

A Submission

to the

Parliament of Victoria

Rural and Regional Committee

**Inquiry into the Extent and Nature of Disadvantage and Inequity
in Rural and Regional Victoria**

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Disclaimer

This submission is based on research currently being undertaken Deakin University – School of Law, through a grant made available by the Victoria Law Foundation.

The views expressed here are however those of the author and do not represent a position of Deakin University, the School of Law or the Victoria Law Foundation.

Executive Summary

This submission is based on findings to date of a research project currently being undertaken by Deakin University - School of Law, funded by the Victoria Law Foundation – titled, *Rural and Regional Disadvantage in the Administration of the Law in Victoria*. The research takes a broad scope approach, examining variations in the application and administration of the law in rural and regional Victoria, compared with metropolitan Melbourne, principally focussing on courts, judicial processes and related justice system services.

Comments are based on responses from 55 interviewees who work in the justice system in various capacities in rural and regional Victoria. Interviewees included private lawyers, community legal centres, Victoria Legal Aid, the Office of Public Prosecutions, advocacy and welfare organisations including indigenous, disability, family, prisoner support, women's and youth services. A literature review of current research has also been undertaken.

Some participant comments are anecdotal and further research is required to substantiate their statements. A survey is currently being distributed to rural and regional lawyers and welfare/support agencies as part of the larger research project.

Summary of findings

As part of an inquiry into the extent and nature of disadvantage and inequity in rural and regional Victoria, consideration should be given to the effectiveness of the institutions, systems and services currently vested with the responsibility to administer the law and ensure the application of equity and justice throughout the state.

National research undertaken to date has identified significant limitations for rural and regional communities in accessing legal assistance. In addition to access issues around the provision of legal advice and support services identified by a number of reports, the current Deakin research indicates that there are significant problems with the way in which existing justice system services are delivered to rural and regional Victoria.

A number of positive initiatives have been undertaken by the state government and lead agencies in the area of delivering social justice and legal services to rural and regional communities. However the research findings to date reveal a clear and continuing disadvantage for rural and regional communities in comparison to their metropolitan counterparts when participating in justice system services and processes.

To a large extent, this sits squarely as a responsibility of government through legislators, regulating agencies, government policy makers and resource allocations to services and court administration. The current shortfalls in the delivery of justice system services suggests a lack of understanding of, or systemic commitment to the divergent legal service needs and circumstances of rural and regional Victorians.

Findings

There was a broadly held view by interviewees that rural and regional Victorians are significantly disadvantaged when participating in the justice system in a number of ways. Some of the more substantial disadvantages for rural and regional communities identified include:

- County Court regional circuit hearing date setting practices result in an inability to adequately prepare legal representation, expert evidence and witnesses.
- Lengthening court delays and more frequent adjournments at County Court regional circuits significantly impact on outcomes and confidence in the justice system.
- Limited or no access to specialist Magistrate's Courts, court based services and programs or external services utilised by the courts, impact on the quality of justice and justice system outcomes, depending on where you live.
- Inequitable impact of penalties and court orders between rural/regional and metropolitan offenders.
- Poor monitoring of outcomes for participants in the justice system on the basis of spatial variations between rural, regional and metropolitan locations.
- A declining ability to attract lawyers to rural and smaller regional settings and inadequate funding of rural and regional Legal Aid and Community Legal Services.
- A substantially increased resource burden on rural and regional legal and related services located at or near state borders.

Summary of recommendations

In response to the issues raised within this submission the following recommendations are made. A more detailed explanation of these recommendations can be found at the end of this submission

Recommendation 1

Establish an independent consultative body to monitor and review legislation, government policy and resource allocation as it impacts on rural and regional Victorians.

Recommendation 2

Immediately implement an independent review of County Court practices and procedures as they impact on participants at rural and regional circuit courts.

Recommendation 3

Introduce strategies to ensure equity for rural and regional Magistrate Court participants at locations which do not have access to the specialist courts and court programs available at larger centres.

Recommendation 4

Establish systems to improve monitoring and data collection of justice system needs and outcomes for rural and regional Victoria.

Recommendation 5

Increase funding of rural and regional legal services and introduce incentives for the recruitment and retention of lawyers to legal practices in rural and regional communities.

