



AUSTRALIAN
PRO BONO CENTRE

Submission to the
Regional Telecommunications
Independent Review Committee

Regional Telecommunications Review 2015
Issues Paper

14 July 2015

Afton Fife
Senior Policy Officer
Australian Pro Bono Centre
T +61 2 9385 7775
F +61 2 9385 7375
afton.fife@probonocentre.org.au
www.probonocentre.org.au

About the Australian Pro Bono Centre

The **Australian Pro Bono Centre** (formerly the National Pro Bono Resource Centre) is an independent centre of expertise that aims to grow the capacity of the Australian legal profession to provide pro bono legal services that are focused on increasing access to justice for socially disadvantaged and/or marginalised persons, and furthering the public interest.

While the **Centre** does not provide legal advice, its policy and research work supports the provision of free legal services and informs government of the role that it can play to encourage the growth of pro bono legal services. The **Centre's** work is guided by a board and advisory council that include representatives of community legal organisations, pro bono clearing houses, the private legal profession, universities and government.

Established in 2002 as an independent, not-for-profit organisation at the University of New South Wales, it was envisaged that the **Centre** would:

*“Stimulate and encourage the development, expansion and co-ordination of pro bono services, as well as offering practical assistance for pro bono service providers (and potential providers). The **Centre** would play the key roles of facilitating pro bono practice and enabling the collection and exchange of information.”*

The strategies that the **Centre** employs to grow pro bono capacity include:

Strengthening the place of pro bono legal work within the Australian legal profession as an integral part of legal practice by

- being a leading advocate for pro bono legal work;
- promoting the pro bono ethos and increasing the visibility of pro bono legal work;
- developing policies and advocating for measures to encourage an increase in the quality and amount of pro bono legal work; and
- producing resources and sharing information in Australia, regionally and internationally that builds pro bono culture in the Australian legal profession and participation by Australian lawyers in pro bono legal work.

Providing practical assistance to facilitate, and remove barriers to, the provision of pro bono legal services by

- undertaking research on how pro bono legal assistance can best respond to unmet legal need, including the identification of best practice in its provision;
- engaging in policy development, advocacy and law reform on issues that have an impact on pro bono legal services;
- providing practical advice to lawyers and law firms to support their efforts to increase the quantity, quality and impact of their pro bono work;
- informing community organisations about the way pro bono operates in Australia; and
- leading in the development of new and innovative pro bono project and partnership models.

Promoting the pro bono legal work of the Australian legal profession to the general public by

- informing members of the public through the media and presentations about the pro bono legal work undertaken by members of the Australian legal profession.

The **Australian Pro Bono Centre** operates with the financial assistance it receives from the Commonwealth and State and Territories Attorney-General Departments, and support from the Faculty of Law at the University of New South Wales.

Summary

The Australian Pro Bono Centre (**Centre**) thanks the Regional Telecommunications Independent Review Committee (**Committee**) for the opportunity to make this submission in response to the Regional Telecommunications Review 2015 Issues Paper.

The Centre has a longstanding interest in the impact that telecommunications infrastructure and services can have on the delivery of pro bono legal services and access to justice in regional, rural and remote communities (see section 1 below).

The Centre submits that in assessing the adequacy and equitability of access to telecommunications infrastructure and services in regional, rural and remote communities in Australia that the Committee should **specifically** take into account the potential for these services to increase access to pro bono and other free legal services, and access to justice for members of these communities.

Submission

1. The Centre's related work

The Centre has a longstanding interest in the impact that telecommunications infrastructure and services can have on the delivery of pro bono legal services and access to justice in regional, rural and remote communities.

In 2013 the Centre was the recipient of a grant from the Commonwealth Attorney-General's Department as part of the National Broadband Network (**NBN**) Regional Legal Assistance Program.

The Centre used its grant to establish a collaborative project between Hobart Community Legal Service (**HCLS**) and DLA Piper. Through the use of video conferencing technology, facilitated by access to the NBN, lawyers from DLA Piper in Melbourne were able to provide advice to HCLS' clients in matters in which HCLS did not possess the relevant expertise.

The project had a significant impact on HCLS' capacity to assist its clients in the Sorell region, an area of particular disadvantage located outside of Hobart. The Centre's project was one of a number of video conferencing projects facilitated by the NBN Regional Legal Assistance Program, together with access to the NBN.¹

In April 2014 the Centre prepared and presented a paper on the use of video conferencing technology to provide free assistance to self-represented litigants in regional, rural and remote Australia.² In July 2015 the Centre prepared and presented a paper, *Pro bono legal services via video conferencing: Opportunities and challenges*, at the 3rd National Rural Law and Justice Conference (**Paper**). We **attach** the Paper as Annexure A to the submission and refer you to its contents.

2. The role of the NBN and other telecommunications infrastructure and services in the delivery of pro bono legal services and access to justice in rural, regional and remote Australia

We note that Chapter 3 of the Issues Paper (*How are services being used in regional, rural and remote Australia?*) does **not** specifically refer to legal services, in the same way as business, health, education and government services are mentioned. We submit that as part of the Review that the Committee should also **specifically** consider how access to telecommunications infrastructure and services can facilitate access to pro bono and other free legal services, and access to justice for disadvantaged and marginalised Australians.

While video conferencing should not be seen as a replacement for face to face services it has an important role to play in the provision of legal services in Australia, particularly in the self-represented litigant context. A number of applicants to the NBN Regional Legal Assistance Program were unsuccessful because the NBN was not available in the region in which the proposed project was located.

The example of the North West Community Legal Centre (**NWCLC**) is typical of the positive impact that

¹ Please see the Centre's paper, attached in Annexure A, for examples of other Australian and overseas pilot projects, including a number conducted in conjunction with community legal centres.

² Leanne Ho 'The use of video conferencing technology to provide pro bono assistance to self-represented litigants in regional, rural and remote Australia' (Paper presented at the Australasian Institute of Judicial Administration Conference, *Assisting Unrepresented Litigants – A Challenge for Courts and Tribunals Conference*, 15-17 April, Sydney).

adequate and equitable access to telecommunications can have on the delivery of pro bono and other free legal services, and access to justice in regional, rural and remote areas. Access to a video conferencing service, facilitated by the NBN, allowed NWCLC in Devonport to service the community of Smithton, located 2 hours away, on a regular, rather than only monthly basis. This allowed the residents of Smithton to access legal advice quickly in relation to time sensitive matters such as residential tenancy, unfair dismissals and criminal matters. If timely legal advice was not available in matters of this nature the impact on NWCLC's Smithton clients could be significant. For example, in the case of criminal matters early intervention allows clients to be moved into diversionary programs, away from the criminal justice system.

There is great potential for telecommunications infrastructure and services to increase the access that residents of regional, rural and remote communities have to pro bono and other free legal services, and therefore access to justice. This potential should be specifically considered by the Committee in assessing the adequacy and equitability of access to telecommunications infrastructure and services.

Australian Pro Bono Centre

14 July 2015

Annexure A

Pro bono legal services via video conferencing: opportunities and challenges



Pro bono legal services via video conferencing: Opportunities and challenges¹

Written by Leanne Ho, Senior Policy Officer

Presented by Afton Fife, Senior Policy Officer

Australian Pro Bono Centre

The Law Building, UNSW Sydney NSW 2052

Website: www.probonocentre.org.au

Email: info@probonocentre.org.au

Tel: +61 2 9385 7381 Fax: +61 2 9385 7375

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Legal Services Corporation (USA) (Glenn Rawdon, Program Counsel for Technology)

¹ The paper is based on a Conference Paper presented by Leanne Ho at the Australasian Institute of Judicial Administration Conference, *Assisting Unrepresented Litigants - A Challenge for Courts and Tribunals Conference*, 15-17 April 2014, Sydney.

