

CHAPTER 6

LEGAL AID IN OUTER-METROPOLITAN, REGIONAL, RURAL AND REMOTE AREAS

6.1 This chapter discusses:

- the particular issues and barriers affecting those people living in outer-metropolitan, regional, rural and remote (RRR) areas of Australia in accessing the legal system; and
- what might be done to better provide access to justice for those living in RRR areas.

Particular issues facing people in rural, regional and remote areas

6.2 The Committee's inquiry into legal aid in 1998 identified a range of difficulties experienced by people living in RRR areas. While the Committee noted that many of the problems experienced by such people were similar to those experienced by people in metropolitan areas, additional problems were prevalent in RRR areas.¹ Some of the issues brought to the Committee's attention were similar to those raised by submissions and witnesses in the current inquiry. In its 1998 report, the Committee recommended that the Commonwealth and state/territory governments give priority to the provision of appropriate legal aid services to meet the specific needs of different communities, including RRR communities.²

6.3 Evidence received by the Committee in the current inquiry suggested that there are a number of issues affecting people living in RRR communities which are beyond the legal needs they share with people in metropolitan areas. Several submissions argued that the current arrangements for achieving national equity and uniform access to justice do not meet the legal assistance needs of RRR communities³ and that any existing inadequacies in the legal aid system are greatly magnified in RRR areas.⁴

6.4 Although it has been recognised that there are common needs and experiences in different RRR communities, there is also a diverse range of issues facing individual members of these communities. People living in RRR communities may not

1 Senate Legal and Constitutional Committee, *Inquiry into the Australian Legal Aid System*, Third Report, June 1998, pp. 164-165.

2 *ibid*, p. 166.

3 For example, see Northern Rivers Community Legal Centre, *Submission 22*, p. 2.

4 For example, see Darwin Community Legal Service, *Submission 56*, p. 2.

necessarily have uniform characteristics and needs. This is of itself important in developing an understanding of the services that are required in RRR communities.⁵

6.5 Some evidence suggested that diversity of, and within, communities means that any national guiding principles of legal aid must take into account the varied needs of community members. In the broader context, national equity and uniformity are not necessarily the same thing. Equity might in some circumstances require that individuals and communities be treated differently within the legal aid system. Indeed, individuals may have different needs even when faced with the same legal problem; such needs should be met in order for an individual to have equity of access when compared with other individuals.⁶

6.6 Several submissions received by the Committee identified a range of difficulties experienced by people with legal needs in RRR communities.⁷ While it may be inevitable to some extent that those living in RRR areas will generally find it more difficult to access legal services than those living in more populous areas with greater resources, the Law Institute Victoria argued that problems for people in RRR areas are often unduly intensified:

... chronic under-funding of legal aid services ... exacerbates this problem. People living in rural and remote areas are disproportionately disadvantaged by gaps in the legal aid funding scheme.⁸

6.7 The Committee received evidence that one of the major barriers to access to justice is the fact that large geographical areas in Australia are not covered by legal aid or free legal services. For example, it was submitted that in NSW:

5 J Giddings, B Hook and J Nielsen, 'Legal Services in Rural Communities: Issues for clients and lawyers', *Alternative Law Journal*, Vol. 26, No. 2, April 2001, pp. 57 & 58.

6 Community Legal Centres Association (Western Australia) Inc, *Submission 93*, p. 6. For example: '... a fluent Mandarin speaking person living in the metropolitan area seeking family law advice, might have different needs to a fluent Mandarin (only) speaking person living in a remote area of Western Australia': *ibid*.

7 See, for example, Riverland Community Legal Service Inc, *Submission 11*, p. 3; Northern Rivers Community Legal Centre, *Submission 22*, pp. 3-8; Murray Mallee Community Legal Service, *Submission 23*, pp. 1-3; Shoalcoast Community Legal Centre, *Submission 28*, p. 4; Blue Mountains Community Legal Centre, *Submission 38*, p. 2; Hawkesbury Nepean Community Legal Centre Inc, *Submission 46*, p. 2; Clayton Utz, *Submission 43*, p. 9; Gilbert & Tobin, *Submission 57*, p. 4; Legal Aid Commission of New South Wales, *Submission 91*, pp. 15-17; Legal Services Commission of South Australia, *Submission 51*, p. 16; Wirringa Baiya Aboriginal Women's Legal Centre, *Submission 89*, pp. 3-4; Community Legal Centres Association (Western Australia) Inc, *Submission 93*, p. 11; Australian Law Reform Commission, *Submission 26*, p. 5; J Giddings, B Hook and J Nielsen, 'Legal Services in Rural Communities: Issues for clients and lawyers', *Alternative Law Journal*, Vol. 26, No. 2, April 2001, pp. 58-60; B Fowler, Manager/Social Worker, Broken Hill Community Inc, 'Access to Justice in Rural and Remote Areas', Access to Justice Workshop July 2002, Law and Justice Foundation of NSW, www.lawfoundation.net.au/access/fowler.html, accessed on 21 January 2004.

8 *Submission 88*, p. 6.

Legal Aid offices and community legal centres exist in some areas of the State, but they are spread too thinly in rural, regional and remote areas. Many services are operating beyond their resource capacity, particularly along the fast growth areas of the coastline where services cannot keep up with the demographic changes. In the more remote parts of each region, there are insufficient workers to cope with the level of demand. Outreach transport costs are high, with travel times making many outreaches unviable.⁹

6.8 Mr Greg Connellan from the Victorian Council for Civil Liberties told the Committee about the need for services in rural areas of Victoria:

I was last year ... looking at access to legal services in the eastern part of Victoria: the Latrobe Valley out to the New South Wales border. There was a community legal centre there, based at Morwell, servicing pretty much from Phillip Island right across to the New South Wales border. It is a huge area of Gippsland that they were servicing. They had, effectively, a staff of three. They tried to employ three lawyers to do that. They were down on resources and they were trying to run outreach projects right across that large area. So that is one example of an area of Victoria where there is a great need for further services.¹⁰