Recommendation 6

Establish improved cross border protocols in relation to the application of court orders and fostering of parallel legislation between states.

Submission

Inquiry into the Extent and Nature of Disadvantage and Inequity in Rural and Regional Victoria

Background

I welcome the opportunity to make a submission to this inquiry.

My interest in the inquiry is as a result of my current activities as a Research Fellow with the Deakin University, School of Law and involvement in the establishment and management of community based services including services to regional Victoria over the past 30 years.

My comments to the Inquiry are principally focussed on issues relating to findings to date from current research I am undertaking, funded by the Victoria Law Foundation titled, *Rural and Regional Disadvantage in the Administration of the Law in Victoria*. For this research, the term administration of the law refers to an exploration of the systems established to administer both criminal and civil laws, largely courts and tribunals and their associated processes and programs, comparing variations between rural and regional Victoria with metropolitan Melbourne. The research also examines other factors external to courts which directly relate the equity of court processes and outcomes for rural and regional Victorians.

This project has involved consultations with approximately 55 individuals from rural and regional Victoria and peak state bodies, through face to face and telephone interviews. Those consulted included private lawyers, community legal centres, Victoria Legal Aid, the Office of Public Prosecutions, those working in advocacy and welfare organisations including indigenous, disability, family, women's and youth services who participate in various capacities in the justice system in rural and regional Victoria.

The research project, to be completed by December 2010, also includes the distribution of 500 surveys to lawyers in private practice and community/welfare organisations supporting clients involved in the justice system around Victoria. The surveys will

assist in establishing the extent to which issues raised through the initial consultations can be substantiated.

Other recent relevant roles and activities I have participated in include, establishing and managing the Victoria Law Foundation's *Rural Law Online* website for 4 years up to July 2009 and producing a national research report on behalf of Deakin University-School of Law funded by the Rural Industries Research and Development Corporation (RIRDC) on *Law and Legal Compliance Training Needs of Primary Producers* – published by RIRDC in May, 2009.

Deakin University has a demonstrated commitment to providing educational services to rural and regional Victorians and to support the economic growth of rural and regional communities. The views expressed here are however my own and do not represent a position of Deakin University or the School of Law or the Victoria Law Foundation.

Research Context

The *Rural and Regional Disadvantage in the Administration of the Law* research project was funded to 'investigate the nature and extent to which disadvantage is experienced by rural communities in the administration of the law, compared with their metropolitan counterparts'.

From the consultations undertaken, a broad range of issues have been detailed. Comments made in this submission will be limited to a selected sample of those issues raised which have a significant impact on rural and regional communities and which were frequently presented by participants, suggesting a common and substantive concern.

This submission is based on the precept that all Australians have a right to the same fair and equitable system of justice, no matter where they live. This position is enshrined in a number of laws impacting on Victoria and Australia including the Victorian *Charter of Human Rights and Responsibilities Act* and is reflected in our obligations under international laws and covenants.¹

¹ Charter of Human Rights and Responsibilities Act 2006 Part 2 Human Rights, Clause 8 Recognition and Equality before the law and the International Covenant on Civil and Political Rights, Articles 14 and 26.

The submission is also based on the notion that our justice system is one of the principal institutions for administering and maintaining a fair and just society, and protecting our social, economic and environmental wellbeing. Where there is inequity and disadvantage experienced by rural and regional Victorians, the question may be asked, Why have our legal institutions not highlighted and at least in part, addressed these inequities? Closer examination of the administration of our legal system and its institutions in rural and regional Victoria is required.

For both metropolitan and rural/regional communities' alike, legal services and institutions are a part of the social capital those communities. They are critical to effective interpretation, compliance and the ongoing evolution of the law to meet our changing needs and to maintain a fair and just society. Accessible, high quality and independent legal advice together with effective legal institutions which administer justice are also essential to the social and economic well being of communities.

