

Attorney-General's Department—Legal Assistance Branch

National Access to Justice and Pro Bono Conference

Sydney Masonic Centre

14-15 November 2008

Paper

Dr Albin Smrdel

Assistant Secretary, Legal Assistance Branch

Commonwealth Attorney-General's Department

The concept of equitable access to justice demands that people have a comparable level of access to justice regardless of where they live. To improve access to justice for people living in regional, rural and remote areas, legal service providers need to work together to overcome the problems of size and remoteness which are quite unique to Australia.

2. Much has been—and is being—done by each of the different legal service providers (legal aid commissions, community legal centres, Indigenous-specific legal services and the private sector acting pro bono) to improve access to justice for disadvantaged people living in non-metropolitan areas. However, a collaborative approach by all legal service providers within each jurisdiction is vital to providing services across the vast rural and remote areas of Australia with the resources that are available. This paper provides some examples of work that is being done in this regard.

Funding

3. Resources being devoted to legal aid are significant. Funding for legal assistance programs administered by the Commonwealth Attorney-General's Department in the last financial year (2007-08) was in the order of \$300 million. The States also make a significant contribution to legal aid services, collectively providing over \$380 million last year.

Collaborative arrangements

4. From the Commonwealth's perspective, there are very encouraging developments in a number of States and Territories where service providers are getting together to make best use of their resources and expertise to address access issues collaboratively. Examples of regionally-based initiatives include the Cooperative Legal Service Delivery Program in New South Wales, the Country Lawyers Scheme in Western Australia, and the Queensland Legal Assistance Forum.

Regional Innovations Program for Legal Services (RIPLS)

5. In June 2008, the Australian Government announced \$5.8 million over four years for the Regional Innovations Program for Legal Services (RIPLS). This is a new initiative to improve access to legal services for communities in regional, rural and remote areas, to be administered by legal aid commissions. It recognises the important contribution of regionally-based law firms to the legal aid system in non-urban areas. Nationally, 25 per cent of the annual funding

provided by the Australian Government to legal aid commissions supports non-metropolitan law firms in delivering legal aid services.

6. Maintaining the participation of the private profession outside metropolitan areas is becoming more and more difficult. Attracting lawyers into regions—and the legal aid system in general—is vital to our mixed model of service delivery, and retaining lawyers is similarly a challenge. This is of particular concern for regional service delivery where there are fewer than three legal firms for every 10,000 people over 18 living in regional Australia.

7. Legal aid commissions in New South Wales, Queensland, Western Australia and Tasmania received funding under the RIPLS initiative to implement a range of proposals that will help with the recruitment and retention of lawyers in the regions.

8. To illustrate, RIPLS funding has been provided to Legal Aid NSW to expand its Cooperative Legal Service Delivery (CLSD) Program to provide legal advice, minor assistance and community workshops, including monthly outreach clinics in five remote areas. It is also expected that Legal Aid NSW's current regional solicitor placement scheme will be extended to 14 regions, targeting the Far West, the South Coast and the Mid North Coast.

9. RIPLS funding has been provided to Legal Aid Queensland for 10 new regional solicitor placements under its regional solicitor placement scheme. Funding will also support the Queensland Legal Assistance Forum (QLAF)—a

10. Legal Aid Western Australia is being funded to develop an e-learning online program. The program will help reduce professional isolation and enable regionally-based lawyers, both private and publicly-funded, to maintain their professional accreditation, without having to return to Perth for costly face-to-face training and development.

11. The Legal Aid Commission of Tasmania has received RIPLS funding to provide a regular outreach services by private practitioners operating from Burnie, Devonport and Launceston to benefit the northern-central and northern-eastern areas of Tasmania and to establish a regional young lawyers' network in these areas.

12. In addition to RIPLS, a number of other initiatives have been funded by the Commonwealth. For example, new regional offices have been opened with Commonwealth support, including the Tennant Creek Legal Resource Centre in the Northern Territory, the legal aid office at Kununurra in Western Australia and the Mount Barker and Port Augusta offices in South Australia.

Community legal centres (CLCs)

13. Of the \$23 million appropriated for community legal centres in 2008-09 by the Australian Government, \$7.7 million (or one third) is for community legal centres located in regional, rural and remote areas. In addition, over

\$650,000 has been set aside for Rural Women's Outreach Projects and over \$1 million for the Indigenous Women's Program, some of which is put towards outreach to Indigenous women in remote areas.