North West Community Legal Centre (Chris Young, Coordinator/Solicitor)

QPILCH (Iain McCowie, Solicitor and Manager, and Elizabeth Pendlebury, Solicitor and Coordinator, Self Representation Service in the Queensland Courts)

Redfern Legal Centre (Kate Gauld, Solicitor, Regional Legal Assistance Program & International Students Service, and Lindsay Ash, Regional Legal Assistance Project Officer)

Welfare Rights Centre South Australia (Amanda Tsoundarou, Legal Advocacy Co-ordinator)

The Centre's student intern, Sean Bowes, assisted with the research for this paper.

EXECUTIVE SUMMARY

In the context of providing pro bono services to address legal needs arising in regional, rural and remote (RRR) areas, the obvious advantage of video conferencing technology over phone or email is that it allows for an instantaneous 'face-to-face' interaction between lawyer and client. The ability to communicate with clients face-to-face in many cases allows a lawyer's relationship with a client to develop more quickly and, in some cases, allows them to examine documents and forms in real time. Many of the services discussed in this paper include a facility to allow scanning and transmission of documents during a session.

However the lessons learned from the pilot projects funded by the National Broadband Network (NBN) Regional Legal Assistance Program in Australia highlight the fact that setting up a service of this nature is not simply a matter of having clients in a RRR location with access to a computer, and pro bono lawyers in the city willing to help at the other end.

The NBN Regional Legal Assistance Program provided grant funding to trial NBN-based initiatives that sought to strengthen and increase legal assistance delivery in RRR areas. This paper draws on the lessons learned from the pilot projects funded during the first round of the NBN Regional Legal Assistance Program, to inform the future use of technology to provide pro bono legal assistance in RRR areas of Australia. It compares the common assumptions made in relation to providing legal services via video conferencing with the actual experiences of participants in the pilot projects.

These experiences indicate that the success of a video conferencing service providing one-on-one advice to clients in RRR areas will depend on a number of factors including:

1. Support to understand the advice and take any follow up actions

The experience of those involved in the video conferencing pilot projects examined by this research all point to the need to have a support person (for example the volunteer law students at the LawWorks clinic) who can not only help with the use of the technology but also help the client to understand the advice and take any follow up actions.

2. Support with the use of technology for both service providers and clients

Staff of service providers (such as community legal centres and other community organisations, which will often be the first point of contact for clients) who do not feel comfortable with the technology will not feel inclined to use it themselves and will not encourage clients to use it. They are likely to revert to using the phone.

3. The nature of the assistance

One-off assistance is much easier to manage in the context of remote service provision because there is no need for ongoing client management. The need for ongoing client support can lead to inefficiencies relating to double-handling of the matter by the pro bono lawyer providing assistance remotely and the local service provider who has physical access to the client.

4. The funding/resources required to set up and maintain the infrastructure/hardware for the service

There remain significant areas of Australia where the infrastructure does not exist to support the high speed internet connection required for quality video conferencing. Even where it does exist, community legal centres and other community organisations are unlikely to have the funds required to purchase the hardware and meet the ongoing costs of technical support, let alone the training of their staff required to ensure they can effectively support and encourage client use of the technology.

For RRR community legal centres, this kind of pro bono assistance allows them to access high quality training and mentoring that builds their capacity to assist their clients. This model of pro bono assistance is also attractive to pro bono providers as it allows them to leverage the skills and training material they may already have and minimises the risks involved in the provision of pro bono assistance.

As an independent centre of expertise that aims to grow the capacity of the Australian legal profession to provide pro bono legal services, the Australian Pro Bono Centre (formerly the National Pro Bono Resource Centre) collaborated on one of the pilot projects in partnership with Hobart Community Legal Service (HCLS) and DLA Piper. One of the most successful aspects of the Centre’s project was the use of video conferencing to facilitate the remote provision of training and mentoring by pro bono lawyers from DLA Piper to community legal centre lawyers from HCLS; rather than the provision of legal services. This paper brings together the lessons learned from the NBN pilot projects, as well as other similar projects in Australia and overseas, and provides practical tips for those considering creating such a service.

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BACKGROUND

Given the voluntary nature of pro bono legal work and the fact that most lawyers undertake pro bono legal work in addition to their commercial work, the resources available to provide pro bono assistance are limited. Obtaining pro bono legal assistance is particularly difficult in RRR areas.

Much has been written about the difficulty of providing legal services in RRR areas in Australia given the vast distances that need to be covered by a relatively small number of legal practitioners². Resources may be particularly limited amongst small local practises in RRR areas (both in terms of the amount of lawyers and time available, and access to specialised expertise).

The distance a client lives from a capital or major city has a large impact on the availability of pro bono resources.³ They are simply further away from the large and mid-sized firms which generally have more potential capacity to undertake pro bono work.

“Finding pro bono lawyers who will travel to RRR areas or local lawyers who will do pro bono work is difficult... Without access to lawyers willing to do Legal Aid or pro bono work, representation in all courts is an issue” (Community legal centre principal solicitor)⁴

A significant factor influencing the decision of pro bono providers about how to prioritise the demands on these limited resources is, to put it bluntly, how convenient it is to provide the assistance. For example, legal tasks that a lawyer can undertake from his/her office (for example the drafting of written advice or legal documents, or providing advice over the phone) lend themselves to pro bono legal assistance more easily than tasks requiring, for example, lengthy court appearances, frequent travel outside of the office or travelling long distances.⁵

For many people living in RRR parts of Australia, for many years telephone advice has been the only way for them to access legal help without travelling long distances. Telephone advice is also an attractive option for pro bono providers given the reduction in time and cost associated with face-to-face service delivery. As lawyers do not necessarily need to leave their desks to provide the advice, firms which might otherwise not do outreach work have been willing to take on telephone advice.

“...If there are only two or three clients arranged for an outreach session we might provide the advice by telephone rather than travelling a long distance for only a few clients” (Mid-sized law firm pro bono coordinator)⁶

² See for example: Law Council of Australia and Law Institute of Victoria, ‘Report into the Rural, Regional and Remote Areas Lawyers Survey’ (July 2009) 5 <http://rrrlaw.com.au/media/uploads/RRR_report_090709.pdf>; Caroline Hart, ‘Sustainable Regional Legal Practice: The Importance of Alliances and the Use of Innovative Information Technology by Legal Practices in Regional, Rural and Remote Queensland’ (2011) 16(1) *Deakin Law Review* 225.

³ Leanne Ho, ‘Pro Bono Partnerships and Models: A Practical Guide to What Works’ (National Pro Bono Resource Centre, 2013) 39 <https://wic041u.server-secure.com/vs155205_secure/CMS/files_cms/Pro%20Bono%20Partnerships%20and%20Models%20-%20A%20Practical%20Guide%20to%20WHAT%20WORKS.pdf>.

⁴ Ibid.

⁵ Maria Twomey, ‘Pro Bono Legal Services in Family Law and Family Violence: Understanding the Limitations and Opportunities’ (National Pro Bono Resource Centre, October 2013) 66 <https://wic041u.server-secure.com/vs155205_secure/CMS/files_cms/Family%20Law%20Report%20FINAL.pdf>.

⁶ Leanne Ho, above 194.