In relation to economic wellbeing and growth, legal services and institutions impact on the ability of industry to adapt to changing markets and the increasingly regulated business compliance environment through establishing appropriate legal structures, advice and interpretation. They can therefore affect the resilience and scale of economic growth of rural/regional communities and the nation. For smaller communities, there is an increasing reliance on what is becoming a decreasing number of legal services and institutions available locally.²

Research Findings

Recent research by the *Senate Legal and Constitutional Affairs References Committee - Access to Justice Inquiry* report identifies a number of resource and service delivery limitations which impact on the ability of remote, rural and regional communities to access justice system services. Recommendations of the Access to Justice Inquiry include “an increase in funding for legal aid service providers, particularly in rural, regional and remote areas” and “that the federal, state and territory governments provide additional funding to legal aid commissions, community legal centres and

² A recent report from the Law Council of Australia and the Law Institute of Victoria, Report into the Rural, Regional and Remote Areas Lawyers Survey, July 2009, identifies a decreasing numbers of lawyers practicing in rural and regional Australia and as a result, “believes that country Australia is facing a crisis in the area of access to justice”.

Indigenous legal services with a view to expanding service delivery in rural, regional and remote areas.”³

While this and past state and federal inquiries have focussed on ‘access’ issues, little research has been carried out on the effectiveness of current legal administrative processes of courts and the justice system services generally in responding to the divergent legal needs and circumstances of rural and regional communities. It was for this reason that it was determined to undertake the *Rural and Regional Disadvantage in the Administration of the Law* research project.

Consultations undertaken to date by the research reveal a clear distinction between justice system services and processes provided to rural and regional communities in comparison to their metropolitan counterparts.

A broad range of issues have been raised by research participants. Further research is required to establish the veracity of consultation participant responses. However a number of issues were frequently raised by interviewees while other issues are self evident or already documented, but not necessarily within the context of rural and regional disadvantage.

Some of the more significant issues raised by interviews include:

Courts

County Court

- The allocation of County Court hearing dates in rural and regional circuits and the lengthening period for cases to be heard are a major concern potentially disadvantaging rural/regional Victorians, in relation to both criminal and civil matters, when participating in the justice system.

Unlike metropolitan Melbourne where a specific hearing date is set some months prior to a hearing, current arrangements for regional County Court hearings means that a specific hearing date is not established until sometimes only days prior to the hearing.

³ Legal and Constitutional Affairs References Committee - Access to Justice Inquiry. Recommendations 3 and 6, pp xxi and xxii, December 2009

For individuals living in rural and regional communities this can mean a significant disadvantage, with the reduced capacity to secure well prepared legal counsel and expert evidence, potentially resulting in inequitable outcomes in comparison to their metropolitan counterparts.

For instructing solicitors this may mean that:

- barristers who have been extensively briefed some time prior to the hearing and may have also represented the client at the committal hearing, may not be able to represent their client at such short notice so that a new barrister with little background to the case may be appointed to the hearing. (A general difficulty in attracting senior barristers to rural/regional circuits was also noted by a significant number of participants).
- difficulties in organising, preparing expert evidence and witnesses in time to attend the hearing.
- for smaller law firms other matters being dealt with by the solicitor including magistrate court matters, must be reallocated or adjourned during their absence.

Other issues raised by interviewees in relation to the County Court include:

- “Justice delayed is justice denied”. Legislative changes which now prioritise serious sexual offence hearings without increasing resources in rural and regional areas has dramatically extended the waiting time for other hearings. Cases can be delayed for years resulting in an impact on witness availability. It also impacts on the level of underlying confidence in the justice system. One authoritative interviewee suggested that it would take approximately 15 years to clear all current cases listed at the Mildura County Court Circuit. Others indicated that serious sexual offences hearing are also experiencing long delays, with one interviewee indicating that these cases were taking up to 3 years to be heard in Morwell.
- Delays also have general consequences for the retention of regional courts circuits. To circumvent delays in having matters heard and to provide greater certainty of a set hearing date and certainty of appointing a senior barrister to the case, proceedings are more frequently issued by

regional solicitors in Melbourne courts. As a consequence potentially further reducing the frequency of regional circuits to the point of their demise. This is an issue in both the County Court and Supreme Court.

