



Recruitment and Retention of Legal Practitioners to Rural, Regional and Remote Areas Strategy: Discussion Paper

*Recruitment and Retention Working Group
Working Draft*

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Introduction

In 2008, the Law Council established a Recruitment and Retention Working Group to examine problems relating to the recruitment and retention of lawyers in rural, regional and remote (RRR) areas of Australia. The Working Group was formed in response to increasing concerns within the Law Council's constituent bodies and the legal community more broadly about the problems in attracting and retaining legal practitioners to areas outside of Australia's metropolitan cities. Research undertaken in recent years has concluded that there is a critical shortage of lawyers in RRR areas and numbers are continuing to decline.¹ Anecdotally, it appears that this shortage will continue to worsen in coming years as older lawyers working in country areas retire.² Legal businesses will cease to operate for want of successors.

Arising out of these concerns, the Recruitment and Retention of Legal Practitioners to Rural, Regional and Remote Areas Strategy (the Strategy) has been developed by the Working Group to address the issues of:

- Recruitment of legal practitioners to RRR areas; and
- Retention of legal practitioners in RRR areas.

This paper provides an overview of possible programs which may form part of this strategy by aiming to improve the recruitment and retention of legal practitioners in RRR areas, either directly (for example, remuneration and relocation grants) or indirectly (for example, education and training initiatives). The incentives identified below can be subdivided into those producing short-term benefits, to assist in attracting legal practitioners, for example remuneration, and those producing long-term benefits, relevant to the retention of legal practitioners, for example, service network supports.

It is considered that an effective solution to the RRR problems will only be achieved through a range of strategies both at a grass roots and national level and in partnerships between government, community and private sector.

¹ See TNS Social Research, *Study of the Participation of Private Legal Practitioners in the Provision of Legal Aid Services in Australia*, December 2006 and Urbis Keys Young, *The Solicitors of New South Wales in 2015 – Final Report*, The Law Society of New South Wales.

² Trish Mundy, *Recruitment and Retention of Lawyers in Rural, Regional and Remote NSW: A Literature Review*, July 2008



I Recruitment and Retention of Legal Practitioners to Rural, Regional and remote Areas

Background

The attraction and retention of legal practitioners in rural, regional and remote (RRR) areas is an issue of concern for government, communities, business, and professional associations.

Research confirms that:

- Demand for professional services to Australian RRR areas is generally greater than supply.³
- There is a significant population decline in many RRR areas.⁴
- At the end of June 2008, 78% of all solicitor practices were located in capital cities. Capital city practices accounted for 81% of all persons employed in solicitor practices and 88% (or \$12.9b) of fee income from the provision of legal and legal support services.⁵
- At the end of June 2008, 51% (or 213) of community legal services were located outside capital cities. Aboriginal legal services had 87% (or 75) of total offices located outside capital cities. Legal aid commissions had 54% (or 45) of total offices located outside capital cities. Community legal centres had 36.8% (or 93) of total offices located outside capital cities.⁶
- Only 11% of employees in RRR areas in Australia are professionals, compared to 23% in metropolitan areas.⁷

The issue of recruitment and retention of young legal practitioners is of particular concern and has been the subject of extensive discussions by a number of the Law Council's Constituent Bodies, for example the Country and Suburban Law Association Conference held by the Law Institute of Victoria (LIV) in 2007, the South Australian Law Society's Country Lawyers Forum held in 2008 and the Conference of Law Societies in March 2008.

Identifying the Concerns

It is believed that the Federal, State and Territory Governments would be receptive to policy reforms relating to the recruitment and retention of legal practitioners in RRR areas.

At the 2020 Summit held on 12th and 13th April 2008, the welfare of Australian rural communities was identified as a key priority area. The group which dealt with rural issues has recommended building on the strengths and contributions of rural communities and development of strategies for the efficient provision of infrastructure and services outside metropolitan areas as key focus areas. This is consistent with the view that the Australian

³ Human Rights and Equal Opportunity Commission (2000), National Inquiry into Rural and Remote Education (Australia): Emerging Themes; A Herrington and J Herrington, 'Using the Internet for professional development: The experience of rural and remote professionals' (2006) Paper Presented at the 23rd Annual ASCILITE Conference: Who's Learning? Whose Technology?

⁴ ABS, *Regional Population Growth, Australia, 2006-2007*, ABS Cat 3218.0 (2006).

⁵ Australian Bureau of Statistics, *2007-08 Legal Services Australia*, June 2009, p 13.

⁶ Australian Bureau of Statistics, *2007-08 Legal Services Australia*, June 2009, p 19.

⁷ Australian Bureau of Statistics, *2006 Census*.



government may be more receptive to considering policy initiatives from legal and other professions in their attempt to recruit and retain professionals in RRR areas.

In its response to the 2020 Summit report, the Government has agreed in principle to a number of key RRR recommendations including:

- Tertiary graduates having their higher education loan debts reduced by seeking voluntary or paid employment in RRR areas;
- A skills audit of remote, rural and regional areas to identify labour and skills shortages and provision of training opportunities in communities where there are labour and skills shortages.

Furthermore, some recent relevant policy announcements include the Victorian Government's pledge to provide an additional \$3000 First Home Bonus to first homebuyers purchasing homes in regional Victoria. The Victorian government's willingness to put resources into RRR areas is extremely encouraging. An increase in housing purchases in these areas will in turn increase the density of the population in regional areas, most likely of young individuals, thus leading to a higher demand for professional services.

Of course the devastating bushfires will now need to be factored into the Victorian response on this issue.

The Law Council considers that the government would benefit from introducing schemes to promote RRR practice to legal practitioners. The benefits to the government include:

- Reducing the burden on the legal aid system;
- Promoting access to justice in country areas;
- Ensuring that people who live in RRR areas are able to access legal services within their community;
- Promoting local business by encouraging legal practitioners to establish practices in RRR communities;
- Preserving local legal services and thereby reducing the need for expensive government advisory services either in outreach forms or in local regional centres; and
- Promoting the vitality of country areas;
- To be regarded by its citizens as a Government which values the legal system as a public good;
- To be regarded by its citizens as a Government which values promotion of higher education among young Australians; and
- To be regarded by its citizens as a Government which values the promotion of a resilient and diverse community.



Research Findings

Before addressing the issues of recruitment and retention of legal practitioners to RRR areas and the specific initiatives which may assist in dealing with these issues, it is necessary to first define the scope of the problem.

Several significant research studies undertaken in recent years have concluded that there is a shortage of lawyers in RRR areas.

The 2006 TNS Study commissioned by the Attorney-General's Department found that there is a shortage of lawyers in regional and remote areas with approximately 3 lawyers per 10,000 residents aged 18+ in remote Australia as compared to 10.7 lawyers per 10,000 in Australian capital cities.⁸

Approximately two-thirds of private firms (67%) in regional and remote areas currently provide legal aid compared with only approximately half of firms (48%) in all locations.⁹ Firms in regional and remote Australia provide larger quantities of legal aid work than their city counterparts, with two-fifths (41%) of regional and remote firms providing more than 30 cases a year.¹⁰

The qualitative component of the TNS study found that regional and remote lawyers were particularly concerned by the limited availability of experienced practitioners and graduates in RRR areas and that reliance was placed on a finite number of solicitors to carry out legal aid work.¹¹

A study undertaken by the Law Society of New South Wales has found that the proportion of lawyers working in country New South Wales has dropped from 16.7% in 1988 to 13.7% in 2003 (an average decline of 1.3% a year).¹² Projections based on this data have found that the numbers of country lawyers will continue to decline and by 2015 only 12.1% of all New South Wales lawyers will be working in country areas.¹³

While there are no national figures currently available on the age of practitioners working in RRR areas, there is considerable anecdotal evidence which suggests that a large percentage of country lawyers are nearing retirement. In a 2003 media release, Ms Kim Cull, former President of the NSW Law Society noted that 'most country solicitors are aged 45 years and over and it appears that one third of those will retire in the next 10 to 15 years, leaving a gap which must be filled by other practitioners'.¹⁴

The Law Council's RRR Survey

In March 2009, a nationwide survey of legal practitioners in RRR areas was conducted in order to obtain empirical support for anecdotal evidence which indicates that there is a shortage of legal practitioners in RRR areas of Australia. The online survey was sent by the law societies in each state and the Northern Territory to their members working in RRR areas.

On 9 July 2009, the results of study were released. The survey report is available at <http://www.lawcouncil.asn.au/initiatives/rrr.cfm>. The survey elicited strong support from the

⁸ TNS Social Research, n 1 above, p 38.

⁹ Ibid, p 39.

¹⁰ Ibid, p 41.

¹¹ Ibid, p 36.

¹² Urbis Keys Young, n 1 above, p 14.

¹³ Ibid.