6.9 Mr Connellan said that the situation was similar in western Victoria:

There is a community legal centre in Warrnambool and there is one in Ballarat, but they cover a huge area. That is not to say that there are not legal aid services in those areas—there are—but they do not always correspond completely; they do not always cover the same areas of work. But also there are situations, say, in family law with child protection stuff, where you have the legal interests of parents—perhaps more than one parent—and sometimes of grandparents and of children to be addressed, so you need multiple services to be able to address all those without conflict.¹¹

6.10 The Committee heard that Western Australia also experiences difficulties:

[WA] has in its rural and remote centres relatively large concentrations of at risk groups, including young families, aborigines and people from non-English speaking backgrounds. However Legal Aid offices are only found in four centres representing four regions (Bunbury (South West region), Kalgoorlie (Goldfields region), Port Hedland (Pilbara region) and Broome (Kimberley region) as well as a para legal outpost on Christmas Island. There are no Legal Aid offices in the Great Southern, Mid-West, Gascoyne or Murchison regions. In a number of centres, including Carnarvon where there is a magistrates court, there are no private lawyers. Access to legal

9 Combined Community Legal Centres' Group NSW, *Submission 60*, p. 15. For example, there are no CLCs between Nowra and the Victorian border. For a further discussion on CLCs, see Chapter 11.

10 *Committee Hansard*, 9 February 2004, p. 8.

11 *ibid.*

services is effectively out of reach of citizens seeking to resolve legal disputes or assert their legal rights.¹²

6.11 In the Northern Territory:

There are no legal services based outside the urban centres of Darwin, Katherine and Alice Springs, other than the Miwatj Legal Service which is based in Nhulunbuy and provides services to indigenous people in that region.

There are no private solicitors based outside the urban centres of Darwin, Katherine and Alice Springs.¹³

6.12 Other barriers in RRR areas include the geographic constraints in accessing legal assistance (for example, tyranny of distance, community and social isolation, limited or no public transport, lack of reliable private transport or dangerous roads) and the high costs of accessing services, including transport costs and STD telephone costs.¹⁴ Even people in RRR areas who are successful in obtaining legal aid are disadvantaged since:

... their costs of running a case are higher (due to additional travelling costs to attend counselling and expert appointments and court, or the need to hire town agents to make court appearances), yet legal aid payments do not take these additional expenses into account. In the case of family law, regional, rural and remote recipients of legal aid may reach the \$10,000 funding cap more quickly than those in metropolitan areas.¹⁵

6.13 Those living in RRR areas also have problems obtaining legal advice and other associated services. Some specific difficulties include:

- lack of services for special needs groups (including Indigenous people and women);¹⁶
- lack of private lawyers in RRR areas willing to undertake legal aid work, due to restrictions imposed by LACs (preferred supplier regimes) and the well-documented departure of private practitioners from legal aid work in these areas;¹⁷

12 The Law Society of Western Australia, *Submission 70*, p. 3.

13 Northern Territory Legal Aid Commission, *Submission 82*, p. 7.

14 See, for example, Northern Rivers Community Legal Centre, *Submission 22*, pp. 3-4; Wirringa Baiya Aboriginal Women's Legal Centre, *Submission 89*, pp. 3-4; Community Legal Centres Association (Western Australia) Inc, *Submission 93*, p. 11; J Giddings, B Hook and J Nielsen, 'Legal Services in Rural Communities: Issues for clients and lawyers', *Alternative Law Journal*, Vol. 26, No. 2, April 2001, pp. 58-60.

15 Professor Rosemary Hunter & Associate Professor Jeff Giddings, *Submission 24*, p. 3.

16 For further discussion, see Chapters 4 & 5.

17 Professor Rosemary Hunter & Associate Professor Jeff Giddings, *Submission 24*, p. 3.

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- limited availability of legal and other services, as well as lawyers and courts;
 - lack of access to ancillary services, such as counselling services;
 - unavailability of quality experts to provide advice, reports and evidence in court; and
 - inability to obtain interpreters for face-to-face appointments.¹⁸

6.14 The Committee also heard evidence about the lack of lawyers with specialist expertise in certain areas of law in RRR areas. For example, Mr Mark Woods of the Law Institute Victoria submitted that, in RRR areas of Victoria, expertise in certain areas of law does not exist:

... it is simply not financially viable for us to have lawyers in the firm develop expertise in social security law, debt harassment law [disability support law and consumer protection law] ... Likewise, there is not a sufficient number of people to justify community legal centres having lawyers who develop that field of expertise.¹⁹

6.15 There are also problems arising from the nature of small communities, such as:

- conflicts of interest;
- lack of privacy and compromise of confidentiality in small communities; and
- conservative attitudes that may make people reluctant to pursue their legal rights.

6.16 Several submissions and witnesses emphasised the significance of the conflict of interest problem. Many people are unable to access legal advice in their own regional centre or town because local legal aid services have already advised the other party to the matter. The only options available for advice might be to access a legal aid service over the telephone, or travel a significant distance to seek face-to-face legal advice. The conflict of interest issue may also mean that one of the parties to the matters has no choice but to self-represent.²⁰

18 See, for example, Mr Mark Woods, Law Institute of Victoria, *Committee Hansard*, 12 November 2003, p. 23; National Network of Women's Legal Services, *Submission 86*, p. 3; J Giddings, B Hook and J Nielsen, 'Legal Services in Rural Communities: Issues for clients and lawyers', *Alternative Law Journal*, Vol. 26, No. 2, April 2001, p. 59.

19 *Committee Hansard*, 12 November 2003, p. 23.

20 Community Legal Centres Association (Western Australia) Inc, *Submission 93*, p. 15. See further Chapter 10.

6.17 The Committee also heard that residents of RRR areas of Australia are in dire need of expanded resources for free legal assistance and that CLCs in RRR areas have large areas of unmet need due to their low-base funding levels.²¹ Specific problems facing CLCs in RRR areas include:

- difficulties in recruiting and retaining experienced staff;
- a small “pool” of volunteers from which to draw;
- resource allocations which do not include adequate consideration of the additional costs of running outreach programs; and
- an expectation that CLCs with regional responsibilities will service their region with local level funding.²²

6.18 In rural NSW, for example:

Community Legal Centres ... are in dire financial circumstances. In particular, those CLCs set up under the 1996 Commonwealth Justice Statement program receive less core funding than other CLCs in NSW. Most of those centres are in the more remote parts of the State. They do not receive a loading on their Community Legal Service Funding Program Grants for the additional transport and telecommunication costs incurred as a result of operating outreaches and 1800 FreeCall telephone advice services. Community legal centres in rural areas are further hampered by the fact that they cannot access the same numbers of law students and lawyer volunteers that some city centres are able to utilise.