- Delays have a range of other affects. Interviewees have indicated that it both increasing the length and use of remand and provides greater legitimacy for bail applications for often serious offences, resulting in the release of defendants back into their local communities, potentially accessible to witnesses and victims. See *Grey v DPP*, 2008⁴
- The prioritising of ‘Special Hearings’ (for children and people with cognitive disabilities)⁵ relating to serious sexual offences, which are now required to be heard within 3 months of committal hearing are adhered to at the Melbourne County Court, but as reported by interviewees, is less likely to be achieved at rural/regional circuits.
- Crown prosecutors who hold significant expertise are according to interviewees, less likely to attend regional circuits. Barristers drawn to represent the prosecution in regional courts may hold less expertise. These limitations extend to the availability of prosecuting solicitors in regional courts and limitations in the availability of court conferencing for victims at regional circuits.
- The reliance on local services in rural and smaller regional communities in relation to the provision of counselling, support services, psychiatric and forensic reports etc, may also impact on the equity of outcomes for rural communities compared with their metropolitan counterparts when using the justice system. Similar issues are raised below in relation to Magistrates’ Courts.

Resource issues can be pervasive affecting outcomes in a range of often unidentified ways. One interviewee suggested that, because of the limited training available to police in smaller rural centres, “some police are still under the impression that there needs to be corroborating evidence of a sexual offence for charges to be laid, which hasn’t been the case since 1989. As a result sexual offences are not being reported in some country areas”. While in other instances it was suggested that because of their

⁴ Bail Review Hearing Supreme Court of Victoria January 2008 - www.austlii.edu.au/cgi-bin/sinodisp/au/cases/vic/VSC/2008/4.html?query=^gray%20vs%20dpp accessed 5th March, 2010

⁵ Justice Legislation Amendment (Sex Offence Procedures) Act, Vic 2008

limited training, rural police present evidence less effectively, for example there is a significant under use of VATE (Video and AudioTaped Evidence) in comparison to metropolitan areas. This has major implications again particularly for sexual offences involving minors and people with cognitive disabilities. The often long delays in hearings may result in evidence being affected. One example provided was that the impact of a sexual assault as evidenced by the video taping of a 15 year old victim would be quite different to the evidence provided in court by the victim at a court hearing potentially 2-3 years later at age eighteen. Other resource and service based issues in dealing with sexual offences in rural and regional communities are briefly discussed in the Victorian Law Reform Commission Sexual Offences Report (2004) – many of these issues remain a concern.⁶

Magistrate Court

- Interviewees noted a significant variation in the availability of specialist Magistrate courts, court support services and diversional programs between metropolitan and rural regional courts. While the Department of Justice has piloted innovative magistrate court programs and services designed to improve outcomes for defendants and local communities, a systemic commitment to rolling-out these programs and services to rural and regional Victoria is lacking. Where such court related services are made available outside metropolitan Melbourne they tend to be limited to a small number of the larger regional centres.

The availability of these specialist courts and court support programs may mean the difference between gaining the benefit of magistrates with specialist understanding of the issues being dealt with and a quality outcome, designed to maximise longer term results for the individual and community or a deficient and piecemeal outcome reliant on limited resources. Those participating in court hearings within smaller regional and rural towns without access to these services and programs or are required to travel to metropolitan Melbourne to attend specialist jurisdictions are therefore more likely to be significantly disadvantaged.

⁶ Victorian Law Reform Commission – Sexual Offences Final Report, Rural Victims, Section 2.45. July 2004

There are currently 53 Magistrate Court locations throughout Victoria, yet the roll out of the specialist courts and court related programs is limited to a relatively small number of metropolitan and larger regional centres.

Examples of Magistrate Court specialist courts and court support programs include:

- *CISP (Court Integrated Services Program (Established 2006). A multi-disciplinary team-based approach to the assessment and referral to treatment of defendants.)*
Available in Melbourne MC, Sunshine MC and La Trobe MC.
 - *Credit Bail Program (Established Dec 2004). Clients are provided with a range of services while on bail.*
Available at Ballarat MC, Broadmeadows MC, Dandenong MC, Frankston MC, Geelong MC, Heidelberg MC, Moorabbin MC, Ringwood MC.
 - *Drug Court (Established 2002)*
Available at Dandenong MC only.
 - *Family Violence Division (Established June 2005) and Specialist Family Violence Service -*
Available at Ballarat MC and Heidelberg MC Melbourne MC, Frankston MC, Sunshine MC and Werribee MC.
 - *Neighbourhood Justice Centre (Established Jan 2007).*
Available Collingwood only.
 - *Mental Health Court Liaison Service (Established Nov 1994).*
Determines the presence or absence of serious mental illness, and provide feedback based on these assessments to the court.
Available at Melbourne MC, Ringwood, Heidelberg, Dandenong, Frankston, Broadmeadows and Sunshine MC's. Part time staff at Geelong, Shepparton, Bendigo, Ballarat and Latrobe Valley MC's.⁷
- The growing use of therapeutic and diversional programs also pre-supposes the availability of a level of external community based services to the courts when setting orders and penalty options. To a large extent however these services and programs may not exist in rural and smaller regional locations. As a result there is a real danger of there being two levels of justice system outcomes - 'Postcode Justice'⁸, dependent on where you live and the location of the court you attend. One system for metropolitan and larger regional centres with the services