In recent years there has been an increasing drive to use video conferencing technology to improve access to legal services in RRR areas, particularly in the context of the relatively high cost of maintaining residential legal services in some RRR areas.⁷

“In an age of cutbacks in funding for legal services and courts, the increased use of technology is often identified as a source of savings and efficiency.”⁸

The innovative use of technology to address growing levels of unmet legal need now includes the use of a variety of different media including interactive websites, social media,⁹ live chat and smart phone technology.¹⁰

The obvious advantage of video conferencing is that it allows for the instantaneous ‘face-to-face’ interaction between lawyer and client. Face-to-face advice can help clients navigate the legal process, and understand its content and operation, in a way that cannot be done by telephone, for example when a client is seeking assistance to draft and prepare documents. For example, QPILCH’s Self Representation Service offices in the Brisbane registries are equipped with an additional computer screen that allows the clients to view their documents as the solicitor staffing their appointments works on them and makes changes. This facility is simply not available when assisting clients via telephone appointments.

Many assume that video conferencing has all the benefits of phone advice with the added advantage of the lawyer being able to see the client and vice versa. However, little research has previously been undertaken to evaluate the use of video conferencing to deliver legal assistance, particularly to disadvantaged clients in RRR areas.¹¹ The rollout of the NBN across Australia was one of the factors which provided the impetus for further exploration of the use of video conferencing to improve access to justice in RRR areas.

In August 2012, the Commonwealth government of the day announced the first four successful applicants to the NBN Regional Legal Assistance Program, which provided grant funding to trial NBN-based initiatives that sought to strengthen and increase legal assistance delivery in regional and remote areas.

The final report of the Australian Pro Bono Centre’s (the Centre) pilot project was submitted in October 2013. This paper draws on the lessons learned from the Centre’s project, the other three NBN pilot projects, and pilot projects in the USA and UK, to inform the future use of video conferencing technology to provide pro bono assistance in RRR areas of Australia.

⁷ Suzie Forell, Meg Laufer and Erol Digiusto, ‘Legal Assistance by Video Conferencing: What is Known?’ (Paper No 15, Law and Justice Foundation of New South Wales, 2011) 1
<[http://www.lawfoundation.net.au/ljf/site/articleIDs/B0A936D88AF64726CA25796600008A3A/\\$file/J115_Videoconferencing_web.pdf](http://www.lawfoundation.net.au/ljf/site/articleIDs/B0A936D88AF64726CA25796600008A3A/$file/J115_Videoconferencing_web.pdf)>.

⁸ James E Cabral et al, ‘Using Technology to Enhance Access to Justice’ (2012) 26(1) *Harvard Journal of Law & Technology* 241, 257.

⁹ Katherine Bladlow and Joyce Raby, ‘Using Social Media to Support Self-Represented Litigants and Increase Access to Justice’ in Carol R Flango et al (eds), *Future Trends in State Courts* (National Centre for State Courts, 2011) 35
<http://www.ncsc.org/sitecore/content/microsites/future-trends-2011/home/Social-Media/~/_media/Microsites/Files/Future%20Trends/Author%20PDFs/Bladlow%20and%20Raby.ashx>.

¹⁰ Julie Grainger, ‘Litigants in Person in the Civil Justice System – Learning From NZ, the US and the UK’ (Winston Churchill Memorial Trust of Australia, 1 November 2014) 14
<<http://www.naclc.org.au/resources/Litigants%20in%20Person%20in%20the%20Civil%20Justice%20System%20Report%202012.pdf>>.

¹¹ Suzie Forell, Meg Laufer and Erol Digiusto, above 2.

ABOUT THE AUSTRALIAN PRO BONO CENTRE'S PILOT PROJECT

As an independent centre of expertise that aims to grow the capacity of the Australian legal profession to provide pro bono legal services, the Centre collaborated on one of the NBN Regional Legal Assistance Program pilot projects in partnership with Hobart Community Legal Service (HCLS) and DLA Piper. In cases where HCLS did not have the expertise to provide advice, Skype video conferencing technology was used to enable lawyers from DLA Piper's Melbourne office to provide assistance to clients referred by HCLS from its outreach service in Sorell, an area of considerable social disadvantage outside of Hobart.

As a result of the NBN-based service, the outreach solicitor in Sorell was able to refer a small number of matters that they would otherwise have turned away due to lack of expertise.

From the clients' perspective it gave them an additional sense of confidence to be able to see through their Skype meeting with DLA Piper that their case had the support of a "suited, big corporate law firm lawyer", especially since many of HCLS's solicitors are quite junior and look very young.

From DLA Piper's perspective, the use of the NBN considerably improved their lawyers' ability to remotely advise clients when compared to the provision of advice alternatively by way of telephone, fax and post. This was because the ability to take instructions from a client and to understand the real issues in a matter was greatly enhanced by being able to observe the body language and visual cues given by the client. The lawyers from DLA Piper reported feeling that the clients were put at greater ease when they could see their lawyer, and through the course of the interview were able to relax and provide full and candid instructions. They were also greatly assisted in providing initial advice to clients by having the option of requesting that particular documents be scanned and emailed through to them during the course of the interview.

From the perspective of HCLS, the NBN-based service gave them access to the knowledge and resources of a large law firm that increased their capacity to efficiently deliver services to its clients, including training sessions for HCLS solicitors delivered via Skype.

The greatest benefit to both HCLS and its clients resulted from the ongoing mentoring assistance that flowed from DLA Piper as a result of the project. This allowed HCLS's solicitors to take on matters with greater confidence, and in subject areas where they previously would not have had the expertise to run the matter on their own. It also provided them with the experience to allow them to run similar cases on their own in the future.

OTHER NATIONAL BROADBAND NETWORK PILOT PROJECTS

REDFERN LEGAL CENTRE

Redfern Legal Centre (RLC)'s NBN pilot project was run in partnership with the University of New England, providing mostly one-off legal advice to international students at the Armidale campus.

RLC was successful in securing a second round of funding. The project at UNE continues, and a second project site has been established in Coffs Harbour at the Coffs Harbour Neighbourhood Centre.

An unexpected offshoot of the NBN pilot was the use of video conferencing to provide a more convenient way for lawyers based in Parramatta (from the family law firm Watts McCray) to provide pro bono assistance to RLC clients. RLC clients have been attending appointments at RLC and receiving pro bono advice in family law matters from Watts McCray lawyers in Parramatta via video conferencing. The provision of interpreting services via video was another unexpected success of the project.

NORTH WEST COMMUNITY LEGAL CENTRE (DEVONPORT)

North West Community Legal Centre (NWCLC) successfully secured funding to run its NBN Regional Legal Assistance Program pilot project from October 2012 – October 2014.

NWCLC is based in Devonport and services the surrounding areas through outreach clinics. One of these areas is Smithton, a town 2 hours from Devonport, where the main industries are forestry, mining, farming and fisheries. Given the distance and the fact that there is no public transport between Devonport and Smithton, it is difficult for people experiencing disadvantage to travel to Devonport to access legal assistance. The road can also be dangerous depending on the weather conditions.

Prior to the commencement of the pilot project, NWCLC was only able to service the wider area through its monthly visits to the Wyndarra Community Centre in Smithton. Wyndarra is staffed by community workers including social workers and financial counsellors, but no legally trained staff.