...

The more remote the service, the greater the difficulty in attracting staff. Given the low pay on offer, many poorly funded community legal centres may take months to fill vacancies for solicitors. This is especially true for Rural Women's Outreach Services, which often have extreme difficulty in attracting experienced women family lawyers to the bush.²³

6.19 Unique challenges may also be encountered by lawyers working in RRR areas. Some of these challenges include:

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- 21 Community Legal Centres Association (Western Australia) Inc, *Submission 93B (Submission prepared to the Family Law & Legal Assistance Division, Attorney-General's Department by the National Rural, Regional and Remote Network of Community Legal Centres, May 2002)*, p. 6. For example: ‘(t)here are still areas in rural and regional Victoria and outer metropolitan Melbourne without access to a community legal centre. For many people in these communities there is no access to justice’: Ms Sally Smith, *Committee Hansard*, 12 November 2003, p. 45.
- 22 J Giddings, B Hook and J Nielsen, ‘Legal Services in Rural Communities: Issues for clients and lawyers’, *Alternative Law Journal*, Vol. 26, No. 2, April 2001, pp. 61-62. Other issues arising in relation to CLCs are discussed further in Chapter 11.
- 23 Combined Community Legal Centres' Group NSW, *Submission 60*, pp. 17-18.

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- inflated costs;
 - limited access to legal information resources and services;
 - limited opportunities for specialisation;
 - pressures of community attitudes and expectations;
 - limited infrastructure (for example, limited access to court and tribunal facilities);
 - difficulties in achieving economies of scale;
 - significant ethical dilemmas such as conflict of interest and confidentiality issues; and
 - geographic isolation.²⁴

How to address problems in rural, regional and remote areas

6.20 Possible ways to address the problems experienced by those living in RRR areas include:

- current initiatives of the Commonwealth Government;
- use of technology;
- outreach programs;
- duty lawyer schemes;
- assistance for lawyers in RRR areas; and
- other measures.

These are addressed in turn below.

Current Commonwealth Government initiatives

6.21 While increasing attention is being paid to the needs and interests of people living in RRR areas, moves to actually enhance legal and legal-related services in such communities have been relatively limited.²⁵ While some Commonwealth initiatives have been implemented with the aim of improving services in RRR areas, the vast majority of submissions to the Committee in this inquiry claim that the

24 *ibid*, pp. 60-61.

25 *ibid*, p. 58.

Commonwealth Government has not done enough to adequately address the needs of those living in RRR communities.

6.22 In its submission to the Committee, the Attorney-General's Department recognised that people in RRR areas often encounter greater difficulty accessing appropriate legal services than people living in metropolitan centres due to geographic constraints and limited legal services. It also stated that in order to address these problems, the Commonwealth provides funding to over 30 community legal services in RRR Australia.²⁶

6.23 The Commonwealth Government launched its Regional Law Hotline (the Hotline) in September 2001. The Hotline is a toll-free, confidential telephone service available to people living in designated RRR areas and its objective is to provide 'family law system information as well as general legal information and basic legal advice.'²⁷

6.24 At the second public hearing in Canberra, a representative from the Attorney-General's Department indicated that it planned to expand the Hotline in the near future:

... the Attorney-General has now made a decision that we want to expand the coverage of Regional Law Hotline. It has up to now been in 14 designated regions, and we want to fill in the gaps and make sure that all regional areas of Australia are covered. To do that we are expanding the role of the legal aid commissions in providing the legal advice component of the Regional Law Hotline and phasing out the involvement of the community legal services. They will continue to be involved until 30 June this year but after that the legal aid commissions we are talking to about taking over the full role will be providing the legal advice component. Up until now it has been a mixture of commissions and community legal services. That will enable us to expand the coverage of the service, and we will be able to do more work in making sure there is community awareness of the service availability.²⁸

6.25 The Departmental representative continued:

The hotline infrastructure will not change: it will continue to go to the same two regionally based call centres that are used for both the Family Law Hotline and the Regional Law Hotline. That will enable us to have national consistency for waiting times, and basic information about family law can be provided by the hotline service providers who first answer the call. It is when people need information about other areas of law or legal advice itself that they are referred to a legal advice provider. That is the role that some of

26 Attorney-General's Department, *Submission 78*, p. 9.

27 *ibid*, p. 11.

28 *Committee Hansard*, 9 February 2004, p. 17.

the community legal centres have been playing. That will now be just the legal aid commissions.²⁹

6.26 The representative also advised that the changes to the Hotline would not involve an increase in funding:

It is the same funding but a more efficient use of the funding, because we are not spreading it around to the community legal services, which had quite limited geographical coverage when compared with the legal aid commissions.³⁰

6.27 Some submissions and witnesses at public hearings questioned the viability of the Hotline as it currently operates. For example:

It is the common view of [seven of the CLCs participating in the Hotline project] and the National Rural, Regional and Remote Network of Community Legal Centres, that the Regional Law Hotline project has completely failed to meet its stated objectives and the expectations of the Attorney-General's Department during its first year of operation.³¹

6.28 Mr Bill Grant of the Legal Aid Commission of NSW was equally blunt:

[The Commonwealth LawOnline program and the Regional Law Hotline] is a total waste of money. It does not deliver the service it is supposed to deliver. We have had this discussion at officer level many times: if they rolled that money into LawAccess, we could provide a better service. We already provide an enormous amount of advice in Commonwealth family law through the LawAccess advice line. To have a competing service, if you like, is not complementary; it is confusing. We are all focusing on this one service, and that is the view of commissions right across this country. All the commissions either participate in or have a legal aid help line.³²

6.29 The Hotline has also been described as 'a superfluous adjunct to the comprehensive telephone advice services already provided by many regional Community Legal Centres and Legal Aid Commissions directly to the residents of their catchment areas.'³³

29 *ibid*, p. 19.