⁷ Magistrate Court Website, *Court Support Services and Specialist Jurisdictions* <http://www.magistratescourt.vic.gov.au> - accessed 25th February, 2010

⁸ 'Postcode Justice', 'Justice by Postcode' 'Postcode Lottery' are terms first used by United Kingdom tabloid newspapers, and refers to the variations in outcomes likely to be received when participating in the justice system, depending on the location of the court or offence.

available to support more progressive and innovative programs and another for smaller regional and rural communities without the support infrastructures available.

One practitioner who regularly acts as a 'Duty Lawyer' at rural Magistrates Court, provided an example of the consequences of limited resources. Often dealing with 20 to 30 duty lawyer cases in a day, he stated that, "Clients with a mental illness, particularly itinerant workers, may not be recognised by me or the courts as requiring specialist support, and without access to the Mental Health Court Liaison Service, they can be on a treadmill of conviction and sentencing, over and over without ever accessing appropriate interventions. For those attending Melbourne Magistrates Court, outcomes for people with a suspected mental illness using the duty lawyer service can be very different".

- This disadvantage may not only exist in relation to penalties and sentencing but also at the early judicial stages, where for example, the lack of services able to support supervised bail in country areas, may result in a greater likelihood of rural offenders being held on remand. This limits the capacity of lawyers to take instructions and reduces the ability of families to maintain contact with their relative in remand.
- Other criticisms relate to the expectation that Magistrates and County Court Judges in regional courts will hear both criminal and civil matters. Within metropolitan courts there is a greater likelihood of having a civil or criminal matter heard by a judge or magistrate with expertise in that area of law. In regional circuit courts however, magistrates and judges are often expected to preside over both jurisdictions; as a consequence this may adversely affect the comparative quality of judgments in rural and smaller regional centres.

For example within the Magistrates Court there is a predominance of magistrates with a criminal law background. Magistrate courts currently hear property and monetary claims of up to \$100,000. The consequence for civil hearings in country towns is that livelihoods can be dependant on the judgment of a magistrate with limited experience in those matters.

- Interviewees indicated that the availability of quality mediation services to rural and regional communities in relation to commercial/civil matters also remains limited. With small business in rural communities often unable to afford litigation and the process and outcomes of mediation being more compatible with the reality of living and working within rural and smaller regional communities.
- Gaining statistical evidence of variations in outcomes between metropolitan and rural communities when participating in the judicial system is difficult. Limited data is held by the Department of Justice, Magistrates Court, County Court or the Sentencing Advisory Council in relation to breakdowns between rural/regional and metropolitan areas across jurisdictions, in for example the areas of, bail, remand, penalties and sentencing. This lack of data reflects a poor recognition of the need for the ongoing review of the delivery of equitable justice system services across metropolitan and rural/regional communities. Comprehensively collecting this data is crucial to substantiating quantitative evidence in relation to these issues.

Other Courts

Issues were also raised by interviewees in relation to other courts and tribunals. Briefly these included:

VCAT

- Limited opportunity to have defended hearings within a number of VCAT lists outside metropolitan Melbourne (planning list, discrimination list, general list were noted as examples).
- Limited capacity to manage urgent hearings outside metropolitan Melbourne.
- Court layout influences the capacity to undertake confidential mediations. Facilities are inadequate to accommodate confidential mediations at some rural/regional venues.
- Long waiting periods for some jurisdictions in rural/regional areas (Civil List noted as an example).
- Lack of accountability as hearings are not recorded at rural/regional venues.