The NBN funding allowed NWCLC to establish a mobile Skype unit within Wyndarra that greatly enhances the services it can provide to people in the area by facilitating the provision of legal information and Skype-based advice appointments during the period between in-person visits. While they do not replace the face-to-face service provision, the Skype appointments act as a “stop-gap”. This has particularly improved the service for clients whose cases are time sensitive, such as residential tenancy and unfair dismissal issues. It also enables NWCLC staff to intervene in criminal matters earlier and move clients into diversionary programs.

Skype appointments are pre-scheduled by NWCLC when clients call NWCLC directly on the phone, or organised by Wyndarra staff referring clients to NWCLC. There is a scanner/copier/fax machine that allows clients to transmit documents from Wyndarra to the NWCLC lawyer in Devonport via secure pdf to the main server before or during the Skype appointment so that the documents can be discussed in real-time. The computer set up at Wyndarra also has a touch screen system that provides links to other legal information resources, documents and forms. This has been especially helpful for people who do not have internet access at home.

Almost all the assistance provided is in the form of one-off legal advice. Where clients need ongoing advice and representation, NWCLC will assess whether the matter falls within its casework guidelines and may take the matter on. However this does not happen very often given the very limited resources of the CLC. In these more complex cases, the CLC has often found that it is best to revert to face-to-face in-person contact and if possible will schedule an appointment during the monthly outreach trip.

Another benefit of the Skype service has been that it limits the number of times that NWCLC staff have to travel between Devonport and Smithton in difficult weather conditions, which is positive in terms of occupational health and safety.

There has been significant uptake of the service which was promoted via a letterbox drop of pamphlets to over 2,500 addresses. Since its commencement in October 2012, the pilot project has assisted 91 clients via Skype appointments (and the same number, if not more, who have accessed the resources available at Wyndarra independently and downloaded the information they needed). Around 60-70% of cases have involved family law. Other areas include criminal law, civil law, government appeals, child support and residential tenancies.

NWCLC hopes that this pilot project will be the beginning of a roll-out into other towns in NW Tasmania, particularly the west coast mining towns, but this will depend on the roll-out of the NBN and the ability to obtain further funding.

WELFARE RIGHTS CENTRE SA

The Connecting Country to City Legal Clinic Service, which is run by Welfare Rights Centre South Australia (WRCSA), has been established to increase access to justice for people in RRR areas of South Australia by using video conferencing to connect lawyers from Minter Ellison in Adelaide with disadvantaged clients in these areas.

Following the success of the WRCSA's homeless persons' legal service, the Housing Legal Clinic (HLC), which takes lawyers in Adelaide city to welfare organisations where clients are located, a similar model was discussed for lawyers to assist clients in country towns. The major difference was the fact that it was too difficult for volunteer city lawyers to travel in order to conduct legal clinics in these areas. To overcome this obstacle, the service decided to try video conferencing.

The service has been providing legal advice to clients in Port Pirie and Whyalla since 2011. Pro bono lawyers from Minter Ellison provide the advice, with around two to three video client meetings scheduled per week. WRCSA has also partnered with welfare organisations that host the service from the "country end" and provide additional support to clients. Uniting Care Wesley SA have six centres which act as referral and host organisations, each with a computer set up with a webcam. Clients are referred by the host organisation, and then supported by a social worker or case worker while they attend the video meeting.

The areas of law that commonly arise are tenancy, police and family law issues. As a general rule, the service does not guarantee representation. The service generally provides advice to assist clients in equipping themselves for their matter, or referral to other services which can assist, namely private lawyers, community legal centres or non-legal services. Some clients choose to proceed with matters by themselves and seek advice from the service's lawyers on the types of information they should be providing to the Tribunals or Courts.

The service is being expanded to areas where the NBN is being rolled out, namely Victor Harbour, then Port Augusta. WRCSA has recently partnered with Anglican Community Care which also has about half a dozen Centres, but are not yet set up to provide the service. As the project expands, the other law firms which already assist with the HLC plan to join the project.

How the service works

Service providers like The Salvation Army have initial contact with clients and have enough general knowledge of the kinds of matters that WRCSA can assist with, through previous experience and strong organisational relationships, that they can effectively triage and refer clients to the clinic.

WRCSA obtains a list of clients from the service providers and calls all of them to confirm that the matter is suitable and to arrange the appointment to return to the service provider's premises to attend the Skype clinic.

WRCSA's lawyers attend the service provider's premises on the day of the appointments to provide support to the service provider with the use of the technology, as well as supporting the clients by explaining what is going to happen during the appointment.

Pro bono lawyers connect with clients via Skype at the time of their appointment from their law firm offices.

"The service has provided lawyers who want to do pro bono work, but would prefer not to attend a clinic, with a comfortable way to participate in a pro bono project." (WRCSA)

The Service has also used WebEx as the platform for the video conferencing. During the set-up phase of the project, WebEx was installed on each of the host organisation's and Minter Ellison's computers by the National Association of CLCs' WebEx trainer, who also provides ongoing technical support with its use. Some of the host organisations also have a laptop loaded with WebEx that they can take with them if they engage in outreach work away from the office. There is a staff member in each host organisation that helps with the technical support.

OTHER PILOT PROJECTS FROM THE USA AND UK

The following USA and UK pilot projects provide examples of the successful use of video conferencing based pro bono services, including within a self-help model to assist self-represented litigants.

COLORADO LEGAL SERVICES' "SKYPE-A-LAWYER" CLINIC¹²

Colorado Legal Services' Northwest Colorado Legal Services Project runs a monthly clinic using Skype to connect volunteer attorneys with clients in geographically isolated areas. The clinic allows clients to have a 20-30 minute private consultation with a volunteer attorney from the Northwest Colorado Bar Association.

Clients are referred to the clinic by project staff who screen the clients for eligibility, obtain documentation regarding the legal problem, and perform a conflict check with volunteer attorneys.

The day of the clinic, volunteer attorneys join the pre-scheduled clinic via Skype, from a location of their choosing. A non-attorney coordinator facilitates the clinics by arranging appointments for clients and attorney volunteers, attending clinics to facilitate and monitor technology usage, and following up with clients and volunteers after the clinic.

Northwest Colorado Legal Services Program launched its first Skype clinic in 2012 in Moffat County, in collaboration with the Memorial Hospital. In the past year, the program has established a steady roster of ten volunteer attorneys that regularly participate in the clinics.

Because of success in Moffat County, Colorado Legal Services is expanding its video conferencing services to two additional counties. A Skype clinic was established in Lake County in August 2013, and an additional clinic was founded in Clear Creek County in January 2014.

THE MONTANA VIDEO EXPERIMENT

The Montana Video Experiment was conducted by the Montana Legal Services Association (MLSA) to assess the potential of video conferencing to support access to justice, and included self-help clinics delivered by video.¹³

The project was established in the context of the extreme challenge of providing access to justice in Montana, given that it is one of the largest but least populated states in the United States. In 2004 there were only 84 lawyers in the entire eastern portion of the state which covers an area of 47,500 square miles (or approximately 120,000 square kilometres). The state-wide legal aid program had been forced to close offices leaving many counties with no legal aid presence whatsoever.¹⁴

Forty-nine video conference sites were installed in 30 counties as part of the program. The processes established by MLSA for the self-help clinics included review by an attorney of materials being completed by self-represented litigants, which provided a mechanism for identifying any errors or omissions. The evaluation of this project found that the clinics delivered by video were very successful with 79 people participating in and being assisted by the clinics within the seven month period of data collection. This was based on observer data which rated the level of interaction between clients and the "teachers" delivering clinics very highly and the feedback of teachers who felt that they were successfully identifying errors and omissions.¹⁵ The evaluation also concluded that having client interviews conducted by video saved resources and made additional pro bono participation possible.¹⁶

¹² <<http://lri.lsc.gov/legal-representation/private-attorney-involvement/delivery-models/rural/best-practice-providing-services-remotely-through-videoconferencing>>

¹³ Richard Zorza, 'Video Conferencing for Access to Justice: An Evaluation of the Montana Experiment' (Montana Legal Services Association, June 2007) <<https://lsntap.org/sites/all/files/TIG%2003693%20MLSA%20Final%20Video%20Conferencing%20Evaluation%20Report.pdf>>.