30 *ibid*.

31 Community Legal Centres Association (Western Australia) Inc, *Submission 93B (Submission prepared to the Family Law & Legal Assistance Division, Attorney-General's Department by the National Rural, Regional and Remote Network of Community Legal Centres, May 2002)*, p. 6.

32 *Committee Hansard*, 13 November 2003, pp. 12-13.

33 Community Legal Centres Association (Western Australia) Inc, *Submission 93B (Submission prepared to the Family Law & Legal Assistance Division, Attorney-General's Department by the National Rural, Regional and Remote Network of Community Legal Centres, May 2002)*, p. 6.

6.30 The need to utilise resources in a more constructive way and innovatively overcome the barriers of distance and isolation in RRR areas is seen to be of greater importance than a telephone service where ‘a solicitor is tied to a central office and its dedicated phone line’ which ‘does not allow the flexibility ideally sought by rural, regional and remote Community Legal Centres and the communities they serve.’³⁴ As Ms Julie Bishop from the National Association of Community Legal Centres told the Committee at the Sydney hearing:

... we feel that, while the money provided to legal centres through the Regional Law Hotline has been effectively used, the model itself has not been particularly effective. This is where travel costs are related. It is the legal centres’ experience rather than belief that the outreach services, while more expensive in the short term, are much more effective, both in terms of dollars spent and outcome, than trying to resolve particularly rural and regional issues through telephone calls.³⁵

Use of technology

6.31 Several submissions received by the Committee made the point that the use of technology to address the problem of lack of legal and related services in RRR areas is not a solution in itself.³⁶ Instead, technology should be seen as being complementary to other more direct forms of legal assistance.³⁷ Technology for those living in RRR communities can be an unfamiliar concept and the delivery of services through technology might be viewed by some as impersonal and threatening. Issues of training, costs and ongoing support may arise since using technology is often not a part of life in RRR areas.³⁸

6.32 Current strategies such as legal assistance telephone services and the internet are beneficial for some people and in some types of matters. However, some submissions and witnesses suggested that telecommunications services cannot adequately meet every need in RRR communities and should not be used as a replacement for face-to-face services and legal representation, particularly in more complex matters. For example, the Illawarra Legal Centre submitted that:

It is the experience of this Centre that telecommunications solutions alone do not meet the need for legal assistance. Telecommunications services

34 *ibid*, p. 7.

35 *Committee Hansard*, 13 November 2003, p. 42.

36 See, for example, Illawarra Legal Centre Inc, *Submission 12*, p. 2; Tasmanian Association of Community Legal Centres, *Submission 45*, p. 1; National Network of Women’s Legal Services, *Submission 86*, p. 3. Indeed, rather than being a progressive development technology may even be a “backward step” in some RRR areas since there are some communities which, until a few years ago, were reasonably well-serviced by lawyers in private practice doing greater amounts of legal aid work: National Network of Women’s Legal Services, *Submission 86*, p. 3.

37 National Network of Women’s Legal Services, *Submission 86*, p. 3.

38 J Giddings, B Hook and J Nielsen, ‘Legal Services in Rural Communities: Issues for clients and lawyers’, *Alternative Law Journal*, Vol. 26, No. 2, April 2001, p. 62.

cannot undertake preventative legal work (eg community legal education) and do not provide a visible presence in the community to establish trust and cooperative relationships with other human service organisations. They do not replace face to face contact with clients who for a variety of reasons do not or cannot use the telephone (those clients are more likely to experience disadvantage generally).³⁹

6.33 The Tasmanian Association of Community Legal Centres made a similar observation:

Telephone services are very beneficial for some areas of law and for some citizens, but for many a telephone call can be as confusing as a third year university reading text.⁴⁰

6.34 While technology may allow a limited level of service delivery to some members of the community, it is not an appropriate vehicle for people experiencing multiple disadvantage.⁴¹ Concern has been expressed about the capacity of many of those in need to access alternatives to face-to-face advice:

I think there are some general accessibility problems with the Internet. Some of our people are in a chaotic state; they just would not get there.⁴²

6.35 Some people will not have the skills or the capacity to act on the basis of “one-off quick advices” for a range of reasons, including poor literacy, limited education, poor English language skills, disability and lack of confidence to deal with the legal system.⁴³ Such people may only feel comfortable accessing legal services where they have developed a relationship of trust with the service provider.⁴⁴ Technology may be ‘... unfamiliar and the delivery of non-face to face services may be seen as threatening and unsupportive’.⁴⁵

6.36 There may also be problems with the content of legal information that is available through technological means:

... the difficulty is that there has not been the content there for people to utilise. They can use it for Internet banking and other general information services but there has been a limit—I mean in terms of the law—in access to plain language, accessible information covering a broad range of issues

39 *Submission 12*, p. 2.

40 *Submission 45*, p. 1.

41 National Network of Women’s Legal Services, *Submission 86*, p. 3.

42 Mr Sam Biondo, Fitzroy Legal Service, *Committee Hansard*, 12 November 2003, p. 51.

43 National Network of Women’s Legal Services, *Submission 86*, p. 5.

44 *ibid*, p. 3.

