, and the call to action in the age of the climate crisis’, Community Legal Centres NSW (26 September 2019), accessible [here](#).



### CASE STUDY 1 LANDER & ROGERS: AUSTRALIA

This case study concerns an organisation involved in logging and wood chipping, which initiated action against 20 individuals and Senator Bob Brown for over AU\$7.8 million. It was seen as one of the first SLAPP (Strategic Lawsuit Against Public Participation) cases against protestors in Australia. Lander & Rogers' client was a photographer at the protest.

Gunns was the largest woodchip operation in the Southern Hemisphere and had a forestry enterprise located in Tasmania that expanded over 900 square kilometres of plantations.

In 2003, a small group of protestors gathered at Baker's Creek in Lucaston to oppose the logging of the old-growth forest. The protest was peaceful, but caused some obstruction and property damage, and a two-day disruption. The protestors also attempted to prevent the logging through the government with an offer to buy the private land, however that was unsuccessful.

Gunns initiated proceedings against the protestors on the basis that they interfered with contractual relations, caused injury to Gunns' trade and business, and caused nuisance and trespass to land. Over the course of the proceedings, many of the original 20 protestors settled. Gunns put maximum pressure on the defendants throughout the legal process and without pro bono legal assistance and lawyers working collaboratively it is unlikely that the defendants would have been able to defend the case.

Lander & Rogers began representing one of the clients in 2008. Leading up to trial, the firm's client was not ready to settle and Gunns was receiving pressure from investors. It was not until three days before trial that a settlement was reached. The client was severely impacted by the drawn out and aggressive litigation. It was a great example of how lawyers can together support environmental protestors who would otherwise not be able to withstand such litigation.


CLIMATE ACTION  
>>> NOW!

### CASE STUDY 2 ACTION READY: AUSTRALIA

During the increasing popularity of Extinction Rebellion in late 2019 in South East Queensland, a small group of law students straddling the law and climate activist world became concerned about the lack of readily available legal information for protestors engaging in direct action. Many long-time activists are aware of the risks and can confidently assert their rights during interactions with police. Until Extinction Rebellion gained popularity, most actions were planned and 'bunnies' (arrestees) had the time and resources to learn their rights and get prepared. However, the model of Extinction Rebellion was for mass arrests of everyday people, until the issue could not be ignored. While a number of people were involved in planning, a lot more decided to show up and get arrested with minimal pre-planning. This was a rapidly changing landscape for climate activism, and Action Ready was

concerned about people's capacity to consent to engaging in arrestable actions where they lacked information about potential consequences, and about their rights.

Action Ready was born from these concerns. They put together an "Activist Legals 101" flyer, with the assistance of pro bono lawyers, to hand out at protest actions, summarising some of the basics when interacting with police, what happens when you're arrested, and the right to protest. Having this information available ensured people felt a little more prepared and supported, whether they were intending on taking arrestable action or not.



# #9. PROVIDING LEGAL INFORMATION AND ADVICE TO THOSE AFFECTED BY A NATURAL DISASTER

The rising temperatures caused by climate change are predicted to result in more frequent and intense natural disasters.<sup>24</sup>

As natural disasters become more severe and recurrent, a growing number of people will require legal assistance to deal with the effects. Assistance from pro bono lawyers is therefore crucial.

The below case studies show how natural disasters can upend a person's life, and how pro bono legal assistance can get it back on track. The case studies mentioned in *Activity #5. Providing a secondees* are also good examples of undertaking helpful pro bono work following a natural disaster.<sup>25</sup>

<sup>24</sup> International Monetary Fund, *World Economic Outlook (Report, October 2017)* 123; Sebastian Acevedo and Natalija Novta, 'Climate Change Will Bring More Frequent Natural Disasters & Weigh on Economic Growth', International Monetary Fund (16 November 2017), accessible [here](#).

<sup>25</sup> Australian Pro Bono Centre (formerly National Pro Bono Resource Centre), *Emergency Preparedness and Disaster Planning for the Legal Profession in Australia (Report, June 2011)* 7, accessible [here](#).

<sup>26</sup> For more information about sourcing pro bono work, see *Sourcing Pro Bono Opportunities: Justice Project: Pro Bono Tool*, Australian Pro Bono Centre (2020), accessible [here](#) and Australian Pro Bono Centre, *The Australian Pro Bono Manual (2016)* Chapter 1.6.2, accessible [here](#).

Those affected by a natural disaster often require legal advice and assistance in relation to:

- bankruptcy
- credit and debt
- employment
- estates
- family law
- housing and tenancy
- insurance
- lost or destroyed wills and documents
- property damage and fencing
- social security issues (including eligibility for government disaster relief payments).

The effect of these issues is spread over a long period. Immediate assistance is often required to address the loss of key documents, and tenancy and employment issues. Other legal matters, such as those involving estates and insurance claims, peak three to six months after the disaster.

Importantly, pro bono is not a substitute for properly funded government legal aid services, community legal centres and other government-funded legal services. Pro bono providers should therefore work in coordination with those services to ensure they only 'step in' when other services are unable to assist.