¹⁴ Trish Mundy, n 2 above, p 9.



legal community in RRR areas with a response rate of 24% (in total 1,185 practitioners completed the survey). Overall, the survey results indicate that there is a significant problem for access to justice in RRR areas. Action is required to ensure that viable practices are retained and Australians in RRR areas are able to access legal services within their communities. The main findings of the report are that:

- Overall, 43% of principals surveyed indicated that their practice currently does not have enough lawyers to serve their client base.
- Sole practitioners made up 46% of all responses to the survey. Of this group, 30% have been practising in RRR areas for more than 21 years and almost 36% of these practitioners do not intend to be practising law in the next five years. Overall, 42% of the legal practitioners who responded to the survey do not intend to practise law in five years time.
- Principals cited succession planning as their biggest concern (71%), followed by concerns about attracting additional lawyers to the firm (58%) and about attracting lawyers to replace departures (51%).
- Of the younger lawyers surveyed (20-29 years), 30% indicated that they only intended to practise in their area for less than two years. For this group, remuneration is also extremely important, with 25% indicating that they would leave the area for better pay. Further, 28% of this younger age group would leave their current firms to join a city based firm and 15% would leave to start a new career.
- RRR practitioners undertake a significant amount of legal aid work, with 51% of respondents indicating that their firm accepted legally aided matters. Of those firms, the majority (50%) dealt with more than 30 cases per year.
- Lawyers are integral to RRR communities providing significant pro bono assistance and undertaking voluntary work within their communities. More than 64% of respondents indicated that their firm undertakes pro bono work, and 71% of respondents undertake other unpaid voluntary work within their area.



II Recruitment Initiatives

Attraction of professionals to RRR areas generally focuses on short-term benefits and may involve provision of incentives, financial or otherwise. A range of recruitment initiatives which may be implemented by both government and the legal profession are considered below.

Initiatives by the Federal Government

Waiving Fringe Benefit Tax (FBT) Liabilities on employer payments of employee benefits

This initiative would apply to both new legal practitioners and experienced practitioners looking for a career change. Government could implement a scheme which waives fringe benefits tax (FBT) for those employers who offer bonuses for relocation or other benefits as part of an increased salary package. Such salary packages could also include payment (either partially or in full) of the HECS-HELP or FEE HELP debt of new legal practitioners.

Housing fringe benefit

A remote area housing benefit is an exempt benefit under s 58ZC of the *Fringe Benefits Tax Assessment Act 1986* ('FBTA Act'). Where an employer grants an employee a "housing right", that is a right to occupy or use a unit of accommodation as a usual place of residence, a housing fringe benefit arises.¹⁵ The right to occupy may apply to any type of accommodation that is the employee's usual place of residence.¹⁶

Different valuation rules apply to a housing fringe benefit depending on whether the accommodation is outside Australia, in a non-remote part of Australia or in a remote area of Australia.

If the accommodation is in Australia and is not in a remote area, the taxable value of the housing fringe benefit depends on the type of accommodation.

If the accommodation is in a hotel, motel, hostel, guesthouse, caravan or mobile home and the provider is in the business of providing similar benefits to the public, the taxable value of the housing fringe benefit is either the market value of the accommodation less any rent paid, if the provider is not the employer (s 26(1)(b) FBTA Act), or 75 per cent of the amount that the public would pay less any rent paid, if the provider is the employer. For any other type of accommodation in a non-remote area, the taxable value is the "statutory annual value" of the right to occupy the accommodation (s 26(1)(c) FBTA Act) and therefore the employer is subject to FBT on this amount.

Four conditions must be satisfied for the remote area housing exemption to apply:¹⁷

1. The accommodation must be located in a remote area, that is, an area that is not in, or adjacent to, an "eligible urban area".¹⁸ Further, the location must be more than 40 km away from the eligible urban area with a 1981 census population of less than 130,000, or is less than 100 km from an eligible urban area with a census population of 130,000 or more.¹⁹

¹⁵ FBTA Act, ss 25 and 149.

¹⁶ 2009 *Australian Master Tax Guide*, para 35-380.

¹⁷ See 2009 *Australian Master Tax Guide*, para 35-430.

¹⁸ Section 140(1) defines an eligible urban area as a town or city with a 1981 census population of at least 14,000 (or 28,000 if in Zone A or Zone B for income tax purposes).

¹⁹ See Practice Statement PS LA 2000/6.

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2. The recipient of the benefit must be employed by the employer for the whole tenancy period and the employee's usual place of employment must not have been at a location in or adjacent to an eligible urban area during that period.
 3. It must be necessary for the employer to provide free or subsidised accommodation to employees for any of the following reasons: the employees are likely to move frequently from one residential location to another because of the nature of the employer's business; there is not sufficient suitable accommodation otherwise available in the employment area, or it is customary in the employer's industry to provide free or subsidised housing to employees.
 4. The arrangement must be an arm's length arrangement and not entered into for the purpose of gaining the s 58ZC exemption concessions.

Therefore, if one of the conditions above is not satisfied the employer will be required to pay FBT if it wishes to provide the housing benefit.

Monetary allowances and bonuses for relocation or otherwise

The Federal Government may offer relocation monetary allowances and bonuses to encourage legal practitioners to pursue employment in RRR areas.

Such allowances may be offered by employers as fringe benefits (on which no tax would be payable by the employer) or by the Federal Government through a benefit distribution system such as Centrelink or some other governmental agency.

The Law Council notes that the Federal Government provides funding for the relocation expenses for general practitioners who decide to take up RRR placements through the Rural and Remote General Practice Program.

Tax breaks for working in remote areas

Currently, 'Zone Tax Offsets' are available to taxpayers who have lived or worked in a remote area of Australia for a certain qualifying period.

The offset amounts range from \$57, plus 20% allowed for dependents, for residents of Zone B (regional areas of South Australia, New South Wales, southern Western Australia and Queensland) to \$338, plus 50% allowed for dependents, for residents of Zone A (comprising the Northern Territory and regional areas of northern Queensland and Western Australia). An additional "special area" offset of \$1173 plus 50% allowed for dependents, is available to those living in an area 250km or more from a population centre of 2,500 or more.²⁰ These amounts have not changed in almost 15 years.

A significant increase in the current offset amount available through the ATO scheme would assist in attracting and retaining legal practitioners in RRR areas.

Subsidised or free housing

The Law Council believes that the availability of incentives which relate to housing in RRR areas would encourage a greater number of legal practitioners to consider relocating to

²⁰ Australian Taxation Office (ATO), *Are you eligible for a tax zone offset*, available at <http://www.ato.gov.au/individuals/content.asp?doc=/content/40483.htm>



these areas. The issue of housing has been identified as a particular issue for the legal practitioners taking part in the Western Australian Country Lawyers Program.²¹

The Government is encouraged to consider funding initiatives for housing subsidies or free housing to legal practitioners practicing in RRR areas. For example, those legal practitioners employed by the States' Legal Aid Commissions and community legal centres (CLCs) located in RRR areas should be eligible for largely subsidised or free housing. On the other hand, those legal practitioners employed by private law firms in RRR areas, and who are expected to earn higher salaries than those employed by Legal Aid and CLCs, should be eligible for a reduced amount of subsidy.

It may be necessary to provide additional funding to Legal Aid Commissions and Community Legal Centres in order to implement these types of state based housing programs.

Developing technology to support RRR practice

The Government could invest in technology to support legal practitioners in RRR areas such as increasing facilities for electronic filing of documents, increasing availability of online legal library resources and increasing video conferencing facilities to decrease the need for legal practitioners in RRR areas to travel long distances to see clients, file documents, conduct negotiations and access legal libraries. Such initiatives could be undertaken in collaboration with State, Territory and local governments.

Repaying, completely or partially, HECS-HELP (or FEE-HELP) liabilities

One effective initiative that may be implemented by the Federal Government is the repayment of HECS-HELP (or FEE-HELP) liabilities for those graduates (and practitioners) who undertake work in RRR areas.

This type of repayment scheme was established by the Federal Government in 2000-2001 as an incentive to attract doctors to work in rural and regional areas of Australia. At the 2020 Summit similar recommendations were proposed as a potential strategy to encourage a range of professionals to live and work in RRR areas, thereby helping to build community capacity and sustainable communities. The Government has provided in principle support for this recommendation.

Under a repayment scheme, the Federal Government would commit to paying off the student's HECS-HELP (or FEE-HELP) debt either partially or in full for those students who in turn commit to practicing in RRR areas for a predetermined number of years following the completion of their degrees. Alternatively, Government could implement a scheme which waives fringe benefits tax for those employers who offer to pay (either partially or in full) the HECS-HELP or FEE HELP debt of their employee.

Consideration must be given to what would be classified as a RRR area for the purposes of such a scheme. It appears that difficulties in attracting and retaining legal practitioners exist in varying degrees of severity according to the remoteness of the area in question. However, other large centres, such as Darwin, are also encountering significant problems in attracting lawyers. A tiered system which distinguishes between rural centres and more remote locations may ensure that a greater level of compensation is provided to those lawyers who seek employment in areas that are experiencing the greatest difficulties.

²¹ Jane Stewart, 'The WA Country Lawyers Program', *National Access to Justice Pro Bono Conference*, 14-15 November 2008, Sydney, p 7, available at http://www.a2i08.com.au/papers/Stewart_J.pdf

A range of policy options concerning HECS-HELP may be considered by the Federal Governments in order to encourage and promote RRR practice to legal practitioners. Such options would necessarily involve extensive collaboration and involvement with universities. The options included below are progressive, that is, each option represents a greater benefit to the professional from the option preceding it.

1. **Partially government-subsidised university places.** Under this regime, the Federal Government would commit to paying part of the practitioner’s HECS-HELP (or FEE-HELP) debt for those practitioners who in turn commit to practicing in RRR areas for a predetermined number of years following the completion of their degrees. The government may additionally choose whether this would only apply to graduates, or whether the regime would apply to any legal practitioner who decided to take up employment in a RRR area, irrespective of any legal employment in the metropolitan area.