45 J Giddings, B Hook & J Nielsen, ‘Legal Services in Rural Communities: Issues for clients and lawyers’, *Alternative Law Journal*, Vol. 26, No. 2, April 2001, p. 62.

that specifically have a rural and regional theme, and that is essentially what we are trying to provide.⁴⁶

6.37 The Law Institute Victoria made a pertinent point about why governments are pushing technology to "solve" the problem of lack of access to justice:

Such developments are to be welcomed but it should not be forgotten that they are only necessary because of the gaps that exist in the legal aid system.⁴⁷

6.38 Indeed:

The concept of access to justice includes access to legal materials, information, advice, assistance in settling documents as well as assistance by way of representation. There is no doubt that improvements have been made in respect of improving access to legal materials, information and telephone advice. These improvements have, to a large extent, been facilitated by the widespread use of the Internet. In particular Victoria Legal Aid's (VLA) web-site provides a wealth of valuable information sheets that can be accessed free of charge.⁴⁸

6.39 Despite the reservations many have about the capacity of technology to provide access to justice, some submissions acknowledged its potential benefit in some situations. The National Network of Women's Legal Services stated:

Video-conferencing, internet access and hotline advice services are ways of providing legal services to communities and groups of women who were mostly unserved in the past such as women living in regional, rural and remote communities.⁴⁹

6.40 The Victoria Law Foundation argued that innovative ways of providing legal information 'can enhance equitable access to justice' and that:

High-quality plain-language legal information should target areas of need, such as rural, regional and remote communities. Effective legal information supports self-help and eases the burden on legal services. Activities and projects that engage the public with law and the legal system are also important parts of a strategy to improve the quality and access to legal services for all Australians.⁵⁰

6.41 Mr Sam Biondo from the Fitzroy Legal Service argued that videoconferencing facilities may be particularly meritorious in RRR areas if personal advice services are not available:

46 Mr Richard Coverdale, *Committee Hansard*, 12 November 2003, p. 90.

47 *Submission 88*, p. 4.

48 *ibid.*

49 *Submission 86*, p. 3.

50 Victoria Law Foundation, *Submission 64*, p. 3. This is discussed further in Chapter 10.

On the technology continuum, the first option would always be a live person to talk to, with an interpreter. Many of our clients have enough difficulty navigating their way around written pamphlets, let alone having the strength to walk in and talk to a lawyer. If the technology were available, because of the particular nature of the problems that people might have, I think videoconferencing might provide access in rural and remote areas. The Internet would provide some basic information for workers in agencies to access and distribute. Videoconferencing may have some suitable applications.⁵¹

6.42 Videoconferencing is likely to be more cost-effective than reliance on lawyers travelling long distances to more remote areas. It may also provide a more sensitive means of communicating with clients who find themselves with complicated and perhaps distressing issues than ‘a disembodied voice over the phone’.⁵²

6.43 Telephone advice services also have their place and may be beneficial in some circumstances, according to Mr Biondo:

At a bare minimum, telephone accessibility would be a great assistance to people who might be in police custody, say. It is very difficult to get a lawyer at 10 o’clock on a Friday night or two o’clock on Saturday morning. People are not aware of their rights. You do not know what people’s circumstances are, and they should be entitled to a legal adviser. There are schemes established in the United Kingdom for the provision of lawyers in police stations.⁵³

6.44 A submission from the Victoria Law Foundation referred to its Rural Law Online project, which is ‘an interactive website designed to provide access to free, user-friendly, plain-language information about law for primary producers and their families.’⁵⁴ In essence, the aim of Rural Law Online is to bring together information from a variety of media on relevant areas of the law, provide links to legal referral services and resources, and feature discussion forums on “hot topics” of immediate relevance to RRR residents so that residents in these areas can share their experiences, knowledge and expertise with each other.⁵⁵

6.45 At the Melbourne hearing, Mr Richard Coverdale of the Victoria Law Foundation stated that the project:

51 Mr Sam Biondo, Fitzroy Legal Service, *Committee Hansard*, 12 November 2003, p. 51.

52 Community Legal Centres Association (Western Australia) Inc, *Submission 93B (Submission prepared to the Family Law & Legal Assistance Division, Attorney-General’s Department by the National Rural, Regional and Remote Network of Community Legal Centres, May 2002)*, p. 12.

53 Mr Sam Biondo, Fitzroy Legal Service, *Committee Hansard*, 12 November 2003, p. 51.

54 Victoria Law Foundation, *Submission 64*, p. 1.

55 *ibid.*

... is essentially about providing an adjunct or support to the provision of direct legal advice support and should not be seen as being instead of the provision of direct legal support to individuals. But, having said that, it is important that people are empowered with information so that they can best make judgments themselves across a whole range of areas of law.⁵⁶

6.46 Mr Coverdale also pointed out that the advantage of online services is that they can be updated regularly. The Victoria Law Foundation project is mainly targeted at farmers who 'are increasingly dealing with more and more complex regulations and legislation and ... require information across a huge range of areas of law'.⁵⁷ However, the content of the service covers subjects such as family law and social security law 'which are generic and relevant to all regional, rural and remote communities'.⁵⁸ The Victoria Law Foundation has plans to expand the service to more broadly target RRR areas of Victoria.

Committee view

6.47 The Committee considers that, while the provision of legal advice by telephone is useful in some circumstances, it is of limited benefit more generally if not complemented by community legal education, community development projects linked to law and social justice issues, and outreach programs for face-to-face advice and assistance. The Committee questions the ability of initiatives such as the Commonwealth Government's Regional Law Hotline to provide people living in RRR areas with useful and effective legal advice that appropriately addresses their needs and concerns without corresponding face-to-face services.

6.48 Although face-to-face services are always preferable, the Committee considers that videoconferencing facilities would significantly improve access to legal assistance for those living in more remote areas of Australia. Such facilities would save travel time and costs, and would enable CLCs to provide services to areas which are currently beyond their reach.

Recommendation 34

6.49 The Committee recommends that technological initiatives such as videoconferencing and telephone advice services should be used by the Commonwealth Government and state/territory governments, legal aid commissions and community legal centres as part of an integrated approach to providing services in rural, regional and remote areas. The use of technology can

56 *Committee Hansard*, 12 November 2003, p. 87.

57 *ibid.*

58 *ibid.*, p. 89.

potentially provide practical solutions to those living in such areas, in conjunction with face-to-face legal services.

Outreach programs

6.50 Another suggested measure to address the lack of legal services in RRR areas is the use of outreach programs. People in remote areas of Australia suffer greatly because of the limited legal assistance options they have. Although they may be able to access telephone advice lines or the internet, often these forms of assistance are not adequate or suitable for the particular problems they encounter.