## HOW TO GET INVOLVED:

- **Black Summer bushfires:** see [this page](#) of the Centre's website for information about how pro bono assistance has been directed to those affected by Australia's 2019/20 bushfires.
- **Other natural disasters:** Guidance from the Centre about how to source pro bono work is available [here](#).<sup>26</sup>



## CASE STUDY 1 JUSTICE CONNECT: AUSTRALIA

In March 2007, James\* made a verbal agreement with the owner of 200 acres of farmland to work as the property manager on the land by tending to livestock, fixing fences and generally looking after the property. In return, James was able to live in his mobile home on the land.

The bushfires hit the property on 30 December 2019. Both dwellings were destroyed along with much of the garage (which contained contents largely all belonging to James).

The landowner told James to make a list of everything he lost, and he did so. James' list totalled AU\$156,000 worth of contents. This consisted of motor bikes, generators, farm equipment and so on. James believes there was probably another AU\$20-30,000 worth of contents which he could not recall in detail.

Shortly after, the landowner told the client he would be receiving an insurance payout of approximately AU\$300,000 and that he would be keeping all of it to build a bigger house for himself. The landowner's original house was from the 1980s, made with cement sheets, worth (at James' estimation) AU\$80,000. James believes the list of contents he prepared was put towards getting the payout amount.

James has moved in with his mother who lives on the eastern Victorian coastline and is in the process of getting a shipping container to move what is left of his belongings to a friend's property. James does not wish to move back to the fire-affected property. He would like his share of the insurance payout to be able to buy a small piece of land and mobile home to live in.

Justice Connect is the pro bono referral organisation in NSW and Victoria. It works to close the justice gap by connecting people and community groups with the help they need. Justice Connect referred James' matter directly to a regional firm in the client's area that had joined Justice Connect for the purpose of helping local people affected by the bushfires pro bono. James was pleased to be referred to a firm that was only a few minutes away from his mother's house.

*\*Name changed to protect privacy*

## CASE STUDY 2 ALLENS: BANGLADESH / INDONESIA / PNG / SOLOMON ISLANDS / TONGA

From 2016-2017 and again in 2019, Allens provided pro bono assistance to the Red Cross.

With climate change exacerbating climate instability and the incidence of natural disasters increasing, humanitarian agencies are working harder than ever to provide support. The Red Cross coordinates the Shelter Cluster, part of the humanitarian response that responds after natural disasters to provide assistance. The Shelter Cluster is the coordination mechanism that supports people affected by natural disasters and internally displaced people in conflicts with the means to live in safe, dignified and appropriate shelter.

The Red Cross asked Allens to collect and analyse information about housing, land and property law in a number of locations identified as at high risk for natural disaster. Allens worked with the agency to develop a clear template in which to present information. Teams were allocated to research each jurisdiction and compile the relevant information, with a centralised coordinator to ensure consistency. Allens prepared reports on PNG, Bangladesh, the Solomon Islands, Tonga and Indonesia.

These resources allow humanitarian agencies, when deployed to one of these areas, to identify and navigate the local regulatory environment, so that people who need shelter assistance get help faster and receive the right kind of support.

Tom Bamforth, the Global Focal Point for the Shelter Cluster at the International Federation of Red Cross and Red Crescent Societies, said the project would help the Red Cross provide quicker, more effective shelter in the immediate aftermath of a disaster:

*"In urban areas, if a multi storey, multi tenanted building collapses, who do you help? The owner? The tenant? How do you prove that you were living there when the building no longer exists? In rural areas, the issues are around documentation," Tom said. "This project will ensure that humanitarian workers and international coordination systems are better placed to respond quickly and effectively by having a pre-existing analysis of key factors underpinning housing vulnerability."*

# #10. OFFERING IMMIGRATION LAW ADVICE TO PEOPLE DISPLACED BY THE EFFECTS OF CLIMATE CHANGE



Experts estimate that between 150 and 300 million people will be displaced by climate change by the middle of this century,<sup>27</sup> with some forecasting it will result in “the biggest refugee crisis the world has ever seen”.<sup>28</sup>

In light of these predictions, there is a growing need for pro bono lawyers with expertise in immigration law to provide pro bono legal advice to people displaced by the effects of climate change (such as rising sea levels, droughts and natural disasters).

*“Our recent record shows we should be concerned about how we will handle the challenge of ‘climate refugees’. The threat to our Pacific neighbours looms ever-larger as rising seas threaten their existence, and climate change will only continue to grow as a ‘push factor’ for international migration generally.”*

– Jonathon Hunyor, CEO of the Public Interest Advocacy Centre <sup>29</sup>

<sup>27</sup> Gulrez Shah Azhar, ‘Climate change will displace millions in coming decades. Nations should prepare now to help them’, *The Conversation* (19 December 2017), accessible [here](#).

<sup>28</sup> Matthew Taylor, ‘Climate change ‘will create world’s biggest refugee crisis’’, *The Guardian* (2 November 2017), accessible [here](#).