Family Court/Federal Magistrates Court

- Long waiting periods for Family Court and Federal Magistrate court sittings in some areas (approximately 12 months).
- Family Court circuit reduced with sittings no longer held in a number of country areas.
- See also *Shared Parenting* issues outlined below.

Variations in Penalties

Some stark contrasts were noted by those consulted in relation to penalties in metropolitan and rural/regional areas. These were often the result of policy decisions or legislation which had not considered the consequences for people living in non-metropolitan communities.

- Mandatory loss of drivers licence was a significant issue raised by a large number of those consulted. With no discretion available to magistrates they are forced to impose penalties that have much greater consequences to many living in rural and smaller regional communities, including the loss of livelihoods for people living in rural areas where large distances are required to be travelled and often no public transport is available. As one Warrnambool based lawyer stated, “If you are a Milker living in Warrnambool and need to be in Koroit by 5am, the consequences of a mandatory loss of license is much harsher compared to a person living and working in metropolitan Melbourne.” “Often whole families can be penalised as a result”. For farmers, the consequence of a loss of licence can be ruinous. One example was given where a farmer was unable to drive his tractor across a public road to access parts of his property divided by that road.

Further, the mandatory term of imprisonment for a second offence of driving a vehicle whilst suspended or disqualified, without discretion or consideration of circumstances, further impacts unfairly on rural Victorians. While a suspended sentences option may provide some discretion, it is an ad hoc approach and does not address the inflexible intention of the penalty. In general, the notion of mandatory penalties can have serious consequences, eroding the principle of judicial independence and discretion.

- A clear inequity is evident in relation to eligibility for the Home Detention Program. Under current arrangements, serving prisoners may serve a period of their sentence at home. Enabling them to re-integrate into community life, take up employment and rebuild community ties. This option however is only available to offenders who live within a 40km radius of metropolitan Melbourne.⁹
- Young people living in rural and regional communities are also clearly disadvantaged by the justice system. The Victorian Youth Parol Board figures for example, indicate a disproportionate number of young people in custody (approximately 46%) from regional and rural communities. Aboriginal young people from country Victoria are particularly noted within the Boards Annual Report as being overrepresented in the justice system.¹⁰ This is a serious and ongoing issue which deserves greater attention at a state and national level.
- There is also a greater risk for rural and regional offenders in breaching a sentence or order as a result of not completing a program that is not available in their rural/regional centre or may only be available in metropolitan Melbourne.
- While the Family Law Shared Parenting legislation (*Family Law Amendment (Shared Parental Responsibility) Act, 2006*), is within the federal jurisdiction and may be outside the scope of this inquiry, it is also an example of the lack of consideration by legislators of the impact of legislation on rural communities. Several of those consulted raised concerns regarding the consequences for parents, mainly women who, once they have moved to a rural or remote community with their husband, were obliged once separated, to stay in those communities with their children. Under the Shared Parenting legislation there is an obligation to ensure children are accessible to both parents. Resultant issues raised were, the greater likelihood of isolation and lack of supports available in those communities and the potential consequences of violence from their ex-partner. This legislation is now being reviewed.

⁹ Adult Parole Board, Victoria –General Guide to Home Detention

¹⁰ Victoria Youth Parole Board and Youth Residential Board Annual Report -Chairpersons Report 2007-2008 p. xi 2008–2009.

Legal Practitioner Issues

Several recent reports indicate a significant and growing gap in the availability of legal services for rural and regional communities and economies.

As evidenced by the Law Council of Australia and the Law Institute of Victoria Report into the Rural, Regional and Remote Areas Lawyers Survey, “Overall, ... there is a significant problem for access to justice in regional Australia. Action is required to ensure that viable practices are retained and country Australians are able to access legal services within their communities. The loss of legal practices will impact negatively on rural and regional commercial infrastructure and also on the community life of country towns.”¹¹

The report further sighted that nearly 40% of Victorian practitioners surveyed indicated that they currently had insufficient staff to serve the needs of their community, while 38% indicated they would no longer be practicing in rural regional Victoria in the next 5 years.¹²

A 2006 report produced by TNS Social research for the Federal Attorney Generals Department also indicated a potentially significant decline in the number of private practitioners in rural and regional Australia. The report, which focussed on Legal Aid services provided by private practitioners in rural and regional areas, noted concerns regarding the current level of provision of legally aided services by private practitioners, stating that while there remains a strong sense of moral obligation to provide legally aided services by rural/regional law firms, “33% of (rural/regional) firms used to provide legal aid but now do not.”¹³