6.51 Outreach programs run from regional centres or major cities are a particularly effective way to provide face-to-face assistance, advice and representation to those who are not able to otherwise access this type of assistance due to their location. However, limited funding does not allow CLCs to provide outreach services to meet need and demand. For example:

Outreach clinics are currently provided in only a few towns in outback South Australia because of problems with the high cost of providing such a service due to the enormous distances to be travelled to see relatively few clients.⁵⁹

6.52 Ms Polly Porteous of the CCLCG told the Committee:

Some community legal centres in New South Wales try to do outreaches where they do a circuit. They might travel, for example, from Broken Hill and go around communities. There are some people who have never seen a legal centre at all and have severe legal problems, so they are trying to get to those communities. Some of those circuits take so much time and money that they have done it once or twice and then realised that that has used up their entire travel budget. Their travel budget is not increased in recognition of the kind of work they have to do, so it is on a par with travel budgets in urban areas, which does not make sense.⁶⁰

6.53 Further, the NSW LAC submitted that it must be recognised that:

... a great deal of planning and community development work needs to go in to the establishment of [outreach] services which is not taken into account by funders. This includes liaison with the community and other service providers, the need to integrate ... services with that of other community organisations, aligning services to court circuits, creating community awareness of the service and maintaining the service over the longer term.⁶¹

59 Legal Services Commission of SA, *Submission 51*, p. 16.

60 Ms Polly Porteous, *Committee Hansard*, 13 November 2003, pp. 41-42.

61 Legal Aid Commission of NSW, *Submission 91*, p. 17.

Committee view

6.54 The Committee considers that increased representation and face-to-face legal advice services are required throughout RRR areas of Australia. Outreach services, operating from legal services in regional centres, are a valuable means of providing access to justice for people living in smaller RRR population areas. Governments need to provide adequate funding to LACs and regional CLCs to enable them to expand and develop their outreach programs to RRR areas where there are currently no outreach programs, or where demand for existing outreach programs is not being met.

6.55 The Committee emphasises that it is the responsibility of the Commonwealth Government as well as state/territory governments to provide this funding. It is imperative that LACs and CLCs have enough resources to provide outreach services to people living in the more remote parts of Australia to assist them in overcoming barriers of distance and isolation.

Recommendation 35

6.56 The Committee recommends that the Commonwealth Government and state/territory governments provide additional funding to state/territory legal aid commissions and community legal centres to allow them to expand their services, including outreach services, to rural, regional and remote areas which are currently seriously under-funded. Additional funding must take into account the significant resources that are required by legal aid commissions and community legal centres in undertaking resource-building initiatives in rural, regional and remote areas.

Recommendation 36

6.57 The Committee recommends that the Commonwealth Government and state/territory governments allocate additional funding to enable legal aid commissions, at their discretion, to open and maintain new regional and rural offices throughout Australia to provide legal services in those areas which legal aid commissions assess as being under-serviced.

Duty lawyer schemes

6.58 A suggested way of addressing the lack of lawyers in RRR areas is to introduce a comprehensive duty lawyer scheme specifically targeted at those areas. The Legal Services Commission of South Australia suggested (in the context of that state) that such a scheme should be funded by the Commonwealth Government. The Commission suggested that the scheme should offer, amongst other things, a duty solicitor in every court of first instance (criminal, civil and family) provided by in-house lawyers and private practitioners, and legal advice and representation on pleas

of guilty, pleas of not guilty in appropriate matters, adjournments and applications for bail.⁶²

6.59 The Committee notes that in Queensland, duty lawyer services are available in over 100 Magistrates and Children's Courts. However:

The long term sustainability of duty lawyer services in some regional areas of Queensland remains problematic where such service depends upon the cooperation of 1-2 private practitioners in the region. Again, it is the fragility of the continued provision of such services in the bush that needs to be addressed immediately.⁶³

6.60 While duty lawyer schemes are important in providing some level of legal assistance to people who would not otherwise be able to obtain any, they may not always be appropriate. Some question the ability of the schemes to provide adequate access to justice. For example, Mr Sam Biondo of the Fitzroy Legal Service asked:

Is equal justice merely about a duty lawyer sharing five minutes of their time in a court foyer with a client whom they have never met?⁶⁴

6.61 Ms Naomi Brown of the Community Legal Centres Association (WA) said:

... in many towns there is not a magistrate who sits all of the time. The magistrate will visit on circuit and in between times many minor committal matters and intervention orders are heard by justices of the peace. The person may or may not have had the opportunity to speak face to face with someone prior to that, because the duty lawyers will only visit the town at the time of the Magistrate Court's circuit. So ... you are still meeting the person at the court door. For many people who are from different Indigenous cultural and linguistic backgrounds, as well as other culturally and linguistically diverse backgrounds, that is very difficult. There is also not necessarily an opportunity to identify the need and get an interpreter, and there may well not be an interpreter that is available in that language in that area anyway.⁶⁵

Committee view

6.62 The Committee considers that, while it may not be a complete solution, the RRR duty lawyer scheme suggested by the Legal Services Commission of SA could usefully be adopted in all states and territories. The Committee believes that the Commonwealth Government has a fundamental responsibility to lead by example in this area and to assist with the provision of funding to the LACs for a duty lawyer

62 *Submission 51A*, p. 2. The Legal Services Commission also suggested that it would be best placed to investigate the most cost efficient method of providing such a service in cooperation with the Law Society, local practitioners, courts and local community legal services.

63 Legal Aid Queensland, *Submission 31*, p. 7.

64 *Committee Hansard*, 12 November 2003, p. 44.

65 *Committee Hansard*, 12 November 2003, p. 47.

scheme. It would also be appropriate for the state/territory governments to contribute funding to such a scheme.

6.63 However, the Committee does not consider it appropriate that the funding should be divided following the current Commonwealth/state dichotomy. A cooperative approach between the Commonwealth and the states/territories is preferable so that duty lawyer schemes can be set up in every court of first instance. The LACs would then be responsible for determining the most efficient and effective way of providing the service in each state/territory in conjunction with relevant state/territory bodies such as law societies, local practitioners, courts and local community legal groups.