<sup>29</sup> Jonathon Hunyor, ‘The climate challenge – how good are we?’, *Public Interest Advocacy Centre* (16 January 2020), accessible [here](#).

However, the term ‘climate refugee’ does not exist in international law, and people displaced by climate events often do not fit within the definition of ‘refugee’ under the 1951 Refugee Convention.<sup>30</sup> As the Refugee Advice and Casework Service (RACS) explained:

*“An applicant for a protection visa must demonstrate a fear of significant harm or being persecuted for one of five reasons: nationality, ethnicity, religion, political opinion, or membership of a ‘particular social group’.<sup>31</sup> An applicant may also meet the criteria for a protection visa in certain circumstances where there is a real risk that they will face significant harm, such as the death penalty, torture, or cruel or inhumane punishment or treatment. This test largely excludes people escaping harm due to climate change, however, climate change may form part of the circumstances compelling an applicant to flee their home country and making it unreasonable for them to relocate within their home country.” <sup>32</sup>*

This is demonstrated in the case studies below.

The role of the legal community is therefore critical in advocating for the rights of those displaced due to climate change, and in finding innovative solutions to resolve their legal problems.

**HOW TO GET INVOLVED:** If you have immigration law expertise and want to assist, you can find out more about how to source pro bono work [here](#).<sup>33</sup>

<sup>30</sup> ‘Climate change and disaster displacement’, *UNHCR* (2020), accessible [here](#).

<sup>31</sup> *In Australia: Migration Act 1958 (Cth) s 5J(1)(a)*.

<sup>32</sup> This information from RACS was provided to the Centre in July 2020.

<sup>33</sup> For more information about sourcing pro bono work, see *Sourcing Pro Bono Opportunities: Justice Project: Pro Bono Tool*, Australian Pro Bono Centre (2020), accessible [here](#) and Australian Pro Bono Centre, *The Australian Pro Bono Manual* (2016) Chapter 1.6.2, accessible [here](#).



## CASE STUDY 1 REFUGEE ADVICE AND CASEWORK SERVICE: AUSTRALIA / YEMEN

Nadheer\* fled Yemen in 2018. The Houthis militia, who had taken over Nadheer's town, had asked Nadheer to work in exchange for basic rations. Nadheer refused to work for the militia, and soon after, his neighbour's home was bombed. Nadheer suspected the bombing was actually targeted at his home. Nadheer escaped, and arrived in Australia on a visitor visa. Soon after, he asked the Refugee Advice and Casework Service (RACS) for help applying for a protection visa because he considered it was not safe for him to return home. One issue is whether Nadheer could relocate to a safe area in Yemen if he returned. Climate change is exacerbating existing political instability in Yemen.<sup>34</sup> The World Bank has noted the diminishing availability of water in parts of Yemen, and ongoing conflict has accelerated the water scarcity. Inconsistent rainfall is affecting crop yields, and warmer ocean temperatures and sea level rise threaten the bio-diversity in the surrounding seas. Extreme weather events are becoming more frequent and increasingly deadly.<sup>35</sup> Unusually high temperatures are increasing the spread of malaria, while the ongoing conflict makes it more difficult to receive proper medical care.

RACS assisted Nadheer in preparing his protection visa application. RACS is now assisting Nadheer in drafting submissions for an interview with the Department of Home Affairs. He is arguing that it is not possible for him to relocate in Yemen, using a recent Federal Court case that says relocation is not to be considered to areas where he would be unsafe, given his home country generally is "unsafe or physically uninhabitable or so inhospitable that a person would be exposed to a likely inability to find food, shelter or work"<sup>36</sup> and is "so war ravaged that civilians are in daily peril."<sup>37</sup> If Nadheer's application is successful, he will be granted a permanent protection visa. He may then be able to bring to Australia the wife and two children he left behind in Yemen.

## CASE STUDY 2 REFUGEE ADVICE AND CASEWORK SERVICE: AUSTRALIA / AFGHANISTAN

Mohammad\* fled Afghanistan in 2013. According to the United Nations Environment Program, 80% of conflict in Afghanistan is over land, water, and resources. Droughts, floods, avalanches, landslides, and extreme weather have worsened in recent years due to climate change<sup>38</sup> and this has exacerbated the battle for land and resources between the settled Hazaras and the nomadic Kuchis in the central highlands of Afghanistan. The Kuchis, who are supported and armed by the Taliban, raid Hazara villages and confiscate Hazara land.

In Mohammad's case, 50 armed Kuchis arrived on the outskirts of a Hazara village. When the Kuchis opened fire, Mohammad and the other villagers fought back. The next day, 200 more Kuchis and Taliban arrived. Outnumbered and outarmed, the villagers realised that they could not stop the Kuchis from taking their land and fled. Mohammad's friends told him that the Taliban was looking for the young men who had fought against the Kuchi. Fearing for his life, Mohammad left Afghanistan with his wife and daughter.