2. **Fully government-subsidised university places.** Under the regime, the Federal Government would commit to paying the entire HECS-HELP (or FEE-HELP) debt incurred by practitioners for the completion of their law degrees for those practitioners who in turn commit to practising in RRR areas for a predetermined number of years. A number of options are open to government in introducing such an initiative:
 - (a) The practitioner’s HECS-HELP (or FEE-HELP) liability is to be waived in the instance when the practitioner has completed a predetermined number of years in RRR practice. In the Law Council’s view, if this option is adopted, the number of years should not exceed five.

 - (b) The student’s HECS-HELP (or FEE-HELP) liability is reduced by a significant amount, for instance 50%, once the practitioner has completed the first year of practice in RRR area. Following the first year, the liability is reduced incrementally, that is, 10% of the initial debt each year the practitioner continues to practice in the RRR area. Thus, under this regime, the HECS-HELP (or FEE-HELP) liability would cease to exist after six years.

Example 1:	
Year 1 debt remaining	$\$33,996 \times 0.5$ [ie 50%] = \$16,998
Year 2 debt remaining	$\$16,998 - (\$33,996 \times 0.1$ [ie 10%]) = \$13,598.4
Year 3 debt remaining	$\$13,598.4 - (\$33,996 \times 0.1)$ = \$10,198.8
Year 4 debt remaining	$\$10,198.8 - (\$33,996 \times 0.1)$ = \$6,799.2
Year 5 debt remaining	$\$6,799.2 - (\$33,996 \times 0.1)$ = \$3,399.6
Year 6 debt remaining	$\$3,399.6 - (\$33,996 \times 0.1)$ = \$0

Note: Variations of this model are possible. For instance, it is not necessary to reduce the sum by 10% of the original debt sum. The remaining debt could be reduced by 10%. Thus, in the example above the \$16,998 sum could be reduced by 10%, meaning that a longer period would be required to pay off the entire HECS-HELP (or FEE-HELP) debt.

- (c) The practitioner's HECS-HELP (or FEE-HELP) liability is reduced incrementally with each year the practitioner spends in practice in a RRR area. For instance, the liability would be reduced by 20% of the initial debt each year the practitioner remains in legal employment in the RRR area. Thus, under this regime, the HECS-HELP liability would cease to exist after five years.

Example 2:

Year 1 debt remaining	\$33,996
Year 2 debt remaining	$\$33,996 - (\$33,996 \times 0.2 \text{ [ie 20\%]}) = \$27,196.8$
Year 3 debt remaining	$\$27,196.8 - (\$33,996 \times 0.2) = \$20,397.6$
Year 4 debt remaining	$\$20,397.6 - (\$33,996 \times 0.2) = \$13,598.4$
Year 5 debt remaining	$\$13,598.4 - (\$33,996 \times 0.2) = \$6,799.2$
Year 6 debt remaining	$\$6,799.2 - (\$33,996 \times 0.2) = \$0$

Note: See explanation above in relation to Example 1 as to what impact any variations may have. It is also important to note that variations in the percentage of the debt reduced each year will lead to variations in time periods taken to pay off the debt.

- (d) The practitioner's HECS-HELP (or FEE-HELP) debt is frozen (not indexed with inflation) when they start work in a RRR area. There is no reduction to this amount beyond what the practitioner is obliged to pay out of their income for three years. After a certain number of years continuous service (for example, five years) in a RRR area, the debt is cleared.
3. **Employer pays for the HECS-HELP debt of their employee.** In this instance, the employer would not be subject to the fringe benefit tax (FBT) on the payment. The advantage of this option is that:
- The employer and/or employee control the timing of the benefit (and any claw back) so that it can be tailored to individual circumstances;
 - The Government only subsidises part of the cost, being the FBT forgone, as opposed to waiving the whole HECS-HELP debt which might be politically unpalatable; and
 - The employer can pass on the cost to the employee if the benefit is taken into account in the employee's "total remuneration".

There is precedent for this option in the public sector in organisations such as the Australian Taxation Office (ATO).

It is important to note that adequate exit mechanisms for these options would also need to be considered.

Increasing opportunities for clinical placements in law in RRR areas for law students

The Law Council believes that there is a need to provide law students with greater opportunities to undertake clinical placements in RRR areas. These types of clinical programs provide law students with the valuable experience of living and working in RRR communities. Many law students that participate in these programs consider relocating to country areas on the completion of their studies.



Programs such as this could be implemented through the States' and Territories' respective Legal Aid offices. However, such programs are largely dependent on allocation of additional Government funding to the Legal Aid Commission for this purpose.

For example, in Victoria, a Regional Summer Clerkships Project (RSCP) was implemented by the Albury Wodonga Community Legal Centre and supported by the Victorian Law Foundation and La Trobe University Law School. The purpose of the RSCP was to provide undergraduate law students with a three to six month placement in three areas of regional Victoria: Bendigo, the Goulburn Valley and North Eastern Victoria. The key objectives of the RSCP were to improve employment opportunities for law graduates and expose law students to a positive RRR lifestyle experience and also to the diversity of RRR legal practice.²²

In addition, with funding from the Attorney-General's Department, the National Association of Community Legal Centres (NACLC) has established a pilot program in partnership with the Australian National University (ANU) College of Law to provide placement opportunities at RRR CLCs for ANU students undertaking the Graduate Diploma of Legal Practice.

Government scholarships

The Law Council considers that the implementation of an innovative scholarship scheme by the Federal Government would assist in encouraging people from RRR areas to pursue a career in law.

Currently, there are 31 universities in Australia that offer law degrees. Of those, only eight offer the course at a regional campus (although a small number of other universities provide an online course option) It is therefore important that Government scholarships become available to students from RRR areas to assist with the additional costs associated with relocation and accommodation if they decide to pursue a career in law.

The Federal Government contributes \$300,000 towards the John Koowarta Reconciliation Law Scholarship (Scholarship) Trust²³, which was established in 1994. The Law Council is the trustee and administrator of the Scholarship. There are also government scholarship programs for education and accommodation costs related to higher education which can be accessed by Indigenous law students. The Law Council suggests that a similar scholarship program could be established for all students from RRR areas.

The Federal Government also provides a range of scholarships to encourage medical and other health professionals to work in RRR areas. For example, the Rural Allied Health Undergraduate Program and the Rural Allied Medical Undergraduate Scholarship scheme provide financial support to assist rural and remote students studying medical and certain health degrees to meet the costs of study, such as accommodation and travel

Due to the shortage of lawyers working in rural and regional Australia, the Law Council believes that there is a desperate need to provide similar support to people from RRR areas who wish to pursue a legal career.

²² Helen McGowan, *Lawyers Go Bush, Regional Summer Clerkship Project 2005-2006*, Victoria Law Foundation, available at

http://www.victorialaw.org.au/pdfbook/SUMMARY_OUTCOMES_REPORT_HELEN_MCGOWAN_2005.PDF

²³ The John Koowarta Scholarship commemorates John Koowarta, a member of the Winychanam community in Aurukun and a traditional owner of the Archer River region in the Cape York Peninsula. The Scholarship is available for Indigenous law students.



Scholarships should also be made available for post-graduate practical legal training (PLT) courses, where such courses provide students the option of undertaking a clinical placement with a firm in a RRR area.

Government scholarships are generally limited to undergraduate courses.²⁴ However, the University of Melbourne now offers law only at a post-graduate level. The Law Council understands that other universities are considering implementing similar models. PLT courses, which law graduates are required to complete in most States and Territories in order to be admitted to legal practice, are also post-graduate courses for which government scholarships are not available.

It should be noted that the University of Melbourne now offers the Donovan-Johnston Memorial Scholarship (the Scholarship). The Scholarship is awarded to up to two full-time Juris Doctor (JD) students from rural or regional Australia, based on the selection criteria for the JD degree (including academic results of all tertiary study previously undertaken, results on the LSAT and personal statement) and demonstrated financial need. The Scholarship is valued at \$5,000 per annum for the duration of the degree (subject to satisfactory performance). To be eligible, students' permanent place of residence, as registered with the University at the time of applying for admission to the JD, must be 80 kilometres or more from the Melbourne General Post Office. Similar scholarship schemes could be introduced by the Federal Government to undergraduate law students at various universities across Australia.

Initiatives by Australian Legal Profession

To date, the legal profession has not as successfully dealt with the issue of attracting legal practitioners to RRR areas as compared to the medical profession (please refer to Appendix 3). Despite the lack of a strategic approach to non-metropolitan legal recruitment, a range of programs across Australia are commended in their efforts to improve and maximise legal service delivery to people living in RRR areas. The coordinated approach taken by the Law Council members will assist to share these initiatives across the country.

Key strategies include the Regional / Rural Solicitor Schemes established by the legal aid bodies in Queensland, Western Australia and New South Wales.

Under the Schemes which have been established in Queensland and New South Wales, new law graduates are placed with private law firms which are located in RRR areas with a high demand for legal aid services. A wage subsidy is provided to the law firm where the graduate is placed by Legal Aid in return for the firm undertaking an agreed amount of legal aid work. Professional fees are also paid to the law firm which delivers the legal aid services.

In Western Australia, the Country Lawyers Graduate Program operates with the assistance of the Law Society of Western Australia, Legal Aid WA, the Community Legal Centres Association of WA, the Aboriginal Legal Service of WA, Family Violence Prevention Legal Services and the Legal Practice Board of Western Australia. Funding for the program is provided by the Federal and State Governments. Under this program, law graduates are recruited to work in RRR areas for a period of four years. Legal Aid WA employs the graduates who undertake their first year as an articled clerk in the Perth office. The graduate then undertakes three 12 month placements at participating community legal centres which are located in RRR areas.