6.64 Duty lawyer schemes are discussed further in the Committee's examination of, and recommendations about, self-represented litigants in Chapter 10.

Assistance for lawyers in rural, regional and remote areas

6.65 The Legal Services Commission of SA submitted that funding needs to be provided by the Commonwealth Government for a RRR subsidy to assist lawyers practising in RRR areas of Australia.⁶⁶ At present, evidence suggests that more and more lawyers are opting out of legal aid work, particularly in RRR areas, because the fees are so much lower than the fees that would be paid by private clients.⁶⁷ It is simply not financially viable for lawyers to engage in this type of work. A subsidy may be one way to attract and retain lawyers in RRR areas. Incentives considered necessary include:

- relocation costs to the country;
- assistance with housing costs;
- subsidised costs of attending further education seminars, including travel costs;
- additional allowances for travelling expenses, motor vehicle expenses, telecommunications expenses, and a cultural training allowance; and
- travelling costs incurred on a legal aid file.⁶⁸

6.66 Another suggestion to ease the problem of lack of lawyers in RRR areas was presented (in the context of Victoria) at the Melbourne hearing by the Law Institute of Victoria:

... a partnership between private lawyers, of which there are plenty in rural and regional Victoria, to undertake ... casework on an individually funded

66 *Submission 51A*, p. 1.

67 Professor Rosemary Hunter & Associate Professor Jeff Giddings, *Submission 24*, p. 3.

68 *ibid*, pp. 1-2.

basis. That would mean that there was at least some modest financial incentive for the development of expertise in those firms to ensure that the people in those areas are able to access the services that their city cousins can, whilst at the same time not breaking the financial back of law firms in regional and rural Victoria.⁶⁹

6.67 Mr John North of the Law Council of Australia told the Committee of the dwindling number of lawyers in RRR areas:

It seems to be particularly clear that the lawyers who are operating in the bush are getting older and there are becoming fewer of them. Just as it is with the medical profession and other professions, it is particularly difficult to entice young lawyers out into the country ... Our finding is now that, because of the crisis that occurred in legal aid a few years ago when the Commonwealth funding was effectively frozen, large numbers of experienced lawyers, many with more experience than me, are not taking part in legal aid work. This is not just a plea on behalf of the legal profession to increase funding; we really do face a problem of access to justice in rural and remote areas with a lack of lawyers on the ground.⁷⁰

6.68 He suggested some ways of improving this situation:

I think the only way we will be able to do anything about it is to start using people who actually live and grow up in the country and try and get them to become lawyers and to come back into the communities where they are from. When you can get somebody to come to the country, if they stay for a few years, they love it, and you get a lot of very dedicated and experienced lawyers.⁷¹

6.69 Mr Brian Withers from the Law Council of Australia noted that the demographics in rural areas were 'changing quite dramatically':

... more disadvantaged people are moving there because of more affordable housing and the ability to live at a better level than they would be able to in the city and, hence, the pool, if you like, of those who would qualify for legal aid is probably increasing ...⁷²

6.70 The Law Council representatives also explored the possibility of introducing government initiatives to attract more lawyers to RRR areas. Mr Withers noted that one of the recommendations in the Law Council's recent report, *Erosion of Legal Representation in the Australian Justice System*, was that:

69 *ibid.*

70 *Committee Hansard*, 9 February 2004, p. 46.

71 *ibid.*

72 *ibid.*

... there be innovative scholarship and subsidy schemes to encourage young people from rural and remote regions to become lawyers and that lawyers be encouraged generally to practise in rural and remote regions ...⁷³

6.71 Mr Withers commented that, although this 'is a fairly substantial undertaking', those people who grew up in RRR areas would be more likely 'to provide the long-term support and commitment that is needed in ... remoter areas'.⁷⁴

6.72 Mr North suggested a possible rethinking of the approach taken by law schools at a fundamental level:

There is absolutely no reason why country campuses attached to universities should not be able to offer country people a legally based education. There must not be, when you look at things, this ridiculous situation that is in New South Wales where you need 99.8 or 99.6 in the Higher School Certificate to qualify. It should be on the basis of people being interviewed, having a reasonable score and being assisted to go through these degrees.

...

I would very much like to take it on board at the Law Council level to see if we can develop it because it takes out the problem of having to move the student from the country area to the city and then back again.⁷⁵

Committee view

6.73 The Committee is greatly concerned about the apparent shortage of lawyers in RRR areas of Australia and urges Commonwealth and state/territory governments to take measures to encourage lawyers to live and work in those areas. The Committee considers that the provision of a subsidy or other incentives for lawyers may have merit.

Recommendation 37

6.74 The Committee recommends that the Commonwealth and state/territory governments, in conjunction with the law societies in each state/territory and the Law Council of Australia, fully investigate the viability of providing a subsidy (or any other relevant incentives), and developing a coordinated national approach, aimed at attracting and retaining lawyers to live and work in rural, regional and remote areas of Australia.

73 Executive Summary, p. 3.

74 *Committee Hansard*, 9 February 2004, p. 47.

75 *ibid.*

Other possible measures

6.75 There is a clear indication in submissions that legal aid should be nationally consistent, that is, assistance should be provided to people in similar circumstances, regardless of where they live.⁷⁶ Legal aid should also be comprehensive in scope (covering the full spectrum of legal matters), adequately funded (giving the requisite degree of assistance to ensure cases are able to be prepared properly) and efficiently administered (so that public funds are expended efficiently and effectively).⁷⁷

6.76 Any changes to the legal aid system in RRR areas must be properly coordinated and evaluated to take into account the wide range of experiences and varied needs of clients, communities and lawyers.⁷⁸ Community consultation is vital to determine where there are unmet needs and which services are required.⁷⁹ Needs analysis is important both for the improvement of service delivery in individual cases and to direct funds generally to cases, clients and geographical areas which experience particular disadvantage.⁸⁰ It has been suggested that a comprehensive national strategy is required in relation to the recruitment, selection and retention of lawyers in RRR areas in order to ensure the sustainability of legal services to people living in those areas.⁸¹

6.77 Focusing solely on legal need might exclude a range of other issues which are also important to consider, such as the particularities of different areas and work, geographical issues, transience of the population, and remuneration issues.⁸² It is essential that an analysis of such issues be undertaken in order to identify the most appropriate mix of legal services required in a particular area.⁸³ The importance of a mixed system of service delivery has been emphasised, with private lawyers, legal aid agencies and CLCs all working together in a coordinated manner⁸⁴ to develop and achieve sustainable models of legal service delivery.