RACS assisted Mohammad in preparing his protection application and represented him at his interview with the Department of Home Affairs. Mohammad arrived in Australia by boat, so he is not eligible for a permanent protection visa. Although Mohammad was granted a temporary protection visa after waiting years for an interview with the Department of Home Affairs, to remain safe in Australia Mohammad will need to prove his case every three years. He will not be able to bring his family to Australia.

*\*Names changed to protect privacy*

<sup>34</sup> 'Future Impact of Climate Change Visible Now in Yemen', World Bank (24 November 2014), accessible [here](#).

<sup>35</sup> Austin Bodetti, 'The dangers of war and climate change in Yemen', *The New Arab* (17 April 2019), accessible [here](#).

<sup>36</sup> *FCS17 v Minister for Home Affairs* [2020] FCAFC 68 (21 April 2020) [80].

<sup>37</sup> *FCS17 v Minister for Home Affairs* [2020] FCAFC 68 (21 April 2020) [77].

<sup>38</sup> Sophia Jones, 'In Afghanistan, climate change complicates future prospects for peace', *National Geographic* (3 February 2020), accessible [here](#).

# #11. GIVING LEGAL SUPPORT TO NGOs AND DEVELOPING COUNTRY DELEGATIONS IN INTERNATIONAL CLIMATE CHANGE NEGOTIATIONS

Lawyers can contribute to wider efforts towards global environmental sustainability by offering pro bono legal support to non-governmental organisations (NGOs) and delegations from developing countries in international climate change negotiations, including under the United Nations Framework Convention on Climate Change (UNFCCC). The highly technical and complex law and policy making processes in international negotiations can otherwise make it difficult for climate-vulnerable developing countries and NGOs to participate.

Pro bono lawyers can provide legal assistance in the following ways:

- participating in United Nations Climate Change Conferences in a pro bono capacity, acting as legal representatives and advisors to developing country delegations, and assisting them to build their negotiating position (for example, see the work of DLA Piper in the case studies below)
- assisting global or regional NGOs with observer status at international climate change negotiations to lobby negotiators, and report on and analyse the progress of the negotiations.

**HOW TO GET INVOLVED:** In addition to offering pro bono assistance to a country delegation or global or regional NGO, another way to get involved is to become a pro bono legal expert adviser with Legal Response International (LRI). LRI provides free legal support to developing countries, to create a more level playing field between actors in climate change negotiations. LRI works with a network of cross-jurisdictional lawyers, barristers and academics who work remotely to draft legal opinions, provide support in meetings, and help build the legal capacity of developing countries. Outside the negotiations, LRI also assists developing countries in the domestic implementation of the Paris Agreement through its network of legal experts.<sup>39</sup>

<sup>39</sup> For more information, see [here](#) or contact them directly at [enquiries@legalresponse.org](mailto:enquiries@legalresponse.org).



## CASE STUDY 1 DLA PIPER: GEORGIA

New Perimeter is DLA Piper's global pro bono initiative providing assistance in under-served regions. Since 2012, DLA Piper lawyers have been supporting the Georgian delegation to the UNFCCC. Support to the delegation has included advocacy, legal advice, research, negotiation and English language proficiency. Through this project the Georgian delegation has doubled in size. With the presence of DLA Piper lawyers and Georgian delegates there was physically enough presence for Georgia to be represented in many work streams.

DLA Piper provides support to the Georgian delegation around the clock, and provides access to lawyers with a range of expertise in a variety of offices around the world. Until recently Georgia was unaffiliated with any of the four officially recognised negotiating groups within the UNFCCC process. In

2015, a long-term project began to determine how Georgia could accede to a negotiating group. The Environmental Integrity Group (**EIG**) is a geographically diverse group committed to multilateral solutions for addressing climate change. DLA Piper approached the EIG on Georgia's behalf to advocate for membership. This proved successful in 2017 at COP23 in Bonn when Georgia joined as a full member. Since then, Georgia has seen a number of achievements within the UNFCCC including at the COP25 in Madrid where a Georgian delegate was elected to serve as Vice-Chair of the Subsidiary Body for Scientific and Technological Advice.

In late 2019, a team of lawyers followed-up the day-to-day development of the COP25 on various selected topics including principles for an international carbon market mechanism and the development of a system of liability/compensation schemes for countries having caused climate change.


## CASE STUDY 2 DLA PIPER: SMALL ISLAND STATES

DLA Piper lawyers have assisted small island states to prepare for their negotiations on climate change at the international level, including through legal research, drafting, speech-writing and policy briefings. DLA Piper lawyers have participated in several of the United Nations Climate Change Conferences and sought to contribute to raising global ambition on climate change.

For example, at the historic COP21 summit in Paris, DLA Piper lawyers followed the negotiations in a pro bono capacity, with one acting as a legal representative in a delegation of a small island government, and another acting as an adviser to a major business and human rights coalition.