²⁴ Australian Law Students Association, Submission to the Dept of Education, Employment and Workplace Relations, *Scholarships for a Competitive Future: Expansion of the Commonwealth Scholarships Program – A Discussion Paper*, April 2008, p 5.



Other strategies include:

- Advertising of job vacancies or creation of specialised employment services, including for locum positions in RRR areas by law societies, eg the NSW Law Society's webpage listing of RRR vacancies and the Queensland Law Society's (QLS) service, www.legalstaff.com.au
- Provision of professional support by law societies, eg the SA Law Society's Online Country Lawyers Forum and formation of Country Lawyer Committees
- Promotion and facilitation of visiting services by barristers in RRR areas
- Increasing availability of Continuing Professional Development and Specialisation Programs to legal practitioners in RRR areas, including both technological and face to face delivery, eg the Queensland Law Society's Continuing Legal Education program delivered 45 regional seminars in 2007/08 to 1031 practitioners and QLS invested further in videoconference and web-based delivery
- Further media promotion of the impact of the shortage on access to justice and the benefits of legal practice in RRR areas for practitioners, including remuneration equal to or better than that in metropolitan areas²⁵ and for the community in terms of increased access to justice
- Provision of information to law students and graduates about practice in RRR areas. The Australian Law Students Association (ALSA) has agreed to collaborate with the Law Council in a survey of law students to assess their current perceptions of practising in RRR areas and what type of information they would like about such practice

A detailed examination of the initiatives undertaken by the legal profession in recent years to help attract legal practitioners to RRR areas is provided at Appendix 2.

Initiatives by Employer Legal Firms or Organisations

Other initiatives that may be offered by employers in order to attract lawyers to practice in RRR areas include:

Salary packaging options for mortgage / rent assistance

Attractive salary packaging arrangements including those available for remote areas housing, may be put in place by employers as an incentive for prospective employees.

RRR employers can provide specific lifestyle benefits such as additional annual leave and flexible work options. RRR employers can also promote lifestyle benefits of better work/life balance, more varied work, more client interaction and earlier responsibility for development of legal practices. The RRR survey found that the main reasons given by respondents for working in RRR areas related to work/life balance and enjoyment of country lifestyle.

²⁵ See Queensland Law Society/Hays Salary Survey: A Guide to Salary Packages for the Queensland Legal Industry, 2009



Provision and promotion of lifestyle benefits which may not be available in metropolitan areas

Offering additional annual leave to employees – Additional leave entitlements provide a good incentive to encourage lawyers to consider relocating outside of metropolitan areas.

Offering the possibility of working from home and part-time employment – Flexible work options are now offered by many metropolitan firms. Similar arrangements should also be utilised by country firms in order to attract and retain employees.

Better work/life balance, more varied work, more client interaction and earlier responsibility for development of legal practices – All of these lifestyle benefits have been identified as advantages for employees in RRR areas.

Training programs

For example, provision of in-house Continuing Professional Development (CPD) seminars. Country lawyers committees may have a role in organizing these types of CPD activities and possible link up to other areas through telephone or video conferencing.

Improving social and professional networking opportunities and family support, including meeting and greeting' of legal practitioners upon arrival to the RRR area²⁶

These types of events may provide a social network and assist in overcoming feelings of isolation which are commonly experienced when arriving in a new place. Country lawyers committee may be able to assist in promoting this type of initiative.

Providing these opportunities and support assist in overcoming feelings of isolation for legal practitioners and their families. The RRR survey found that most respondents cited family reasons for moving from RRR areas.

Collaboration with law societies and other legal assistance stakeholders.

Employers can gain considerable benefit from close collaboration with law societies and other legal assistance stakeholders in facilitating: provision of information to law students and graduates; advertising job vacancies; placement of law students and legal practitioners in RRR areas; visiting services by legal practitioners; provision of CPD and professional support, as well as promotion of the issues in the media.

Increasing use of technology to reduce isolation and travelling time for practitioners in RRR areas

Employers can promote the provision of technology such as electronic filing, online legal library resources and video conferencing to reduce isolation and travelling time for practitioners in RRR areas.

²⁶ Rural Industries Research and Development Corporation, *Small Town Renewal: Overview and Case Studies* (June 2001), <http://www.rirdc.gov.au/reports/HCC/01-043.pdf>; Tomazin, F, 'State Schools Struggling to Find Teachers', *The Age*, 28 January 2008, 3; Banfield, M, 'Call of The Bush', *The Sydney Morning Herald*, 15 September 2007, 12; *The NSW Planning Profession: Looking Forward – Report of the Planning Professionals Working Group to the Minister of Planning* (2006), http://www.planning.nsw.gov.au/settingthedirection/pdf/ppwg_report_nov06.pdf; M Berry, 'Mid-career Teachers', *The Sydney Morning Herald*, 6 February 2008, 2; Human Rights and Equal Opportunity Commission (2000), *National Inquiry into Rural and Remote Education (Australia): Emerging Themes*; Herrington, A and Herrington, J, *Using the Internet for professional development: The experience of rural and remote professionals*, (2006) Paper Presented at the 23rd Annual ASCILITE Conference: Who's Learning? Whose Technology?, 3-6 December 2006.



III Retention Initiatives

The legal profession not only lacks the abundance of initiatives which have been employed by other professions to attract professionals to RRR areas, but there is further concern that no effective strategies exist to retain legal practitioners on a long term basis. There are many reasons to explain the differential employment patterns of professionals in RRR communities as compared to metropolitan communities, including, but not limited to, travel costs, higher costs of living, limited accommodation, lack of access to professional development, lower earning capacity and lack of employment, health and educational opportunities for spouses and children.²⁷

A recent Discussion Paper published by the University of New England²⁸ has identified other strategies which require attention in order to improve the retention of professionals in RRR areas. These include service networks and supports, alternative service options, career development opportunities, and addressing isolation and other personal considerations associated with RRR practice. The summary below identifies specific activities within each of the strategies which have been employed by a range of professions and may prove effective in their application to the legal profession.

1. Service Networks and Supports
 - Development of professional communities,²⁹ eg Hervey Bay monthly social barbeque
 - Development of partnerships with other departments, business and government agencies
2. Alternative Service Options
 - Developing alternative forms of service, such as telecommuting, use of local agents, special transport arrangements³⁰
3. Career Development Opportunities
 - CPD programs (decreasing numbers of CPD events held in regional areas are a disincentive)
 - Clear job descriptions
 - Comprehensive orientation programs
4. Locum programs
 - For example, such networks may be established between sole practitioners in RRR areas to enable principals to take annual leave.

²⁷ Herrington and Herrington, n 3 above.

²⁸ University of New England, *Proposing a Systematic Approach to Improving the Supply of Rural Professional Services* (April 2008).

²⁹ RL Miles, C Marshall, J Rolfe, and S Noonan, *The Attraction and Retention of Professionals to Regional Areas* (2003).
<http://www.dtrdi.qld.gov.au/dsdweb/v3/documents/objdirctrled/nonsecure/pdf/6751.pdf>

³⁰ Miles et al, n 23 above.

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- Such networks would be facilitated by an agreement between the legal practitioners that they would undertake the case load of the practitioner on leave during that period.
 - Country lawyer committees in each state and territory may have a role in facilitating these types of arrangements.

5. Addressing Isolation and Other Personal Considerations

- Employment opportunities for spouses
- Educational opportunities for children³¹
- Availability of adequate medical services
- Quality and affordability of accommodation
- Targeted recruitment strategies aimed at professional couples rather than individuals
- Offering flexible arrangements to couples and children
- Promotion of RRR areas as lifestyles options
- Promotion of living in a particular region and professional experience

³¹ Miles et al, n 23 above.



IV Recommendations

The Law Council considers that the most effective strategy in improving the recruitment and retention of legal practitioners, particularly young legal practitioners, to RRR areas should involve a range of options which focus on both short term goals of recruitment and long term goals of retention.

Recommendation 1: Legal profession

The Law Council recommends that a collaborative approach of the legal profession sector be developed. It is essential that the legal profession engages in active promotion of co-operative programs between Legal Aid Commissions, Aboriginal Legal Service providers, private law firms, Legal Aid preferred supplier firms, law societies, community organisations and legal practices in RRR areas of Australia in the delivery of legal services.

An example of the collaborative approach as applied to the medical profession is contained in Appendix 3.

The Law Council also recommends:

- Advertising of job vacancies or creation of specialised employment services for RRR areas by law societies
- Facilitation of professional support by law societies
- Provision of information to law students and graduates about practice in RRR areas.

Recommendation 2: Government

The Law Council recommends that the Federal Government should consider:

- Waiving FBT liabilities on Employer Payments of employee benefits which apply to both new lawyers and experienced lawyers looking for a career change
- Monetary allowances and bonuses for relocation or remaining in a RRR area
- Repaying completely or partially HECS-HELP or FEE-HELP liabilities for legal practitioners who practice in RRR areas for a certain number of years
- Increasing opportunities for clinical placements in RRR areas for law students and graduates

The shortage of publicly funded legal services in RRR areas, such as CLCs, legal aid, and private solicitors, has a detrimental effect on the community's ability to access justice. This Strategy therefore, has a public benefit of:

- Reducing the number of self-represented litigants;
- Decreasing reliance on telephone and intermittent outreach services to meet legal needs; and

- 
- Encouraging law graduates to relocate to RRR areas by providing subsidies for university fees would arguably increase the number of solicitors in private practice in RRR areas.