The 2009 Senate Legal and Constitutional Affairs References Committee - Access to Justice Inquiry¹⁴, also acknowledged the shortfall in adequate legal services available to rural and regional Australia, with several recommendations in relation to the declining availability of legal services. Recommendation 3 states that “using an evidence-based approach, review existing funding programs for legal aid

¹¹ Law Council of Australia and the Law Institute of Victoria, Report into the Rural, Regional and Remote Areas Lawyers Survey, p. 6 July, 2009

¹² Law Council of Australia, *Main Findings* Victoria Report into the Rural, Regional and Remote Areas Lawyers Survey. July. 2009

¹³ TNS Social research for Federal Attorney Generals Department - *Summary of Conclusions and Implications* in Study of the Participation of Private Legal Practitioners in the provision of Legal Aid Services in Australia, December 2006 pp 62-63

¹⁴ Legal and Constitutional Affairs References Committee - Access to Justice Inquiry, Recommendations p. xxi, December 2009

commissions, community legal centres, Aboriginal and Torres Strait Islander legal services, and Family Violence Prevention Legal Services units with a view to sufficiently resourcing the legal aid system to meet the legal needs of the Australian people, including appropriate loadings for high needs areas such as remote, rural and regional areas.”

The difficulty in attracting and retaining practitioners in rural and regional communities was also acknowledged by participants in the current Deakin research. The following additional practitioner issues were raised, including:

- Changing and increasingly complex and specialised areas of law require lawyers to maintain professional development training to maintain their knowledge. Accessing this knowledge is difficult for rural and small regional law firms with a limited capacity to attend centrally run professional development programs. The consequences of the inability to maintain up to date knowledge, particularly for generalist law firms who need to be well informed across a range of areas of law, can impact significantly on individual client and rural communities. As one country lawyer put it “you are expected to be able to cover anything that comes through the door - much more than you have any expertise or experience in, and inevitably you stuff up”. “Clients however won’t ever know that their service has been compromised”. “It’s easier in the city where you can develop an expertise in one area”.
- Conflict of interest issues for lawyers increasingly arise in rural and small regional centres where clients have access to the services of just one or two local solicitors. When conflicting parties seek legal advice in a small town, alternative legal representation will often need to be sought for one party, frequently from firms in other regional centres. This conflict of interest issue also holds when both parties attempt to use the services of Legal Aid. Conflict of interest issues can also arise when solicitors may be acting as duty solicitors in small regional courts, for example a Family Violence list.
- Accessing experienced defence barristers at regional courts was raised by a number of solicitors consulted. Senior barristers were often hesitant in taking on briefs at rural regional courts because of the associated costs and time required,

(which is finally a cost born by rural regional clients). This was however not exclusively a concern of country defence lawyers. It was also suggested that the Office of Public Prosecutions had difficulty in appointing senior prosecutors with sufficient expertise for country circuits. This is further compounded by their limited access to experienced Crown Prosecutors in comparison to prosecutors in Melbourne, when being briefed.

Border Issues

State borders often mark the greatest distance from centralised decision making and the spatial limit of a state's capacity to provide resources and services. For the provision and administration of legal services and a state based justice system, borders create a number of issues.

Border related issues raised by interviewees include the following:

- The additional weight of dealing with at least two sets of state laws, jurisdictions and related procedural variations places a significant demand on legal services on or near state borders.
An example sighted by one Mildura lawyer included dealing with a client who was involved in a road accident and owned a transport business. The client lived in and had a registered office in NSW, had his truck depot based in Victoria, and the truck was registered in ACT.
- Orders which may be made by a court in one state may not be recognised by bordering state services. Examples of this include Community Treatment Orders set in Victoria, may not be supported by services in NSW, where the client resides. Similarly with Compliance Orders and Child Protection Orders, services and state agencies may not effectively communicate and implement orders. Intervention orders in Victoria and Apprehended Violence orders in NSW also create issues for border communities. A women moving across the border from Wodonga to Albury for example will not be protected by an order from the other state. Dual orders can be obtained in this instance but this is not often undertaken. In many instances universal orders covering all states would an appropriate solution.