IMAGE BY JON / UNSPLASH





# #12. PROVIDING COMMUNITY LEGAL EDUCATION

A powerful way to contribute to climate justice is to increase the community's awareness and understanding of the law as it relates to the climate and environment. Pro bono lawyers should consider collaborating with civil society organisations to deliver pro bono community legal education (CLE) on issues such as pollution, water management, mining, forestry, and how the public can influence environmental outcomes.

Legal professionals can provide CLE in several ways:

- delivering training, seminars, webinars or collaborative workshops to members of the community (or civil society organisations) on climate issues
- drafting or updating 'plain English' written materials (such as factsheets, handbooks and legal information guides)
- drafting legal information for inclusion on the website of a civil society organisation.

To ensure the delivery of effective CLE, it is important to work in partnership with a civil society organisation. Given that these organisations have strong ties to the local community and understand the issues affecting them, a partnership makes it more likely that there will be strong attendance at events or readership of materials, and that the CLE will be effective and targeted to the appropriate audience.

Benefits of undertaking CLE as a pro bono activity include the following:

- conflicts of interest are less likely to be an issue than when providing advice or representation

- the time and resource commitment of pro bono providers is contained to the activity
- it can potentially reach a much wider audience than individual casework.

**HOW TO GET INVOLVED:** To learn more about the benefits and challenges of CLE, and the features of an effective CLE partnership, see [here](#).<sup>40</sup>

## CASE STUDY NORTON ROSE FULBRIGHT: AUSTRALIA

Between July and September 2019, Norton Rose Fulbright (NRF) contributed to a 'Carbon Farming Handbook' for an independent industry body working on and advocating a transition to a net-zero emission economy. The client's primary objective is to support the continued evolution and development of Australia's carbon market and to develop and promote efficient and effective emissions reduction policies.

The Handbook is part of the client's education and outreach work in collaboration with government. The final product is intended to be a practical guide on carbon farming for key stakeholders, outlining the business case for carbon farming with the aim of supporting participants looking to unlock opportunities in Australia's carbon farming industry. NRF advised on steps involved in developing and running a carbon farming project under the Emissions Reduction Fund, as well as providing an overview of common contracts that arise when running carbon farming projects.

<sup>40</sup> Australian Pro Bono Centre, *Pro Bono Partnerships and Models: A Practical Guide to What Works* (2016) Chapter 29, accessible [here](#).



# #13. PROVIDING LEGAL ASSISTANCE TO COMMUNITIES PARTICULARLY AFFECTED BY THE CLIMATE CRISIS

The effects of climate change, including increased variation in temperatures, lower rainfall, longer heatwaves, and more extreme weather conditions, will affect some communities more than others. As such, to make a meaningful contribution to climate change, law firms should consider redirecting or expanding the focus of their pro bono work to communities that are particularly vulnerable to the effects of the climate crisis.

These people include, but are not limited to, those who are:

- experiencing financial hardship or homelessness<sup>41</sup>
- women and girls<sup>42</sup>
- living with a disability or illness<sup>43</sup>
- socially isolated,<sup>44</sup> housebound or frail<sup>45</sup> – and in particular, older persons
- living in rural, regional or remote communities<sup>46</sup>
- working primarily in outdoor environments<sup>47</sup>
- tenants.<sup>48</sup>

Assisting those most affected by climate change is critical to achieving equal access to justice.

## HOW TO GET INVOLVED:

- Start by reflecting your intention to provide climate-related pro bono assistance to one or more of these groups in the strategic objectives of your pro bono program, which should be embedded in your firm's or legal team's pro bono policy. Guidance from the Centre on developing (or refreshing) your pro bono policy is available from:
  - > The Australian Pro Bono Manual, [Chapter 1.3](#)
  - > Pro Bono Legal Work: [A Guide for In-House Corporate Lawyers](#), Chapter 4
  - > Pro Bono Legal Work: [A Guide for Government Lawyers](#), Chapter 6.
- Use the Centre's *Justice Project: Pro Bono Tool* (available [here](#)) to find pro bono opportunities that assist with priority justice issues for several of the client groups listed above. Building on the Law Council of Australia's Justice Project Final Report, this tool equips pro bono providers with practical resources to find potential pro bono opportunities, form pro bono partnerships and reduce barriers to pro bono participation.
- Start sourcing relevant pro bono legal work.<sup>49</sup>

<sup>41</sup> S Nazrul Islam and John Winkel, *Climate Change and Social Inequality*, UN Doc ST/ESA/2017/DWP/152 (October 2017) 4.

<sup>42</sup> *Ibid* 16.

<sup>43</sup> 'How Climate Change Disproportionately Impacts Those With Disabilities', United Nations Environment Programme (9 December 2019), accessible [here](#).

<sup>44</sup> 'People Who Are Socially Isolated', *Climate Just* (2017), accessible [here](#).

<sup>45</sup> 'Climate Change and the Health of Older Adults', United States Environmental Protection Agency (May 2016), accessible [here](#).

<sup>46</sup> Purnamita Dasgupta et al, 'Climate Change 2014: Impacts, Adaptation and Vulnerability', Intergovernmental Panel on Climate Change (Report, 2014) 616, accessible [here](#).