Recommendation 3: Employer legal firms and organisations

The Law Council recommends the following Initiatives by employer legal firms and organisations

- Provision and promotion of lifestyle benefits which may not be available in metropolitan areas.
- Increasing social and professional networking opportunities and family support
- Collaboration with law societies and other legal assistance stakeholders in facilitating: provision of information to law students and graduates; advertising job vacancies; placement of law students and legal practitioners in RRR areas; visiting services by legal practitioners; provision of CPD and professional support, as well as promotion of the issues in the media.
- Increasing use of technology to reduce isolation and travelling time for practitioners in RRR areas.

Recommendation 4

The Law Council recommends that a range of retention strategies be explored collaboratively by the legal profession and the government. As identified above, a range of options such as service networks and supports, alternative service options, career development opportunities, and addressing isolation and other personal considerations should be made available to legal practitioners. Availability of these options is expected to provide legal practitioners with incentives to remain in the RRR areas.

Recommendation 5

That insofar as some constituent bodies might not have a dedicated committee of RRR practitioners, that such a committee is established and that it has the carriage of these matters in conjunction with the LCA committee. These RRR committees would assist in gathering and disseminating information and ensuring the LCA committee is working on the most accurate information possible. They would assist by ensuring as complete uptake as possible with the RRR survey.



Appendix 1: Research

Research regarding the problems of recruitment and retention of legal practitioners in RRR areas and the contributing factors is outlined below.

National

In 2002 National Legal Aid conducted a national survey of family law practitioners which identified a higher rate of withdrawal from publicly-funded work by legal practitioners in rural areas (40%) when compared to those in urban areas (21%).³²

The 2006 TNS Study commissioned by the Attorney-General's Department found that there is a shortage of lawyers in regional and remote areas with approximately 3 lawyers per 10,000 residents aged 18+ in remote Australia as compared to 10.7 lawyers per 10,000 in Australian capital cities.³³

Approximately two-thirds of private firms (67%) in regional and remote areas currently provide legal aid compared with only approximately half of firms (48%) in all locations.³⁴ Firms in regional and remote Australia provide larger quantities of legal aid work than their city counterparts, with two-fifths (41%) of regional and remote firms providing more than 30 cases a year.³⁵

The qualitative component of the TNS study found that regional and remote lawyers were particularly concerned by the limited availability of experienced practitioners and graduates in RRR areas and that reliance was placed on a finite number of solicitors to carry out legal aid work.³⁶

New South Wales

The number of legal practitioners working as solicitors in RRR areas of NSW has been steadily declining since 1988. According to a report prepared for the Law Society of New South Wales,³⁷ the proportion of solicitors working in RRR locations dropped from 16.7% in 1988 to 13.3% in 2007 (an average decline of 1.3% per year).³⁸ A further report³⁹ indicates that the proportion of solicitors is expected to decrease to 12.1% in NSW RRR locations by 2015. Furthermore, solicitors practicing in these areas are generally older and many are expected to retire in the next 10 years.⁴⁰ These trends give rise to serious concerns regarding succession planning for the provision of legal services in these communities.

In 2007, there were 2,822 solicitors working in rural areas of NSW, most of whom (2,428) were engaged in private practice.⁴¹ In her report *Recruitment and Retention of Lawyers in Rural, Regional and Remote NSW: A Literature Review*, Trish Mundy further indicates that in the last decade there has been a significant movement of private solicitors away from

³² National Legal Aid, *Family Law Private Practitioner Survey 2002*, 2002, p 1 available at http://www.nla.aust.net.au/res/File/PDFs/Family_law_Practitioner_survey.pdf.

³³ TNS Social Research, n 1 above p 38.

³⁴ *Ibid*, p 39.

³⁵ *Ibid*, p 41.

³⁶ *Ibid*, p 36.

³⁷ Urbis Keys Young, *2007 Profile of the Solicitors of NSW*, The Law Society of New South Wales, 2007, p 13.

³⁸ Urbis Keys Young, n 1 above, p 14.

³⁹ *Ibid*, p 14.

⁴⁰ Trish Mundy, n 2 above, p 9.

⁴¹ *Ibid*.



inland areas of NSW to coastal areas of the state and a higher concentration of non-metropolitan solicitors in larger regional centres rather than smaller rural towns.⁴²

The number of private law firms located in rural NSW has decreased by 1.3% since 1988 and represents only 22.6% of all private law firms in NSW.⁴³ The rural law practices are generally sole or small practices and more “economically reliant on areas such as conveyancing, wills and estate and family law” than are the metropolitan practices.⁴⁴ Furthermore, the incomes of these practices are well below that of the Sydney-based firms.⁴⁵

Finally, the 2007 Annual Profile of Solicitors⁴⁶ indicates that only 31 (1.3%) government lawyers, that is those working in a range of government departments and public agencies, including lawyers working within non-government organisations, such as CLCs and Indigenous legal services, are located in rural NSW.

Northern Territory

The 2004 *Legal Aid and Access to Justice Report* of the Senate Legal and Constitutional References Committee made a number of recommendations relevant to RRR areas in Australia. Specifically, Recommendation 2 advocated “increased funding for the Northern Territory to account for the special challenges it faces in light of its high indigenous population and remoteness.”⁴⁷

Queensland

Research conducted by Griffith University in 1998⁴⁸ showed that a large number of legal practitioners in Queensland had withdrawn from the legal aid system. Consequently, shortage of availability of legal services in RRR areas in Queensland, where Legal Aid Queensland has been left with significant gaps in its legal aid preferred supplier network, had a significant detrimental impact on these areas.

The report further identified “a tendency towards ... ‘juniorisation’ amongst those lawyers who still do legal aid work”,⁴⁹ that is, the delegation of “legal aid work to more junior lawyers because the legal aid rates are too far below the normal “charge-out” rate of experienced practitioners.”⁵⁰ Such trend necessarily had an indirect impact on RRR areas.

Victoria

The LIV in 2005 conducted a research project to investigate the issue of recruitment and retention of legal practitioners in practices that were outside the Melbourne metropolitan

⁴² Trish Mundy, n 2 above, p 10. Ms Mundy makes reference to a mapping project currently being prepared by Professor Rice of the Australian National University and which at present remains unpublished. This project utilises the ‘raw data’ collected by the NSW Law Society and maps the movement and gender distribution of private sector lawyers in rural and regional NSW over the past decade.

⁴³ Urbis Keys Young, 2007, n 31 above, p 14.

⁴⁴ Law Society of New South Wales, *National Competition Policy: A discussion paper*, March 2002, p39.

⁴⁵ Ibid.

⁴⁶ Urbis Keys Young, n 31 above.

⁴⁷ Senate Legal and Constitutional References Committee, *Report on Legal Aid and Access to Justice*, June 2004, p xxiii, available at http://www.aph.gov.au/Senate/committee/legcon_ctte/completed_inquiries/2002-04/legalaidjustice/report/report.pdf

⁴⁸ John Dewar, Jeff Giddings, Stephen Parker, Donna Cooper and Christine Michael, ‘*Griffith Legal Aid Report: The Impact of Changes in Legal Aid on Criminal and Family Law Practice in Queensland*’, Research Report commissioned by the Queensland Law Society and The Family Law Practitioners’ Association, 1998, pp 90-91.

⁴⁹ Ibid, p 91.

⁵⁰ Ibid, p 3.



area. This issue has been raised repeatedly by RRR members, and has been an ongoing topic of discussion with Country Law Association (CLAC) presidents.

The objectives of the research were to assist RRR members to address issues they face with recruitment and retention of legal practitioners by:

1. Identifying the issues with the help of stakeholders;
2. Surveying the extent of the problem and possible solutions with the broader RRR based membership;
3. Surveying young legal practitioners about their attitudes to working outside the CBD area and what would attract them to RRR opportunities; and
4. Exploring initiatives and programs which will help address the problem (with the ultimate aim of implementing those that are feasible).

In order to quantify the issue and assess the real extent of the problem (with both employers and potential employees), the LIV developed a two-pronged survey. One survey, targeting employers, was developed with input from CLAC presidents. A mirror survey tool was developed to canvass the perceptions of potential employees of RRR firms. This was important as a mechanism to test the assertions of RRR employers. The employer survey was sent to 377 private practice firms in RRR Victoria (drawn from LIV membership data) and a total of 98 responses were received, thus resulting in a high response rate of 26%. The employee survey sample of 1958 was drawn from the LIV database. The sample was a cross-section of young legal practitioners in metropolitan and RRR Victoria, as well as a specifically drawn sample of mid-career (35-45 year-old) employee legal practitioners, working in the CBD or metropolitan area. A total of 244 responses were received, thus resulting in a response rate of 12.5%.

The key findings from the research which are relevant to the present paper include:

- There is a gap in the information available to both employers and employees about how to undertake the recruitment and retention process;
- There is no central or known path to canvass for jobs or employees for RRR practices;
- Employers need support and practical guidance on how to go about the recruitment process; and
- Lifestyle and work flexibility issues are the most significant factors for legal practitioners outside the metropolitan area.