6.78 While many submissions argue that more funding is required to meet the demand for legal services in RRR areas, it has been submitted that simply moving

76 For example, see Riverland Community Legal Service Inc, *Submission 11*, p. 6; Darwin Community Legal Service, *Submission 56*, p. 2.

77 Riverland Community Legal Service Inc, *Submission 11*, p. 6.

78 J Giddings, B Hook and J Nielsen, "Legal Services in Rural Communities: Issues for clients and lawyers", *Alternative Law Journal*, Vol. 26, No. 2, April 2001, p. 62.

79 *ibid*; Illawarra Legal Centre Inc, *Submission 12*, p. 2.

80 Australian Law Reform Commission, *Submission 26*, p. 4.

81 Legal Aid Queensland, *Submission 31*, p. 3; Community Legal Centres Association (Western Australia) Incorporated, *Submission 93*, p. 37.

82 Fitzroy Legal Service, *Submission 48*, p. 12.

83 National Legal Aid, *Submission 81*, p. 7.

84 J Giddings, B Hook and J Nielsen, "Legal Services in Rural Communities: Issues for clients and lawyers", *Alternative Law Journal*, Vol. 26, No. 2, April 2001, p. 62.

funding from metropolitan areas to RRR areas is not the answer.⁸⁵ The fundamental reality about legal aid is that there are insufficient funds across the board to adequately meet need.⁸⁶ Since the level of legal need in highly populated areas of metropolitan cities and surrounding suburbs is not being met by existing services, further spreading or diluting of resources, even if possible, would have the effect of severely impacting the existing network of service provision.⁸⁷

6.79 While diluting funding is not desirable, the Committee received evidence in relation to some of the crucial factors which may need to be considered if any shift in location or reallocation of resources is required:

- population density which largely resides within metropolitan areas;
- higher concentrations of legal problems within urban areas;
- access to public transport;
- location of existing centres;
- access and availability of volunteer staff within particular communities; and
- the ability to attract and retain paid staff in particular areas.⁸⁸

Committee view

6.80 Evidence presented to the Committee during the course of the inquiry clearly indicates that gaps in the legal aid system are greatly magnified in RRR areas. Overwhelmingly, the evidence suggests that the current arrangements throughout RRR areas of Australia are inconsistent and inadequate, and generally fall well below acceptable standards for achieving geographic equity and uniform access to justice. In fact, it appears as though there is a growing crisis in effective legal aid service delivery in RRR areas. The Committee is of the view that the provision of legal aid should be nationally consistent. Funding and services should be available to provide assistance to all Australians with similar needs and circumstances, regardless of the location in which they live.

85 For example, see Fitzroy Legal Service, *Submission 48*, p. 9; NSW Combined Community Legal Centres Group, *Submission 60*, p. 8; Marrackville Legal Centre, *Submission 53*, p. 6.

86 Fitzroy Legal Service, *Submission 48*, p. 9.

87 *ibid.* While relocating legal aid lawyers from major cities to smaller centres might constitute progress towards addressing the lack of legal aid resources in those places, it does so at the expense of the areas already serviced: George Giudice Law Chambers, *Submission 68*, p. 4.

88 Fitzroy Legal Service, *Submission 48*, p. 9.

6.81 The Committee strongly endorses the recommendation made in the Committee's *Third Report* that legal aid expenditure be closely monitored to determine if disproportionate expenditure in certain priority areas is having the effect of depriving other areas of appropriate funding. The Committee is particularly concerned about expenditure that may disproportionately favour metropolitan areas at the expense of RRR areas.

6.82 However, the Committee does not believe that any increase to funding in RRR areas should involve a decrease in funding to metropolitan areas. The Committee agrees with the view that shifting funds from one area to another is not a solution to the problem of lack of funding and services in RRR areas since it cannot be said that metropolitan areas are over-resourced in terms of legal aid funding. It appears that additional funding by the Commonwealth and state/territory governments is urgently required to address the problem of lack of legal and related services in all areas, but this is particularly the case in RRR areas where there are increased costs associated with providing legal services.

6.83 The Committee is of the view that the provision of legal and legal-related services to RRR areas of Australia is critical to the operation of an equitable legal system for all Australians. The Commonwealth and state/territory governments have a shared responsibility to ensure that people living in such areas have equitable access to legal aid. Governments need to respond in an integrated way to the range of legal problems experienced by many people in RRR areas and work to provide flexible and innovative solutions to the community need for assistance.

6.84 Further, the circumstances surrounding legal need are not fixed and require ongoing evaluation by governments. The Committee feels strongly that such evaluation would be able to allow an accurate assessment of service delivery in RRR areas and will result in developing more equitable, efficient and effective ways of delivering legal aid services in those areas.

Recommendation 38

6.85 The Committee recommends that the Commonwealth Government conduct research to determine the particular needs and services required by people living in rural, regional and remote areas of Australia. The Committee urges the Commonwealth Government and the state/territory governments to develop mechanisms, in conjunction with legal aid commissions in each state and territory, to ensure that people living in rural, regional and remote areas are not disadvantaged, nor denied basic services and access to the legal aid system, simply because of where they live.

Recommendation 39

6.86 The Committee recommends that any increase in funding for rural, regional and remote areas should not be at the expense of funding for metropolitan areas. Additional funding is urgently required to address the problem of lack of legal and related services in rural, regional and remote areas.

Recommendation 40

6.87 The Committee recommends that the Commonwealth Government and state/territory governments ensure that thorough consultation takes place with rural, regional and remote communities in order to determine the most appropriate legal and associated services required in particular communities. All consultations should occur before any establishment of any new services.