<sup>47</sup> 'Working On a Warmer Planet: The Impact of Heat Stress on Labour Productivity and Decent Work', International Labour Organization (Report, 2019) 13-14.

<sup>48</sup> Lesley Instone et al, *Climate Change Adaptation and the Rental Sector (Final Report, 2013)* 6, accessible [here](#).

<sup>49</sup> For more information about sourcing pro bono work, see *Sourcing Pro Bono Opportunities: Justice Project: Pro Bono Tool*, Australian Pro Bono Centre (2020), accessible [here](#) and Australian Pro Bono Centre, *The Australian Pro Bono Manual* (2016) Chapter 1.6.2, accessible [here](#).

# #14. DELIVERING TRAINING TO COMMUNITY LAWYERS

Many law firms employ lawyers with a wealth of experience in areas such as commercial litigation, business and corporate law, and torts law.

There is increasing interest in using these areas of law to underpin novel approaches to strategic climate change litigation, in addition to the more traditional route of filing administrative law challenges to government decision-making under planning and environmental legislation.<sup>50</sup> However, lawyers at civil society organisations, not-for-profit organisations, and charities often do not have expertise in these commercial practice areas.

For that reason, firms could consider volunteering the time of their senior lawyers to provide pro bono training to community lawyers on topics within the firm's areas of expertise. This training could provide the groundwork to enable community lawyers to explore novel approaches to climate change litigation.

Useful topics for training could include:

- corporations law – particularly directors' duties <sup>51</sup>
- torts law – particularly negligence and nuisance
- how to run a class action.

**HOW TO GET INVOLVED:** If your firm is interested in training community lawyers, reach out to a civil society organisation that works on climate-related matters and ask if training would be helpful for their lawyers (and if so, on what topics). For a list of these organisations in Australia, see [here](#).

To learn more about strategic climate change litigation, see Activity #1 in this guide.

<sup>50</sup> Jacqueline Peel, Hari Osofsky and Anita Foerster, 'Shaping the 'Next Generation' of Climate Change Litigation in Australia' (2017) 41(2) Melbourne University Law Review 793, 795 and 816.

<sup>51</sup> For more on the potential duty of directors to consider climate change risk, see: Beth Nosworthy, 'Corporations and Securities: The Corporations Act and Climate Change - Appetite for Change?' (2020) 94 Australian Law Journal 411.



# #15. EXPANDING THE ROLE OF THE PRO BONO LAWYER — EMBEDDING CLIMATE TRANSITION AND ENVIRONMENTAL FACTORS IN COMMERCIAL DECISION-MAKING

*"Firms can help their pro bono and commercial clients by identifying potential climate litigation risks and helping them to mitigate those risks through better systems and processes. This points to an expanded role for pro bono lawyers."*



## #15. EXPANDING THE ROLE OF THE PRO BONO LAWYER — EMBEDDING CLIMATE TRANSITION AND ENVIRONMENTAL FACTORS IN COMMERCIAL DECISION-MAKING

Recently, the private sector has seen a marked shift towards integration of environmental, social, and governance (ESG) factors into commercial decisions, with ESG becoming an inextricable part of doing business. Excelling in all three requires an acknowledgement that they are themselves intertwined and that fulfilling each is not simply a compliance exercise. Leading law firms and corporations recognise that they can be much more proactive in responding to the spirit of all three in a variety of ways, including through pro bono work. Indeed, many of the case studies in this guide attest to that leadership.

The role of the pro bono lawyer is expanding. Pro bono lawyers are uniquely positioned to help the business track and forecast changing stakeholder expectations, including those of clients, employees and investors. Through their work for disadvantaged individuals, civil society organisations, and social enterprises, pro bono lawyers have a unique connection to civil society and an understanding of the needs of, and issues of concern in, their communities. That connection can enable pro bono lawyers to develop an enhanced understanding of the interplay between the “E” and “S” in ESG, which they can articulate to the business. Environmental concerns, such as climate risk and sustainable investment, are now key drivers within the market. The increasing importance of ESG factors to both pro bono and commercial work represents an opportunity for pro bono lawyers to play an expanded strategic role within the business, ultimately benefitting both the business’s social impact and commercial success.

On the issue of climate risk, Nicolas Patrick, Partner & Head of Responsible Business at DLA Piper said:

*“Firms can help their pro bono and commercial clients by identifying potential climate litigation risks and helping them to mitigate those risks through better systems and processes. This points to an expanded role for pro bono lawyers.”*<sup>52</sup>

Pro bono lawyers are also in a good position to encourage their employers to commit to best practice sustainability in the workplace. The Sustainability Framework developed by the Australian Legal Sector Alliance (AusLSA) provides a good overview of the key elements of a sustainable organisation.<sup>53</sup>

### HOW TO GET INVOLVED:

- Pro bono lawyers can show leadership and assume an important role in the fight against climate change by encouraging best practice within their own firms, and embedding environmental factors into business decision-making.
- Pro bono lawyers can help to shape the strategic direction of the firm, including senior management choices about legal practice area priorities and clients.
- Australian pro bono lawyers can also reach out to AusLSA for guidance with respect to improving sustainability within their workplaces. AusLSA is an alliance of law firms that works collaboratively to promote sustainable practices across the legal sector. Lawyers should also consider the report *Strengthening Resilience: Acting on Climate Change and Health*, which provides advice about how businesses can assist with mitigating poor health outcomes as a result of climate change.<sup>54</sup>

Pro bono lawyers can also, where appropriate, contribute to higher-level strategic planning discussions to influence their employer’s vision, values, purpose, and mission. This could ultimately result in changes to a firm’s objectives, targets, position descriptions and key performance indicators (KPIs).