The surveys further showed that employer and employee expectations were the same, namely, a residence of up to four years was expected. An important finding of the survey of the RRR employers was that employees tended to stay for short periods of time, which was a source of great frustration in view of the investment made in the employee.

Employees surveyed indicated a reasonable level of interest in the idea of working in RRR areas. While employees were focused on the short term issues such as relocation, employers were focused on the longer term, more sustainable strategies such as 'financial offsets', that is, financial support that complements to the salary package in indirect ways. The most popular of these were support for training and HECS debt relief. For employees, the issue of remuneration was important and some of these offsets were therefore likely to address their concerns, at least in part.



Employer survey

Most respondents (68.4%) were the only partner in their firm, with 28.6% from firms of 2–4 partners. Further, 69.4% of respondents employed 1–2 people, 18.4% employed 3–5 people. The majority of respondents described their practice as a general practice covering most areas of law (61.2%), while 21.4% indicated they worked in one or two specific areas exclusively. The remaining 17.3% said they focused on a small number of specific areas (more than 2, but less than what a ‘general’ practice might perform).

For firms that concentrate their efforts on 1–2 areas of law, Family Law was the most popular (9 mentions) closely followed by Criminal Law. Others, such as Conveyancing, Property and Wills and Estates were not singled out in large numbers.

Of the 17.3% that focused on a specific number of areas of law (but not less than 3), they most frequently cited Commercial/Business Law and Wills and Estates (11 mentions each). These were followed by Conveyancing (7), Probate (6) and Property (6). Other areas such as Litigation and Family Law were mentioned but not in large numbers.

At the time of the survey, most respondents wished to remain the same size (46.9%), however only a few less indicated they did want to grow the business (44.9%). Further, the majority (52%) responded that they employed about the same number of practitioners in their firms compared to five years ago, 22.4% said they were employing more, and a minority (9.2%) said they employed fewer.

The most frequently cited concern of respondents was succession planning (62.2%), that is, finding partners / principals who are interested in, and able, to take over the practice, followed by the concern about attracting new employees (38.8%), and retaining them (29.6%).

Based on the respondents’ experience, they expect employees to stay with the firm for between 2 and 4 years (23.5%) or 5 or more years (18.4%).

Most respondents (61.2%) had not recruited articled clerks in the last 5 years. Of those who had recruited articled clerks, 21.4% had recruited 1 or 2 in the 5 year period, and 14.3% had recruited 3–5. It is important to note that respondents indicated that when they most needed to recruit legal practitioners, they were seeking junior practitioners (38.8%), followed by experienced practitioners (28.6%) with graduates a third priority (16.3%).

Findings indicate that most respondents lost employees to the larger cities or regional centres (30.6%) and/or for better remuneration elsewhere (14.3%). A smaller proportion indicated they left to change the area of law they worked in (10.2%) and others for family reasons (8.2%). Respondents indicated that where they went was mostly into employment with a larger firm (28.6%) with a much smaller proportion leaving to go to a firm of similar size (11.2%).

Employer respondents indicated that the most significant factor in attracting employees was the lifestyle (58.2%), followed by work/life balance and flexibility (45.9%) and the benefit of a variety of work (45.9%).

Distance from larger centres was the key perceived drawback to attracting new employees

(49%), followed by negative perceptions about RRR practices/city-centric views (39.8%), limited income potential (35.7%) and limited career opportunities (24.5%).



Employer respondents regarded financial offset strategies, such as financial support for training, as the key remedy (37.8%). Equal weight (15.3% each) was given by respondents to HECS debt relief and support for families of employees.

Employee survey

Most employee respondents (48%) said they would not consider employment in a RRR practice at all ('no' group). However, a significant number (42%) indicated that they would ('yes' group), and 9.8% were undecided ('don't know' group). Those who indicated that they would consider employment in these areas were more likely to expect to stay in a position for 5 or more years, compared to a shorter period of between 2 and 4 years for the other two groups.

All respondents indicated that the strongest motivator for moving to a RRR practice would be for lifestyle reasons. The 'yes' and 'don't know' groups indicated that the second strongest motivator would be the possibility of fewer hours or greater flexibility, while the 'no' group indicated that following lifestyle, better remuneration might be a motivator.

For the 'no' group, the key consideration was distance from larger centres, followed by limited income potential. For the 'yes' and 'don't know' groups, limited income potential was the key obstacle, followed by the distance from larger centres. All three groups ranked in third place the belief that making such a move would limit their opportunities for career development. For the more receptive groups, access to continuing professional development (CPD) training and job prospects for spouse/partners figured at reasonable relative levels in their priorities.

For the receptive ('yes') group, relocation assistance was the factor singled out as the thing likely to favor a move, with 54% of the 'yes' group indicating this was the case. Equal second preferences were given to financial support for training and support for family/spouse (44.7% each). The unreceptive group indicated that there were two factors that would move their receptiveness, namely, support for family/spouse (41.9%) and relocation assistance (41%).

As a result of this research, this report identified three general areas where the LIV could usefully apply its resources to assist RRR practices.

1. *Communication:* A general communications program about the benefits of working outside the metropolitan area. The LIV concluded that any communications campaign would be strengthened by existence of concrete initiatives, arising out of Options 2 and 3 below.
2. *Financial:* Pursue funding for financial offset programs. Specifically, funding would be required for training of legal practitioners who work in the RRR areas and scholarships for RRR law students. Other financial possibilities included HECS-HELP debt relief for those who take up RRR positions and funds for relocation expenses.
3. *Jobs forum:* The needs of both groups for access to information regarding available positions through an online service. The LIV in 2006 developed a 'Careers in Law' website. The website contains a job search function by location and among these are included regional areas of Ballarat, Bendigo, Geelong, Gippsland, Goulburn Valley, Mornington Peninsula, North East Victoria, North West Victoria, Western Districts, and Wimmera.



Western Australia

Recent data provided in a paper on the WA Country Lawyers Program presented by Jane Stewart at the 2008 National Access to Justice Pro Bono Conference indicates that there is a significant shortage of legal practitioners in the regional community legal sector of Western Australia.⁵¹ In March 2008, more than one in three regional community legal sector positions (21 of 59) were vacant.⁵²

Ms Stewart's paper also considered research which has been undertaken into recruitment and retention issues in Western Australia's Family Violence Prevention Legal Service Units (all of which are located in RRR areas of WA). This research found that there were massive problems in recruiting legal practitioners for the units with only one of the eight units fully staffed at the time the research was undertaken. As cited in the paper: "[t]he coordinator of the Port Hedland unit spent the first 8 months in his new job with only an admin[istrative] worker as he could not recruit other staff. The Kununurra unit has not been able to recruit a solicitor since it opened two years ago. Several units report staff staying in their posts only a matter of weeks, or even days."⁵³ The report identifies the problem as "a fundamental failure to be able to effectively deliver a service."⁵⁴

The paper further notes that, with the exception of Broome, the areas north of Geraldton have no private legal practitioners. Consequently, legal services for those areas are provided by the CLCs or other government-funded agencies and, as indicated above, one in three of these positions were vacant in March 2008.

Future research

The Working Group is currently exploring options for conducting research into legal practitioners in RRR areas throughout Australia. Further information about the research and any findings will be incorporated in this paper once available. Nevertheless, anecdotal evidence appears to suggest that a similar trend is experienced in all other areas of Australia.⁵⁵

⁵¹ Jane Stewart, n 18 above, 2008. The figures were provided in March 2008 by Legal Aid WA, The Aboriginal Legal Service of WA, Community Legal Centres and Family Violence Prevention Legal Services. At this time there were 59 positions and 21 vacancies (36%).

⁵² *Ibid*, p 1

⁵³ *Ibid*, p 1, citing Leah Watkins and Rona Chadwick, *The Starfish Report: The Presence of Justice - Recruitment and retention issues in WA's Family Violence Prevention Legal Service Units*, Starfish Consulting 2008.

⁵⁴ *Ibid*, p 1.

⁵⁵ This conclusion is based on the communications between the authors and representatives of other law societies.



Appendix 2: Initiatives of the Legal Profession

National

Following receipt of the *Report on Legal Aid and Access to Justice* in 2004, the Law Council adopted certain policy strategies relating to RRR Australia. Those policy strategies were taken up in the 2004/2005 Strategic Plan – Policy Projects following the Directors' Meeting on 26 June 2004. The relevant strategies relating to rural, regional and remote Australia are as follows:

- Promote increased effectiveness in delivery of legal aid services.
- Promote increased availability of legal aid services to RRR Australia.

Relevant implementation tasks included:

- Consider and, if appropriate, promote a more formalised partnership scheme for the delivery of legal aid services.
- Promote increased interaction and co-operation between publicly funded legal aid providers.

The Federal Government has not taken up recommendations in the 2004 Senate report to improve the provision of legal aid services to RRR Australia and consequently the Law Council's strategies have not produced the desired effect.

Most of the initiatives undertaken by the legal profession to attract legal practitioners to RRR areas to date have been introduced on a state by state basis rather than nationally.

However, in 2008, NACLC received funding for a one year feasibility study from the Attorney-General's Department to place practical legal training (PLT) students in CLCs in RRR areas. A pilot program will be run in conjunction with the ANU College of Law from 1 January 2009 to 30 June 2009.