¹⁴ Richard Zorza, above 1-2.

¹⁵ Richard Zorza, above 9-10

¹⁶ Richard Zorza, above 11.

“It is clear that private attorneys are more willing to provide assistance if they do not feel that they have to travel large distances for interviews and hearings. Even if the travel burden would be borne by the litigant if there were no video, the attorney appreciates the greater chance that the litigant will turn up and will be there on time when video is used.”¹⁷

SELF-HELP ASSISTANCE REGIONAL PROJECT

The Self-Help Assistance Regional Project (SHARP) also shows how self-help services can be provided to self-represented litigants in rural areas through the innovative use of technology. The project was run in rural and semi-rural areas of north-central California where populations varied between 26,000-203,000.¹⁸ These areas were characterised by high unemployment, limited social services, limited public transportation, long distances to population centres, and aging populations. The video conferencing component of SHARP was able to assist thousands of self-represented litigants in areas where very few resources had previously existed.

Included in SHARP’s initial goals were to provide self-help services to the range of case types that were needed in areas where very few services were available to self-represented litigants, including family law, guardianship, unlawful detainer, domestic violence restraining orders, and civil harassment. Self-help centres were established at several court sites in three rural counties and linked via video conferencing equipment so that workshops, one-on-one assistance, and staff supervision could be conducted by a single managing attorney.¹⁹

Workshops were the principal component of SHARP’s planned regional video conferencing model, with the primary goal being the accurate and informed completion of necessary forms. About 22 percent of all customers at SHARP were given a workshop appointment during the project period.²⁰ The project proposal envisaged that video conference workshops would “allow the managing attorney (or an attorney on contract to SHARP) to conduct the workshop/clinic, provide an orientation, assist in completion of the forms relevant to that particular workshop subject or area of the law, answer questions and communicate with participants or assistances in the other locations”.²¹

Having workshops regularly available meant that clients who might otherwise struggle to obtain an appointment with the professional legal staff (who were only available for drop in or telephone assistance for a small amount of time) could access the expert assistance of these staff.²²

The SHARP office staff could triage client’s legal concerns and assign them to the appropriate workshop run at some time during the month where they would receive expert assistance with forms and other issues. These workshops could be broadcast to multiple sites and one time.²³

“Workshops, with their ability to serve many customers at one time, maximize attorney resources and allow SHARP to manage its growth in users without corresponding increases in staff.”²⁴

¹⁷ Richard Zorza, above 16.

¹⁸ Administrative Office of the Courts, Judicial Council of California, ‘Model Self-Help Pilot Program: A Report to the Legislature’ (March 2005) 24 <<http://www.courts.ca.gov/documents/Model-Self-Help-Pilot-Program-March-2005.pdf>>.

¹⁹ Administrative Office of the Courts, Judicial Council of California, above 25.

²⁰ Administrative Office of the Courts, Judicial Council of California, above 37.

²¹ Administrative Office of the Courts, Judicial Council of California, above 37.

²² Administrative Office of the Courts, Judicial Council of California, above 37.

²³ Administrative Office of the Courts, Judicial Council of California, above 38.

²⁴ Administrative Office of the Courts, Judicial Council of California, above 37.

Workshops used a combination of lectures, questions and answer sessions, one-on-one assistance, and small group activities. Customers received a variety of services during the workshops, including information on legal procedures, help preparing forms, help preparing for hearings, and assistance with motions.²⁵

The use of video conferencing for one-on-one assistance was actually an unexpected benefit of SHARP's regional model. Customers who came into the centres as "drop ins" without an appointment, were able to obtain assistance from the managing attorney who could provide advice face-to-face via video conferencing from self-help centres in different locations. The managing attorney could also assist staff and volunteers remotely when they needed help with answering clients' questions.²⁶

LAWWORKS UK - SKYPE EMPLOYMENT CLINIC

LawWorks in the UK is also exploring the use of Skype clinics. In March 2013, the Brent Citizens Advice Bureau (CAB) launched a pilot Skype Employment Clinic in partnership with the firm Clyde & Co and BPP law school.²⁷

The current clinic model involves the following process:

- 1) **Triage process conducted by Brent CAB.** Following assessment and conflict check, appointments are made for clients with suitable employment matters at the Skype clinic with lawyers from Clyde & Co acting on a pro bono basis.
- 2) **Appointment schedule is sent to Clyde & Co** with a brief case summary, relevant conflict information (e.g. name of employer) and scanned copies of any relevant documentation regarding the legal problem. (Any additional documents can be shared during the appointment using Skype document share functionality.)
- 3) **Law students from BPP Law School help to facilitate the meeting** by supporting clients with the use of technology and taking notes. They greet clients when they arrive for their appointment, help them connect the Skype call with the lawyer, and sit through the session. They may also assist with follow up work, like drafting letters of advice etc.

The clinic has been very successful, with most of the advices having been provided early in the process – before proceedings have been initiated. For the period April to October 2013, 40 advices were provided by 38 solicitors. Advice was provided in the area of Employment law on 38 occasions and in the area of Immigration law on two occasions. Law Works are seeking to work with partners to replicate this successful model elsewhere, targeting regional clinics and areas of unmet need.

LESSONS LEARNED FROM THE PILOT PROJECTS

In applying our experience of the Centre's project and the other pilot projects, the following issues will be discussed:

- What pro bono **resources** might be available to assist clients remotely
- What **infrastructure** needs to exist to enable a reliable video conferencing service
- What **support** is needed for clients accessing assistance via video conferencing technology, and the local service providers providing that support

²⁵ Administrative Office of the Courts, Judicial Council of California, above 39.

²⁶ Administrative Office of the Courts, Judicial Council of California, above 41-42.

²⁷ BPP is Europe's largest specialist professional education, training and publishing provider. BPP University is a UK degree-awarding body recognised by the UK's Privy Council, with four schools: [BPP Business School](#), [BPP Law School](#), [BPP School of Health and BPP School of Foundation and English Language Studies](#). See BPP University, *BPP University* (2014) <<http://www.bpp.com/bpp-university>>.

- Whether it is more efficient to use pro bono resources to **build the capacity of local service providers**

WHAT PRO BONO RESOURCES MIGHT BE AVAILABLE TO ASSIST CLIENTS REMOTELY

Pro bono programs in Australia are becoming increasingly sophisticated, structured and strategic. Pro bono providers strive to maximise the impact of the pro bono resources they contribute. Video conferencing is potentially an attractive option for pro bono providers as a way of maximising impact while minimising the costs associated with the provision of in-person legal advice in RRR areas, such as travel and time. This is especially the case if pro bono assistance can be used to provide training and workshops that assist more than one person at a time and potentially in multiple locations.