<sup>52</sup> Australian Pro Bono Centre, ‘The Future of Pro Bono: Global perspective on growing areas of legal need and sector trends’ (December 2019) Pro Bono Voco 7, accessible [here](#).

<sup>53</sup> For more information, see [here](#).

<sup>54</sup> UN Global Compact Network Australia, *Strengthening Resilience: Acting on Climate Change and Health* (Report, 3 July 2020), accessible [here](#).





# DEALING WITH CONCERNS ABOUT COMMERCIAL CONFLICTS OF INTEREST

When a firm is deciding whether it can provide pro bono assistance to a client, it should refer to its intake criteria (generally formalised in the firm's pro bono policy). This usually includes consideration of conflicts of interest, which can be:

- **Legal conflicts** — also known as direct conflicts, or
- **Commercial conflicts** — also known as indirect conflicts.

Firms generally have systems in place to identify and respond to both types of conflicts of interest.

Commercial conflicts are the more contentious area in pro bono legal work. While there is typically no legal reason a firm cannot act for a pro bono client where there is a commercial conflict, firms are often reluctant to take on pro bono clients in these circumstances.

## COMMERCIAL CONFLICTS

A commercial conflict is where the firm understands that taking on a particular pro bono matter may deter a current or potential commercial client from working with the firm, because the matter is perceived to be damaging to the firm's relationships, or is prohibitively controversial.

Many firms act for clients within industries that directly or indirectly contribute significantly to carbon emissions, such as energy, financial services, asset and investment management, transport, and infrastructure. This can give rise to commercial conflicts when pro bono clients request assistance from a firm on a climate-related matter.

In particular, situations that can give rise to commercial conflicts in climate-related pro bono legal work include:

- Advocating a point of view that is antagonistic to a commercial client or their interests, or acting in proceedings against their interests. This may include undertaking pro bono work that directly impinges on the known legal or business interests of a client: for example, hosting a seminar for an environmental charity to discuss potential causes of action against oil and gas companies, where the firm acts for a number of commercial clients in that industry.
- Acting for 'the other side': for example, representing an individual or charity against a particular class of clients (such as mining companies) from whom a firm regularly receives instructions, even where the defendant(s) in question are not clients.
- Acting for plaintiffs in a class action against a corporation, institution or government agency to whom unrelated legal advice was previously given.
- Acting in matters that are perceived by the firm's commercial clients to be politically sensitive, ethically controversial or ideologically charged.

Because commercial conflicts are about perceptions, it is ultimately a matter for each firm to decide whether a conflict exists and how best to respond.



### HERE ARE VARIOUS WAYS TO MITIGATE OR ELIMINATE COMMERCIAL CONFLICTS:

Pro bono lawyers have an important role to play in addressing concerns raised by firms in relation to commercial conflicts. Pro bono lawyers should ensure they understand the market and can respond to their firm's concerns regarding conflicts, so that firms do not take an overly cautious approach that inhibits their ability to take on important climate pro bono legal work.