New South Wales

The Co-operative Legal Services Delivery Model (CLSDM)⁵⁶ was introduced in NSW for the purpose of maximising legal service delivery to people living in disadvantaged communities, particularly those in RRR areas. The Model was piloted in Western NSW (Dubbo) and the Far West (Broken Hill) and Northern Rivers regions of NSW. This initiative involves collaboration between government organisations (legal aid, courts and tribunals), community groups (CLCs, Indigenous legal organisations, and tenancy workers), private lawyers (Blake Dawson Waldron in the Dubbo & Far West NSW regions and Allens Arthur Robinson in the Northern Rivers district) and quasi-legal service providers (financial counselling services and Family Violence Protection Units) to plan and deliver services more effectively and efficiently in RRR areas.

Further, a Regional Solicitor Program, based on the Queensland model in terms of the salary subsidy and other financial incentives to law firms, was initiated in 2007 by the NSW Legal Aid Commission. Unlike the Queensland model, under the NSW program the

⁵⁶ Hitter, M, Cooperative Legal Services Delivery Model, Legal Aid Commission of NSW, Sydney, May 2004. View at <http://www.legalaid.nsw.gov.au/data/portal/00000005/public/07944001198016882175.pdf>. Evaluation Report of the Pilot Study is available at <http://www.legalaid.nsw.gov.au/data/portal/00000005/public/13935001128470643765.pdf>.



State's Legal Aid Commission does not actively recruit young legal practitioners through the NSW universities. The Program is expected to be evaluated shortly.

Finally, the National Pro Bono Resource Centre received funding from the Law and Justice Foundation of New South Wales "to undertake a project aimed at improving access to legal services for disadvantaged and marginalised people in RRR communities by increasing the availability and quality of pro bono legal services in those communities."⁵⁷ The project included:

- Organising a 'relationship building event' between CLCs and law firms in New South Wales RRR areas;
- Supporting the development of three pilot partnerships between three firms and three RRR CLCs, all of which have continued beyond the pilot period; and
- Liaison with regional law societies.

Northern Territory

In May 2005, a two-day workshop was held in Darwin with legal service providers to discuss unmet legal needs in Northern Territory and solutions to those needs. Attendees included representatives from the Law Society of Northern Territory, government, Aboriginal and Torres Strait Islander legal services including women's legal services, Family Violence Protection Legal Services, Northern Territory Legal Aid, CLCs and pro bono providers, and the National Pro Bono Resource Centre. Some solutions identified included sharing library, expertise and other resources. It was agreed that the workshop meetings will be held on annual basis to ensure better cooperation and communication between existing providers.

Queensland

The Rural/Regional Solicitor Scheme in Queensland was established in 2004 in order to address immediate supply difficulties. Under the scheme, new law graduates are placed with private law firms situated in the RRR areas of high demand for legal aid. A wage subsidy is offered to the law firm where the graduate is placed in return for undertaking an agreed amount of legal aid work. Further, professional fees are paid to the law firm which delivers the legal aid services. Legal Aid Queensland pays the graduate's PLT course fee and up to 75% of a wage subsidy for a period of two years. Evaluations of the program indicate that the law firms were satisfied with the program and were either breaking even or making a small profit from involvement in the program. Further, the evaluation report indicated that greater support for graduates was required in order to assist them in adjusting with relocation, this factor being the most significant determinant of whether the graduate remained in the firm.⁵⁸

The Legal Aid Services to Regional and Remote Areas of Queensland Strategy was developed by the Legal Aid Queensland (LAQ) in 1999 in order to address the shortage of legal services provision in RRR communities. As part of the Strategy, LAQ established a cross-departmental network of community access points (CAPs) across Queensland and collaborative relationships at a RRR level to enable resource sharing. CAPs are organisations (which include neighbourhood centres, Queensland Government agents, hospitals and courthouses) that community members identify as places they turn to for support in their town and that agree to act as LAQ information and services bases in

⁵⁷ National Pro Bono Resource Centre, *Regional, Rural and Remote Pro Bono Models and Opportunities*, May 2006, p 7 available at http://www.nationalprobono.org.au/ssl/CMS/files_cms/RRRpaper.pdf

⁵⁸ Trish Mundy, n 2 above, p 3, 21-22.



communities where there is no Legal Aid regional office. There are currently 37 CAPs across Queensland.⁵⁹

Finally, the preferred supplier scheme has been operational in Queensland since 1997. Under this scheme, each firm enters into a service agreement for membership on the list. Services are provided across various lists, including Family Law, Civil Law, Criminal Law General, Criminal Law Juvenile and Criminal Law Life.

In October 2004, the Queensland Public Interest Law Clearing House (QPILCH) received funding from the Grants Committee of the Queensland Law Society Incorporated for a project to assist with the provision of pro bono legal services to RRR areas of Queensland.⁶⁰

The grant has been utilised to:

- Undertake research into the provision of pro bono legal services in Queensland and to identify unmet needs for pro bono legal services;
- Trial two pilot projects where two RRR firms and two metropolitan firms develop links or 'partnerships' to provide pro bono legal services to RRR areas of Queensland;
- Promote QPILCH and the project to the profession and the community in RRR areas of Queensland; and
- Provide general facilitation and communication between RRR legal service providers (law firms and CLCs) and Brisbane law firms to enhance pro bono services in RRR. In particular, the RRR Project has been a point of contact for other RRR legal service providers and CLCs to request assistance.

Victoria

The Regional Summer Clerkships Project (RSCP), aimed at undergraduate law students, was an initiative of the Albury Wodonga Community Legal Centre and supported by the Victorian Law Foundation and La Trobe University Law School. The purpose of RSCP was to provide undergraduate law students with a three to six month placement in regional law practices. The project recruited 56 applicants and facilitated a summer work experience focusing on three areas of regional Victoria: Bendigo, Goulburn Valley and the North East of Victoria. The key objectives of RSCP were the improvement of employment opportunities for law graduates, exposure to a positive RRR lifestyle experience and to the diversity of RRR legal practice.⁶¹

The students were supported through regular meetings with other young legal practitioners or law clerks in their town or region in an attempt to address isolation and assist them to integrate into the RRR communities. An evaluation of the Project indicated that the interest in RRR practice was reaffirmed for many students. Further, social isolation was a significant factor in the perception about the experience.

The Public Interest Law Clearing House in Victoria (VPILCH) has developed a number of strategies to address the shortage of pro bono services in RRR areas. The organisation has decided to establish relationships with CLCs and other community based

⁵⁹ See <http://www.legalaid.qld.gov.au/Regional+Queenslanders/Community+access+points.htm>

⁶⁰ National Pro Bono Resource Centre, n 51 above, p 9.

⁶¹ Helen McGowan, n 19 above.



organisations in RRR areas and it encourages city-based members to extend their services to RRR areas.⁶²

The VPILCH Homeless Persons Legal Clinics program has targeted training to assist homeless people outside the city, by holding half-day workshops in the Barwon, Grampians and Bendigo areas. There are plans to extend workshops into nine RRR areas and also to cover credit and debt matters.⁶³

Western Australia

Western Australia established the Country Lawyers Graduate Program (the Program) in 2007. The Program is funded with the assistance of both Federal and State Governments. Specifically, in September 2007, the Federal Government provided Legal Aid WA with funding over two years to establish a Co-ordination Team. The team is responsible for implementing the key phases of the Program, including the development of a graduate program, attracting experienced lawyers to the Program and improving access to continuing professional development and professional support for legal practitioners in RRR areas of Western Australia.⁶⁴

An initiative of the Law Society of Western Australia, Legal Aid WA, CLCs, the Aboriginal Legal Service of Western Australia, Family Violence Prevention Legal Services and Legal Practice Board of Western Australia, the Program is aimed at improving the recruitment and retention of lawyers in RRR areas by recruiting, developing and rotating junior solicitors throughout regional Western Australia. Thus, the Program is targeted at law graduates. The graduate's salary is increased progressively to \$60,000 in their fourth year. Other salary bonuses and incentives include salary packaging, payment of membership fees to the Law Society of Western Australia, and regional allowances including access to subsidised housing.⁶⁵ After 12 months of operation, there are 21 legal practitioners in the program.

The Professional Development component of the Program specifically targets legal skills that legal practitioners, including those working in private practice and other agencies, will require in RRR community legal sector agencies, including cross cultural training, family violence, protection and care, family law, criminal injuries compensation, criminal law, and advocacy skills.⁶⁶

The Program is based on a one-employer model, with Legal Aid WA as the employer. The legal practitioners are seconded to each stakeholder agency during their placements in the RRR area. The model utilises the Legal Aid WA award as the benchmark in order to provide the parity of working conditions across all stakeholder agencies and it honours entitlements accrued under and provides portability of conditions across the Program.⁶⁷

Participating stakeholder agencies pay Legal Aid WA an Articled Clerk loading. This loading, spread over three years of the program, is calculated to reimburse Legal Aid for 75%, or approximately \$18,000 per year, of its Articled Clerk training costs. Housing subsidies in certain areas, admission fees, Law Society of Western Australia fees, and

⁶² National Pro Bono Resource Centre, n 51 above, p 9.

⁶³ National Pro Bono Resource Centre, n 51 above, p 9.

⁶⁴ Jane Stewart, 'The WA Country Lawyers Program', n 18 above, p 3.

⁶⁵ Country Lawyers Graduate Program,

<http://www.legalaid.wa.gov.au/LAServices.aspx/default.aspx?Page=Employment%5CCountryLawyers.xml>

⁶⁶ Jane Stewart, 'The WA Country Lawyers Program', n 18 above, p 3.