QPILCH had hoped to secure funding to establish a service in north Queensland which used video conferencing to overcome these difficulties, with the NBN anticipated as solving some of the practical difficulties clients face in using the technology, such as slow network speed and connection. It proposed that the service would link clients in north Queensland with solicitors in Brisbane who would be able to use the technology to assist clients to draft documents. Unfortunately the funding application for this project was unsuccessful.²⁸

The opportunity for relationship-building that a project of this kind presents, can lead to the provision of more pro bono resources on a long term basis. For example the Centre's pilot project facilitated the development of a relationship between HCLS and DLA Piper that enabled HCLS's solicitors to access timely support by telephone from DLA Piper's lawyers who have expertise in areas that HCLS does not. These 'phone a friend' mentoring relationships have continued beyond the period of the pilot project, with DLA Piper agreeing to continue providing pro bono assistance to HCLS.

WHAT INFRASTRUCTURE NEEDS TO EXIST TO ENABLE A RELIABLE VIDEO CONFERENCING SERVICE

There remain significant areas of Australia where the infrastructure does not exist to support the high speed internet connection required for quality video conferencing. Some applications to the NBN Regional Legal Assistance Program funding were unsuccessful because the NBN was not yet active in the proposed area.²⁹

From his experience of RRR Queensland, Iain McCowie, the solicitor managing QPILCH's Self Representation Service in the Queensland Courts, explained that the lower population density in RRR areas of Australia compared with the USA might mean that there are simply insufficient numbers of clients to support the costs involved in setting up the kind of self-help centres that exist in the USA.

Technology set up: Clients

Even where the NBN is available, many low income Australians, especially in RRR areas, do not have access to internet at home so they need to be able to access a service from a convenient location like a self-help centre or a community organisation. Where they do have internet at home, they are still likely to need support from staff at a self-help centre or community organisation to understand and apply the available legal information.

²⁸ see Queensland Public Interest Law Clearing House, Submission No 58 to the Australian Government Productivity Commission, *Inquiry into Access to Justice Arrangements*, 4 November 2013, 17 <http://www.pc.gov.au/data/assets/pdf_file/0017/129320/sub058-access-justice.pdf>.

²⁹ The roll out of the NBN has been slowed or suspended in many areas. See for example: Simon Cullen, 'Updated NBN Rollout Maps Show Thousands of Homes Removed From Construction Schedule', *ABC News* (online), 31 October 2013 <<http://www.abc.net.au/news/2013-10-31/thousands-of-homes-removed-from-nbn-construction-schedule/5059452>>.

Technology set up: Community organisation

Even where high speed internet connections are available, many community legal centres and other community organisations are unlikely to have the funds required to purchase the hardware and meet the ongoing costs of technical support. These costs need to be taken into account at both the pro bono legal practitioner and community organisation/client ends of the video conferencing service.³⁰

The Centre's project funding allowed HCLS to purchase an iMac, scanner and router (and later a desk, filing cabinet, drawer set and chair to furnish the dedicated video conferencing room). However the WRCSA's project funding mainly covered staff costs (outreach staff that managed the project and attended the clinic sites) rather than infrastructure or hardware. WRCSA is now looking at available options for continuing the clinic now that the NBN-based funding has ceased.

NWCLC's project funding enabled it to purchase equipment and use technical support services that it would otherwise not have been able to cover with its usual budget. The service will not be able to continue beyond the project period without further funding. The current suspension of the NBN roll-out will also limit expansion of the program.

The pilot projects also encountered technical difficulties. The equipment for the Centre's project was installed and the NBN was connected by 12 October 2012. However the internet provider had connected HCLS to the wrong plan, which meant that the service had insufficient speed to support high quality video picture and sound. It took several weeks for it to be upgraded. By 11 November 2012 the plan had been upgraded to 50Mbps down and 20Mbps up and has continued to work well.

Technical problems that NWCLC have encountered during the course of their pilot project have included problems with the internet security filtering out clients who were then unable to download certain sites. Despite the NBN technology, problems with data speed still arose when there was too much traffic on the network. Ongoing technical support was factored into the program's funding application and NWCLC pays for technical support on a needs basis, rather than on retainer.

A decision also needs to be made about the video conferencing system that best suits the service. As the community organisations involved in the pilot projects had limited resources, they chose between free web conferencing programs, such as Skype.

Before making the final decision to use Skype, the project partners involved in the Centre's project also explored the possibility of using WebEx, which has been made available with government funding for use by community legal centres. The project partners eventually decided that the simplicity of the Skype program would be better suited to the needs of HCLS and its clients given that the use of internet-based video conferencing was new to them. Skype has ended up working well for both.

Technology set up: Pro bono provider

Pro bono providers, especially if they are large law firms, may be better resourced than the community legal centres with the hardware and technical support required to participate in a video conferencing service. However there can be compatibility issues with their proprietary systems. For example, providing professional development training sessions from office locations other than Melbourne has proved to be a challenge for the Centre's project. This is because DLA Piper generally uses proprietary video conferencing facilities which HCLS cannot access, and not all the DLA Piper training rooms are fitted with webcams that would allow HCLS to join using Skype.

³⁰ Suzie Forell, Meg Laufer and Erol Digiusto, above 11.

WHAT SUPPORT IS NEEDED

Clients: Encouragement and support to use the service

The experience of the pilot projects was that some clients needed initial encouragement to use the video conferencing but were generally happy with using it once they had started. WRCSA reported that its clients have been initially nervous about using the service, but quickly become comfortable with it once the video meeting starts. To overcome lack of familiarity with the technology amongst its clients, HCLS sold the NBN-based service as an opportunity to obtain the assistance of very experienced lawyers who had expertise beyond that of HCLS.

All service providers warned that there will always be some clients for whom the video medium does not work, for example persons with a mental illness, older persons (especially those with hearing difficulties) and persons with literacy issues. While HCLS was generally surprised by the high level of acceptance and comfort that clients displayed with the video conferencing, there were still a few clients who expressed reluctance to use it. These clients represented groups that might generally require a high level of support, namely one client who had a mental illness, and two older clients who said they preferred speaking to the HCLS Sorell solicitor and having the solicitor speak to the DLA Piper solicitor during their Skype meeting.

The pilot projects also encountered client groups for whom the video medium may be particularly attractive. For example the international students who were the target client group of the RLC project were very familiar and comfortable with the use of video conferencing. In fact RLC has found anecdotally that these clients prefer video conferencing to phone. The LawWorks project, being an employment law clinic, deals with clients who are currently or have recently been employed and may therefore be more likely to be comfortable with the use of technology compared with other groups of disadvantaged clients.

Local service providers: Training and practise to become familiar with the technology

The LJF report identified that the willingness of lawyers and client-end support staff (often community workers) to use this technology was of potentially greater impact on the uptake of video conferencing than client comfort with it.

*“Workers at the client end need to be comfortable with the technology before they are prepared to promote and support the use of video conferencing with their clients”.*³¹

In her paper on sustainable regional legal practice and the use of innovative information technology in RRR Queensland, Caroline Hart suggests that “for RRR legal practitioners there may be a double layering of conservatism to be found in both the law, and through life in the country... There may be valid reasons for hesitancy in using information technology on the grounds that such innovation may be disruptive, or result in reducing the effectiveness of the practice”.³²

Part of the success of the NWCLC project has been the fact that all the staff at NWCLC and Wyndarra are comfortable using the technology and can provide technical support and assistance to clients.

WRCSA reported that the challenges involved in their project have related to a lack of familiarity with the technology, surprisingly on the service provider rather than the client end. While both clients and service providers were unfamiliar with the technology, clients were generally happy to continue using it once they had started using it. In contrast service providers who were unfamiliar with the technology continued to be reluctant to use it and were unlikely to be able to support clients’ use of it. While they believe that these challenges could be overcome with training, there was (and currently remains) no funding available for this.