- Identify any alignments between the interests of the pro bono and commercial clients, which may mean the commercial conflict is not as problematic as it initially appears. For example, many companies now have policies to reduce carbon emissions, or to become net-zero, which aligns with the interests of environmental groups.
- Identify the benefit to commercial clients of a firm undertaking climate-related work. For example, it may be advantageous to an investment bank to have a firm that has acted for climate change organisations lobbying for green investment, if that bank is looking to diversify their portfolio.
- Promote the benefits of commercial lawyers undertaking climate change pro bono legal work, including technical skill-building and a development of a broader understanding of the sector. For example, if a firm works for a large oil company that is at risk of climate litigation, it is beneficial for that company to have lawyers who have an understanding of the sector from all sides and an awareness of community expectations.
- It may be possible to accommodate a firm's involvement in a particular matter by: (i) having its staff act as secondees or volunteers at a community legal centre, non-government organisation or charity that is working on the matter. The firm's lawyers would still do the work, and the principal lawyer of the civil society organisation would act as the supervising lawyer. In this way, the client is the organisation's client and any risk rests with it, or (ii) undertaking advocacy or law reform work behind the scenes in partnership with a civil society organisation and refraining from having the firm's name mentioned in connection with that work.
- If involvement in adversarial climate-related work is problematic, take on transactional pro bono work that focuses on 'green solutions', including green financing and green innovations.
- Link climate-related work to another pro bono client focus area or specific area of disadvantage or marginalisation. For example, seconding a pro bono lawyer to an environmental agency to work on a project focused on the impact of climate change on Indigenous peoples.
- Take on climate-related pro bono work in a different jurisdiction. For example, Australian and New Zealand lawyers may consider taking on climate-related work in the Pacific.
- Form coalitions with other law firms and lawyers on climate-related pro bono projects. Firms may be encouraged to become involved in climate-related work with other firms that are demonstrating leadership in this area.
- Clarify with the commercial client that the firm's commitment to pro bono is an integral part of its social investment strategy, corporate image and public relations strategy. Pro bono legal work is proudly promoted by many firms, and corporate social responsibility is now firmly embedded in many organisations as a cornerstone of their corporate culture. The client may in fact prefer to partner with firms that demonstrate these values.
- Contact the client to discuss the perceived conflict and obtain the client's consent to act in the pro bono matter. In Australia, the Commonwealth does not prevent firms on the Whole of Australian Government Legal Services Panel who may at times act for the Commonwealth, from acting pro bono in matters that may be against the Commonwealth, or otherwise against the Commonwealth's interests (except where there is a direct legal conflict).<sup>55</sup> Many governments support a healthy civil society. Law firm partners who act for those governments may therefore feel comfortable with the firm taking on climate related pro bono work that challenges government policy in circumstances where there is no direct legal conflict.

<sup>55</sup> *Legal Services Directions 2017 (Cth) paragraphs 11.3 – 11.5.*



# NATIONAL PRO BONO PROFESSIONAL INDEMNITY INSURANCE SCHEME

The Centre runs the National Pro Bono Professional Indemnity Insurance Scheme (**Scheme**) to encourage in-house corporate, government and individual volunteer lawyers to undertake pro bono legal work.

The Scheme removes one of the key barriers for in-house and individual volunteer lawyers who want to engage in pro bono legal work – the need for professional indemnity (**PI**) insurance to cover them for any civil claims arising from their pro bono legal work.

The Scheme provides PI insurance to lawyers and paralegals working on pro bono projects approved by the Centre. The Scheme may be able to cover your pro bono work on climate-related matters, if you are not covered by any other PI insurance.

## *How does it work?*

The Scheme is currently available in the following Australian jurisdictions:

- New South Wales
- Victoria
- Queensland
- South Australia
- the Australian Capital Territory
- Western Australia, to holders of volunteer practising certificates only.

The Scheme has a 'safety net' policy, so cover will only extend to circumstances where no other PI insurance covers an approved project. PI insurance under the Scheme is provided free of charge. The Centre pays the policy premium and will cover the excess payable on any claim.

## *To obtain coverage under the Scheme, you must:*

1. think about the project you want to get coverage for, and make sure it falls within the policy's **definition** of 'pro bono legal work'
2. if it does, complete an application form (available on the **Centre's website**)
3. submit the application to the Centre for approval.

## *Want more information?*

For more information and to apply, please visit the **Centre's website**.

## *UK Scheme*

In the United Kingdom, the LawWorks Professional Indemnity Insurance Scheme provides 'last resort' professional indemnity insurance to encourage in-house lawyers to undertake pro bono legal work.

You can find out more about the LawWorks Scheme **here**.

## APPENDIX: DEFINITION OF 'PRO BONO LEGAL SERVICES'



*The Australian Pro Bono Centre's definition of 'pro bono legal services' is as follows:*

1. Giving **legal assistance for free or at a substantially reduced fee** to:
  - a. individuals who can demonstrate a need for legal assistance but cannot obtain Legal Aid or otherwise access the legal system without incurring significant financial hardship; or
  - b. individuals or organisations whose matter raises an issue of public interest which would not otherwise be pursued; or
  - c. charities, other not-for-profit organisations or social enterprises, in each case where their sole or primary purpose is to work in the interests of low income or disadvantaged members of the community, or for the public good;
2. Conducting **law reform and policy** work on issues affecting low income or disadvantaged members of the community, or on issues of public interest;
3. Participating in the provision of **free community legal education** on issues affecting low income or disadvantaged members of the community or on issues of public interest; or
4. Providing **a lawyer on secondment** at a community organisation (including a community legal organisation) or at a referral service provider such as a Public Interest Law Clearing House.



*The following is NOT regarded as pro bono work for the purposes of this definition:*

1. giving legal assistance to any person for free or at a reduced fee without reference to whether that person can afford to pay for that legal assistance or whether that person's case raises an issue of public interest;
2. free first consultations with clients who are otherwise billed at a firm's normal rates;
3. legal assistance provided under a grant of legal assistance from Legal Aid;
4. contingency fee arrangements or other speculative work which is undertaken with a commercial expectation of a fee;
5. the sponsorship of cultural and sporting events, work undertaken for business development and other marketing opportunities; or
6. time spent by lawyers sitting on the board of a community organisation (including a community legal organisation) or a charity.

For further information, please visit the [Centre's website](#).



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