- For indigenous populations, where clan and language boundaries do not follow state boundaries and therefore state borders may not in some circumstances be recognised, additional complexities can occur.
- Generalist Community Legal Services assist clients who may not be eligible under the tightening criteria for Legal Aid and who cannot afford private practices. Funding of Community Legal Services continues to be tight and in rural communities, while they are expected to serve large areas with limited resources. This is further compounded where rural based Community Legal Services are required to serve cross border communities.

Recommendations

Recommendation 1

Establish an independent consultative body to monitor and review legislation, government policy and resource allocation as it impacts on rural and regional Victorians.

Rural and regional Victoria has a limited voice and diverse needs in comparison to metropolitan Melbourne.

Consideration should be given to the establishment of an independent authority with an ongoing role to review whole of government legislation, policies, practices and resource allocation as they impact on rural and regional Victoria to ensure they reflect and respond to this diversity.

A model based on the United Kingdom *Commission for Rural Communities (CRC)*, may be appropriate. The enacting legislation established the CRC “to provide well-informed, independent advice to government and ensure that policies reflect the real needs of people living and working in rural England, with a particular focus on tackling disadvantage”¹⁵.

¹⁵ Statement in ‘About Us’, UK Commission for Rural Services website <http://www.ruralcommunities.gov.uk/people/aboutus> . accessed 5th March, 2010

Recommendation 2

Immediately implement an independent review of County Court practices and procedures as they impact on participants at rural and regional circuit courts.

An independent review should be urgently undertaken of County Court procedural, practice and resource variations between rural/regional and metropolitan courts and outcomes for those participating within County Court jurisdictions. Particular focus should be given to:

- Variations in the setting of hearing dates and its impacts in relation to case preparation and securing of barristers and expert evidence.
- Length of time to commence and complete hearings and the consequences in relation to the integrity of evidence, hardship for participants, bail and remand outcomes, frequency of adjournments and the consequences for participants of adjournments to the Melbourne County Court.
- Variations in and the independence of court hearing listing processes.
- The effective implementation of the minimum of 3 month requirement for the commencement of proceedings for ‘special hearings’.
- Variations in the level of seniority of prosecutors and defence counsel and resources/support services available.
- Reasons for and consequences of regional solicitors initiating proceedings at Melbourne County Court.

Recommendation 3

Introduce strategies to ensure equity for rural and regional Magistrate Court participants at locations which do not have access to the specialist courts and court programs available at larger centres.

A commitment and agreed timeframe should be set for the roll out of current ‘pilot’ magistrate court programs and specialist courts to rural and regional Victoria. Where this may not be possible, systems and protocols should be developed which acknowledge and address the variations in equity and access to these specialist courts and court programs. In addition, systems and protocols should be established which recognise the often limited access to court referred community based services and programs for rural and smaller regional communities and alternatives established so as not to disadvantage participants from those communities.

Recommendation 4

Establish systems to improve monitoring and data collection of justice system needs and outcomes for rural and regional Victoria.

The Victorian government should institute systems for the ongoing monitoring and review of the justice system needs of rural and regional Victorians.

This includes maintaining data which specifically tracks and provides detailed analysis of rural/regional justice system services and outcomes.

Recommendation 5

Increase funding of rural and regional legal services and introduce incentives for the recruitment and retention of lawyers to legal practices in rural and regional communities.

In the light of several commissioned reports and inquiries, the Victorian and Commonwealth governments must look to ways of increasing the presence of well qualified and where possible experience legal practitioners to serve the increasing legal service needs of rural communities and industry. This is both a justice issue an issue which has implications for the social and economic wellbeing of rural and small regional communities.

Recommendation 6

Establish improved cross border protocols in relation to the application of court orders and fostering of parallel legislation between states.

Protocols between state law enforcement and regulatory agencies should be encouraged to further develop the recognition and an ease of application of court orders across-state border. State legislators should also be mindful of the advantage of common provisions and definitions and nationally consistent legislation when drafting laws.

In conclusion I would welcome the opportunity to speak further to the Committee and at the completion of the full research report, due December 2010, provide further details of the consultation and survey findings and recommendations.

Thanks you for the opportunity to provide this submission to the inquiry.