³¹ Suzie Forell, Meg Laufer and Erol Digiusto, above 14, 17.

³² Caroline Hart, ‘Sustainable Legal Practice: The Importance of Alliances and the Use of Innovative Information Technology by Legal Practices in Regional, Rural and Remote Queensland’ (2011) 16(1) *Deakin Law Review* 225, 251.

“An early obstacle for the WRCSA service was the resistance of host organisation staff to using the technology, but they are becoming more comfortable with it the more they use it. It is very difficult for these clinics to be genuinely self-sufficient unless the service provider is comfortable with it. For example, there was very old technology at one of the clinics, requiring WRC lawyer to physically go there, replace it and teach service providers how to use it.” (WRCSA)

Similarly staff at HCLS, particularly the outreach solicitor in Sorell, was not very familiar with the use of this technology. The Centre assisted HCLS by providing support with installation and use of Skype and making practise Skype calls between Sydney and Sorell. However HCLS’s solicitors tended to prefer using the phone when they wanted to ask for some mentoring assistance, rather than Skype, because it felt “less formal” and “less of an imposition” on DLA Piper’s solicitors. In the context of a relationship where HCLS was receiving pro bono assistance, they wanted to avoid the feeling they were “bugging” the DLA Piper solicitors and felt that using Skype would be more of an “intrusion”. They felt that they needed to make an appointment to make a call on Skype, but could simply call on the phone.

After discussing this issue, the solicitors involved agreed that a solution would be for them to send an instant message through Skype asking whether it is a convenient time for a Skype call. However they have now reverted to using the phone, demonstrating the importance of service provider/practitioner comfort with the technology to the success of any video conferencing service.

HCLS found that the distance meant that it took a longer time to build rapport between its solicitors and DLA Piper’s solicitors than it would in person and that the relationship needed to be initially established and regularly maintained with in-person contact.

Pro bono providers: Need solicitors or other support services “on the ground”

The experience of all pilot projects points to the need for a support person to be present at the client end, not only to provide support to the client with the use of the technology, but also to help them understand the advice they were receiving remotely and take any required follow up action.

A key factor that contributes to the success of the LawWorks UK pilot project is its partnership with the university which provides volunteer students who can support the clients with both the process of obtaining advice and the technology. The students also gain valuable experience with client interviewing and follow up work.

RLC has similarly found that having a partner organisation is vital to establishing this kind of service within a community. At UNE, the staff supporting international students has ensured that new students are aware of the service and continue to use it. This is especially important given the transient nature of international students. Video conferencing was also used to train support staff at International Student Services so they could effectively refer and support clients. In Coffs Harbour the service is in the initial stages of establishing the trust and recognition of the community, and the RLC partnership with the neighbourhood centre is integral to this.

During the course of the Centre’s project, DLA Piper found that it was not possible to establish the same level of rapport with clients over Skype as in person, which made taking instructions more difficult. They found that nuances of body language and facial expression that would normally allow a solicitor to gauge, for example, whether a client is being truthful, cannot be detected as clearly without in person contact. However they did find that using video overcame some of the limitations of the phone. Given the limitations of the communication via video conference, having a HCLS solicitor present at the Skype meeting between the HCLS client and the DLA Piper solicitor was essential to ensuring that the client’s needs could be fully identified and assessed.

WRCSA explained that having a support person “on the ground” is essential for being able to conduct the necessary triage and assessment of the issue to ensure that it is suitable for the service before rushing to use the video technology. They suggest that video technology should only be used for issues that need an in depth face-to-face interview.

“If an issue can be dealt with over the phone, it is preferable to use the phone. Clients don't like being dragged in to a host organisation for a one minute simple issue that could have been dealt with over the phone. Often clients will be difficult to track down and may not turn up to a video meeting if they do not think that it is serious enough to need a face-to-face meeting...”

Think of the video conference as replacing a first face-to-face meeting, then conduct all the follow up by phone or email.” (WRCSA)

Double-handling of information remotely

The Centre’s project found that there were inefficiencies resulting from the double-handling of matters between the DLA Piper solicitor providing pro bono assistance and the HCLS solicitor supporting the client in Sorell.

Given that the solicitors at DLA Piper were relying on the clients to provide information necessary to progress their matter, there was a need to have solicitors at both ends of the video communication as the DLA Piper lawyer could not be physically present to assist client with gathering or assessing these documents and information. Additional time was needed on an ongoing basis to pass instructions and take necessary actions through the two sets of lawyers involved. HCLS’s clients were also unlikely to have any access to email or fax and sometimes took a long time to find and bring relevant documents to the Sorell office in person. This created challenges for the relationship between project partners as HCLS felt like its clients were “mucking DLA around”.

DLA Piper explained that: “Notwithstanding the ability to have a ‘face-to-face’ discussion with the client, we do remain heavily reliant upon the outreach solicitor in Sorell to collate and send through documents and other materials required to open a file and provide the advice or representation sought, and this need to maintain the outreach solicitor as a conduit between advisor and client does pose a challenge in circumstances where further instructions are required to progress the matter.”

HCLS explained that in relation to some matters it was quicker, for example, for HCLS to call the Insurance Law Service for advice and for HCLS to deal with the client directly, than to refer a matter via the NBN-based service and provide support to their client through the use of that service. For HCLS and DLA Piper this double handling of information/instructions made the process inefficient and frustrating for lawyers and clients involved in the Centre pilot project (see case study in the **Appendix** on page 19).

Note that the ‘double-handling’ problem is not necessarily unique to video conferencing services. It would equally apply to phone advice services as well, and is a product working remotely.

Interestingly, RLC, WRCSA and LawWorks did not report double-handling issues and their projects may provide insights into ways of structuring a video conferencing service to avoid this problem. In the case of RLC’s project, the nature of the pro bono service (at both UNE and the family law advice service) is to provide one off advice so there is generally little follow up or ongoing support/coordination required, and if ongoing assistance is required RLC takes full carriage of the matter. This is similar to the one-off advice provided at the LawWorks clinic where each appointment lasts for around 30 minutes. If follow up work needs to be done it is undertaken by a student under the instruction/supervision of the Clyde & Co lawyer (not the CAB).

WRCSA explained that they were careful to refer the entire matter to the firm and did not provide any advice in addition to, or ‘overlapping’ with, that of the firm. They established a clear understanding early on of who had carriage of each matter.

USE OF PRO BONO RESOURCES TO BUILD THE CAPACITY OF LOCAL SERVICE PROVIDERS

Use of the NBN-based service during the Centre’s pilot project for delivery of training and building relationships/capacity has proven to be a much more successful model for the use of video conferencing technology in the provision of legal assistance than one-on-one advice to clients.

In addition to addressing the problems relating to double-handling outlined in the previous section, this is because clients (particularly those who are especially disadvantaged) need a lot of support which is often needed in-person. Training up the local solicitors to equip them to provide that support in-person has worked really well.

It is also important to recognise that best practice still requires implementation of strategies that give clients access to face-to-face assistance where they are unable to take advantage of online self-help strategies,³³ especially where ongoing advice and representation is needed on a one-on-one basis. For example, rural areas have high levels of illiteracy, which limits the value of text-based online information for some people.³⁴

PRACTICAL TIPS MOVING FORWARD

In planning for any video conferencing service to connect clients in RRR areas with pro bono legal assistance, it will be helpful to consider the following:

Technical assistance

Plan for both set up costs (for example computers, software, scanners) and ongoing maintenance costs, as well as staff training.