⁶⁷ Ibid, p 5.



other RRR costs are provided under the Program. These costs are incurred by the participating agencies.⁶⁸

Legal practitioners participating in the Program are provided with professional support such as access to senior staff to assist with legal queries, human resources personnel to assist with leave and relocation needs, IT support including a laptop and access to the internet, online legal resources and library provided by Legal Aid, professional mentors, employer funded counselling and de-briefing services, and peer support through a bi-monthly Country Lawyer's Newsletter.⁶⁹

A paper presented at the *2008 National Access to Justice and Pro Bono Conference* on the WA Country Lawyers Program indicates that in the six months from March 2008 the Program has assisted in reducing the vacancy rate in the RRR community legal sector from one in three to one in four positions.⁷⁰

As identified in the paper, provision of housing for Program participants is the most significant concern due to the impact of the economic boom in Western Australia. Government "housing subsidies and assistance in obtaining housing will be essential for the survival and sustainability of the Program."⁷¹

The paper identifies the following options to address the issue of housing shortage:

- **"Accessing government housing subsidies:** Using the status of Legal Aid employee under the one employer model to access government subsidised housing (Government Regional Officers Housing - GROH formerly GEHA);
- **Purchase Houses:** Some agencies are purchasing houses in key areas including Kununurra, Port Hedland and Broome;
- **Fly in Fly out:** Fly in fly out services are being used successfully in some areas:
 - The Carnarvon Flying Duty Lawyers Circuit - Legal Aid in Perth
 - Fitzroy Crossing family violence services - Women's Legal Centre in Perth;
 - Flying in senior counsel for serious indictable matters on District and Supreme Court criminal circuits; and
 - Many regional community legal sector agencies regularly using relief support from lawyers based in Perth or other offices."⁷²

The Program is expected to be comprehensively evaluated in 2009 by examining the effectiveness of the Program in recruiting and retaining legal practitioners in the longer term and in meeting the professional needs of those participating in the Program in a RRR context.⁷³

Evident from the State-based initiatives above is that the delivery of legal services to RRR areas can be effectively achieved only through a partnership of government, community

⁶⁸ Ibid, pp 5-6.

⁶⁹ Ibid, p 6.

⁷⁰ Ibid, p 2.

⁷¹ Ibid, p 7.

⁷² Ibid, p 7.

⁷³ Ibid, p 9.



and private sector providers. The important factor which distinguishes these communities from their metropolitan counterparts is not so much the reduced number of legal aid and CLC providers but the lack of private law firms and practitioners necessary for the healthy sustainability of these communities. It emphasises the need for government assistance to private providers in recruiting and retaining practitioners to RRR areas. The direct and indirect contributions of private legal practitioners to the community are also vital to advanced economic prosperity and social welfare generally.⁷⁴

⁷⁴ Spigelman JJ Hon, AC Chief Justice of NSW, Access to Justice and Access to Lawyers – Address to the 25th Australian Legal Convention, Sydney, 24 March 2007.



Appendix 3: Attraction and Retention Strategies of the Medical Profession⁷⁵

Model incorporating some of the initiatives explained in this paper

Medical and allied-health professions benefit from a range of publicly funded programs and incentive schemes, such benefits having been available for some time to these professionals. Such benefits range from encouragement of RRR participation in university studies, the provision of undergraduate and postgraduate scholarships,⁷⁶ financial support for RRR clinical placement; financial incentives for taking up practice in RRR areas⁷⁷ and financial incentives to practitioners to remain in these areas for extended periods.⁷⁸

The programs and initiatives of the medical profession have been divided into the main categories of:

- Remuneration, Grants and Subsidies
- Leave and Conditions
- Education and Training
- Other

The Commonwealth provides funding to the Rural Workforce Agencies (RWAs) through the Rural and Remote General Practice Program (RRGPP) to deliver a number of program initiatives with the aim of improving the attraction, recruitment and retention of GPs in RRR areas. RWAs may also receive some funding from their state government.

The RRGPP comprises of:

- The RRGPP Rural Medical Support Forum (RMSF)
- The Rural Medical Family Network (RMFN)
- Relocation, training and remote area grants
- Practice sustainability and crisis grants
- CME/locum grants
- The Rural Locum Relief Program (RLRP)
- Education and training

⁷⁵ For full details of the initiatives visit [http://www.ama.com.au/web.nsf/doc/WEEN-79J3MX/\\$file/State_territory_rural_workforce_programs.pdf](http://www.ama.com.au/web.nsf/doc/WEEN-79J3MX/$file/State_territory_rural_workforce_programs.pdf)

⁷⁶ For example, the Rural Allied Health Undergraduate Scholarship provides financial support to assist rural and remote students to meet the costs of study, such as accommodation and travel. The scholarship is valued at \$10,000 per year payable throughout the student's degree. Approximately 100 new scholarships are offered each year, with 550 being maintained at any one time. Other scholarships are also available.

⁷⁷ For example, the NSW Rural Doctors Network offers grants of up to \$18,000 to eligible general practitioners relocating to rural NSW communities in need of general practice services.

⁷⁸ For example, the Rural Retention Program, introduced in 1999, providing financial incentives of up to \$25,000 depending on the length of service, the remoteness of the area and the level of service provided by medical practitioners.



Individual RRR hospitals have developed their own strategies and offer packages of incentives to recruit and retain doctors and include cars, accommodation, study leave, return airfares, additional leave, assured leave (hospitals arrange a locum), time off in lieu for overtime (instead of loading) as well as family support and spouse employment. Specialist Colleges also have initiatives including locum services, RRR training programs and targeted training/practice improvement programs.

In some states, local governments have also been active in the area of recruitment and retention in an attempt to recruit doctors to live and work in their towns. This has mainly been via a partnership arrangement (ie. with Division of General Practice) to set up the necessary infrastructure and support for services to encourage doctors to take up employment without having to make the considerable investment of setting up a practice (model examples available at http://www.nswrdn.com.au/client_images/6927.pdf).

Remuneration, Grants and Subsidies

- Rural Enhancement Package (REP) funding is provided by the government to 86 eligible hospitals in an attempt to compensate General Practitioners for after hours public on-call work.
- The Victorian Government provided funding to the Victorian Faculty of the Australasian College of Dermatologists to cover costs for dermatologists to visit rural centres on a rotational basis to provide a monthly consulting service
- Since 1996, the Victorian Government has provided procedural rural GPs who have admitting rights to designated Victorian Rural Public Hospitals a reduced premium insurance option.

Leave and Conditions

- The Rural Workforce Agency of Victoria (RWAV) offers a subsidy to rural GP's to assist in covering the cost of locum services. The Rural Locum Subsidy is available to solo GPs practicing in RRMA categories 5 (Other Rural Area), 6 (Remote Centre) and 7 (Other Remote Area), and GPs in a group practice in RRMA categories 6 or 7.

Education and Training

- Subsidies are available to health services in areas of workforce shortage to offset the cost of education, training and supervision (posts in other areas with a demonstrable workforce shortage may also be funded - assessed on an individual basis, according to merit and funding availability). To improve flexibility, posts may be available on a part-time basis or job-share arrangements facilitated.
- Funding is available to subsidise health services for the cost of GP training posts, specifically for the provision of appropriate education, training and supervision provided within a post.
- The Basic Physician Training Pilot Consortia Model aims to more equitably distribute the medical workforce across Victoria so that there is adequate supply in areas of workforce shortage. The rationale is that the distribution of basic physicians and basic surgical trainees is one of the greatest areas of concern for outer metro and rural hospitals.

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- Subsidies are available through the Victorian government for procedural training and some non-procedural training through the Continuing Professional Development for GPs Subsidy Program.
 - The Victorian Government provides funding for medical education to RRR practitioners and allied health professionals through the Country Education Program. Meetings are accredited for CPD/CME points with relevant organisations.

Other

- The Victorian Government provides funding (\$6 million over four years) for the Rural Workforce Strategy to attract and retain health professionals in RRR Victoria. Projects funded are varied and include education for rural GP Anaesthetists, support and professional development for Directors of Medical Services across rural health services, enhancing capacity for RRR undergraduate placements, retention initiatives for Overseas Trained Doctor (OTD) psychiatrists, basic physician training consortia model
- Victorian Government funds the Victorian OTD Rural Recruitment Scheme which aims to attract, assess, place and support overseas trained general practitioners in RRR Victoria.

In the 2009 Budget, the Federal Government announced that it would invest \$134.4 million to reform and improve incentives to encourage medical practitioners to work and remain in the rural and regional communities. The Government will replace the previous classification system with a new approach which is based on the principle of 'the more remote you go, the greater the reward' to encourage doctors to work and remain in some of Australia's most isolated communities.

- By way of example, a doctor moving from a major city to a regional centre will receive \$15,000 whereas a doctor re-locating to a very remote area will get \$120,000, in stark contrast to current incentives of zero in some areas.

Under the proposed changes, nearly 2,500 doctors will be newly eligible for support, almost 500 communities will be eligible for incentive payments for the first time, and some 40 communities benefit from more investment in primary care infrastructure.

The Government has also expressed a commitment to establish a National Rural Locum program and expand the Training for Rural and Remote Procedural GPs program and provide more support for rural training for nurses, midwives and allied health students.

The media release by the Minister for Health and Ageing, the Hon Nicola Roxon, outlining these changes can be found at <http://www.health.gov.au/internet/ministers/publishing.nsf/Content/sp-yr09-nr-nrsp140509.htm>.