Training for service providers

Ensure that service providers have sufficient training to confidently use the technology. It is critical that the service providers promoting and running the service feel comfortable and positive about the use of the technology so that they will encourage clients to use it and be able to troubleshoot any problems that arise. Without this, the service provider is likely to revert to a telephone service.

Support for clients

Ensure that there will be an appropriate support person available to support clients with both the use of the technology as well as understanding the legal advice provided by the pro bono lawyer and taking any follow up actions. Be aware of particular client groups that may have difficulty or may be reluctant to use the technology.

Pro bono partnership

Discuss and agree on a plan between pro bono partners about how the service will work and the division of responsibility between the pro bono provider and local service provider so there is no confusion about who has carriage of the matter and there are no inefficiencies with both sets of solicitors double-handling the work. For example:

- Who is responsible for sourcing clients and triaging?
- Who is responsible for conflict checking?
- Who is responsible for ensuring clients attend appointments?
- Who is responsible for drafting follow up correspondence?
- Who is responsible for obtaining additional documents?

³³ Julie Grainger, above p. 7; see also James E Cabral et al, above 241, 262.

³⁴ See James E Cabral et al, above 241, 262.

Have a discussion about the best way for pro bono partners to communicate with each other, given that relationships are more difficult to develop at a geographic distance. Having an initial face to face meeting may be the best way to establish rapport between project partners, but it is a good idea to work out how to communicate after that, for example setting up a Skype call with a quick Skype chat.

APPENDIX: CASE STUDIES

These case studies have been generously provided by HCLS, NWCLC and WRSCA.

Case Study 1 – HCLS (Double-handling issue)

One of the matters referred to DLA Piper via the NBN service was a dispute between a resident of a retirement village (the client) and the stratum title management of that village about who was responsible for payment for the shared lighting that lit the street going through the village.

DLA Piper needed specific records and documents from the Lands Titles Office ('LTO') relating to the properties in the village to establish the legal ownership status of the many properties in the village that benefited from the lighting, as well as the internal road itself.

Given that DLA Piper was assisting the client remotely, it could not obtain the documents without having HCLS physically present to meet with the client at the LTO in Hobart and assist the client to obtain the necessary documents. Being physically present also made it easier for HCLS to obtain the information needed by DLA Piper from the Stratum Title Management of the village.

However, given that HCLS did not actually have carriage of the matter as it had been referred to DLA Piper, HCLS did not have full knowledge of the matter which made it difficult for them to know exactly what information and documents DLA Piper needed. HCLS ended up making three separate trips to the LTO with the client to obtain the correct documents, which caused significant delay in the progress of the matter. DLA Piper also ended up having to communicate directly with the Stratum Title Management, which meant that two sets of lawyers (both HCLS and DLA Piper) spent time seeking the same information.

Avoiding these issues by having both sets of lawyers fully informed about the matter would still involve an inefficient double-handling element. In the end HCLS and DLA Piper agreed that the best way to avoid the problem of double-handling was for an HCLS solicitor (who is physically present and able to liaise directly with the client and others) to take carriage of the matter, with the assistance of DLA Piper providing mentoring support.

Case Study 2 - NWCLC (Family Law)

*Bill contacted the NWCLC having been served with Federal Circuit Court of Australia Application for Adjustment of Property. Bill separated from his long term partner and has 4 children. He is in receipt of a Disability Support Pension (DSP) and lives in the former home of the relationship and meets all its outgoings in the form of mortgages, rates and other payments.

He has been finding it difficult for the children to spend time with him due to the breakdown of the relationship and a reluctance of the children's mother to allow the children to spend time with him.

Bill made contact with the NWCLC at the last minute regarding his family law property matters. He was due to appear in the Federal Circuit Court the following business day and was not sure what he had to do.

By making contact with the NWCLC via Skype at Wyndarra, Bill was able to receive advice as to how to appear before the Court, seek for the matter to be adjourned, obtain more time to file responsive documents and otherwise get advice as to his rights and responsibilities regarding property under the *Family Law Act 1975* (Cth).

Pro bono legal services via video conferencing: Opportunities and challenges

Bill attended Court the next business day, obtained the adjournment and made a follow up appointment with the NWCLC for assistance regarding his property matters and children.

In a follow up appointment Bill was able to get further advice as to how to complete the Response, an Affidavit and Financial Statement as well as his options regarding children's matters under the Family Law Act.

Bill has now made contact with a FDR resolution provider and has had his initial appointment with the FDR provider to enter into discussions with his former partner through FDR for his children to spend more time with him.

Without the Skype link the NWCLC would not have been able to see Bill at such short notice. It is noted that the NWCLC did re-arrange other appointments in the diary around Bill. Bill was the first appointment due to the urgency.

Bill has now been exited from the NWCLC as a client, referred to a private practitioner for any further assistance but it is unlikely that he will be able to afford any such representation being in receipt of a DSP and his current outgoings.

Casework guidelines and workload of the NWCLC mean that unfortunately he will not be able to receive ongoing assistance from this office and he will be self-represented in the process but has as a result of meeting with the NWCLC a far greater knowledge of his rights and responsibilities regarding property but more importantly how to go about putting in place either a Parenting Plan or Consent Order for the care, welfare and development of his children.

**person's names have been changed to protect confidentiality*

Case Study 3 - NWCLC (driving licence)

Our client lived on the remote north west coast. He had been disqualified from driving after a drink-driving offence and several prior convictions for drink-driving. After his disqualification, he had sought help with his alcohol consumption and given up drinking altogether.

At the end of his disqualification period, the Registrar of Motor Vehicles refused to re-issue him with a licence because the Registrar was not convinced that the client no longer consumed alcohol. This imposed a significant level of hardship on the client, including social isolation and an inability to secure employment.

The client was on Newstart Allowance and lived in an area with extremely limited public transport options. The client became aware of NWCLC through our promotion of our Smithton outreach service.

NWCLC provided advice and regular, ongoing telephone support to help the client understand the process of appealing the Registrar's decision in court, the grounds for appeal and the evidentiary issues the client needed to address.

As a result, the client successfully appealed the decision and was reissued with his licence.

**person's names have been changed to protect confidentiality*

Case study 4 - WRCSA (Residential tenancy)

WRCSA assisted a client who was having difficulty with their previous landlord in recovering money back from a bond paid. The landlord was claiming that excessive amounts of cleaning needed to be done after our client vacated the property, however, was not able to provide receipts or invoices for the work. Our client was struggling financially and counting on the bond being returned. Prior to her leaving the property she had undertaken the cleaning of the property and had employed the services of a carpet cleaner and a general cleaner to assist them. The receipts were available for these. The only avenue available our client was to proceed to the Residential Tenancies Tribunal to seek recovery of the bond the landlord was withholding.

Although our lawyers do not represent at the Tribunal (it is primarily designed for self-representation), the lawyers assisted in preparing the arguments to be made, ensuring that the documentation was in order and explaining the processes and law to the client.

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The client had difficulty in understanding the processes and required the explanations several times, and eventually managed the hearing with the assistance of her support worker. The outcome was that although some extra cleaning needed to be done, there was some money owed to them and the decision was that a majority of the bond was to be returned.

Whilst this does not seem like a huge victory, for the client involved it allowed a little more financial freedom in that they were able to pay some of the new rent from the money paid back to them. It was only with the assistance of the lawyers, through the technology of the NBN project, that the client felt empowered to take on the heavy handed approach of the landlord successfully. It also prevented the client from getting into further debt.

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