14. Some urban centres also engage in outreach work to rural, regional and remote areas, particularly Women's Legal Centres and other specialist services that have state-wide coverage. This outreach work typically involves visiting remote communities and locations for a set period of time in order to provide community legal education or individual advice sessions to clients living in those areas. Where relevant, these visits will be timed to coincide with court circuits and outreach visits by other service providers.

15. In some cases, city-based specialist centres or law firms acting pro bono work with local community legal centres to collaborate on outreach activities.

Telephone and video conferencing may also be used to save on travel costs whilst still providing some level of personal access to legal services.

Community legal centres face the same challenges faced by other legal service providers in retaining staff to work in remote areas and in meeting the additional costs of providing services to clients dispersed over a larger area.

16. RIPLS funding also included funding for the National Association of Community Legal Centres (NACLC) to encourage law graduates to work in regional community legal centres. In the financial year 2007-08, additional one-off funding of \$10 million was paid to community legal centres, with each of the

regionally-based centres benefiting. This was the largest ever injection of additional funding into the Commonwealth Community Legal Services Program.

Aboriginal and Torres Strait Islander Legal Services (ATSILS)

17. Indigenous Australians remain one of the most disadvantaged groups in Australia, and experience higher rates of contact with the law and justice system compared to other Australians. When they do make contact with the law and justice system—in particular the criminal justice system—it is when things are at a crisis point. It is at this point that the Aboriginal and Torres Strait Islander Legal Services (ATSILS) play their vital role.

18. The ATSILS provide the Aboriginal and Torres Strait Islander people with accessible, quality and culturally-appropriate legal services. However, in remote areas in particular the Indigenous population is growing rapidly, and with this growth in population comes an increase in demand for services, including Indigenous legal aid services. This increase in demand for services presents some real challenges for the ATSILS.

19. In recognition of the increasing demand for their services, earlier this year (2008) the Minister for Home Affairs, the Hon Bob Debus MP, announced additional one-off funding of \$10.9 million to the ATSILS. For example, the Government this year (2008) provided around \$1 million to increase the capacity of the ATSILS to service indigenous justice initiatives, including

Murri, Koori and Nunga courts, circle sentencing courts and community justice groups. These innovative approaches are helping Indigenous communities to exercise greater control over the problems facing their remote communities and appear to be reducing re-offending rates.

20. To assist attracting and retaining staff in remote areas, the Australian Government provided almost \$5 million in 2008 in additional funding, to enable the ATSILS to purchase properties in places such as Broome, Port Headland and Kununurra in Western Australia, Ceduna in South Australia and Walgett in New South Wales. It is expected that these initiatives will help address specific challenges that impact on service delivery to rural and remote communities.

Family violence prevention legal services (FVPLS)

21. The Australian Government through the Attorney-General's Department funds a number of initiatives that work towards reducing the level of family violence and sexual assault in Indigenous communities. The Family Violence Prevention Legal Services (FVPLS) program, which has been operating since 1998, is one of these initiatives.

22. The FVPLS funding supplements the funding of State and Territory agencies, whose primary responsibility is prevention, diversion, rehabilitation and restorative justice services. FVPLS units assist Indigenous adults and children who are victims of family violence, including sexual assault, or who are at immediate risk of such violence. The primary function of the units is to

provide legal assistance, casework, counselling and court support. FVPLS units are located predominantly in regional, rural and remote areas.

23. In 2007 the Department, in conjunction with Kimberley Legal Services, engaged Starfish Consulting to examine and identify recruitment and retention issues of legal practitioners in FVPLS units located in Western Australia. Its report identified a number of issues, namely lack of suitable accommodation, personal and professional isolation and reduced access to opportunities and community facilities for both employees and their families.

24. The Department has been actively seeking to address the concerns raised. For example, residential housing has been purchased in Port Hedland and Broome. In addressing professional isolation, the Department became a party to a joint initiative—the Country Lawyers Scheme. Administered by Legal Aid Western Australia, the scheme aims to improve the recruitment and retention of lawyers in regional and remote areas of Western Australia, by providing structured professional development and support for legal practitioners located in regional, rural and remote areas.

Northern Territory National Emergency Response (NTER)

25. In support of the Northern Territory National Emergency Response, the Australian Government has provided \$2 million in each of 2007-08 and 2008-09 for legal assistance services in the Northern Territory to provide services to Indigenous people who have a need for legal services for matters

related to the Government's intervention in the Northern Territory. This is an important recognition of the law and justice needs of people living in rural and remote locations, which arise as a result of an Australian Government initiative.

Cooperation between Governments

26. Responsibility for legal assistance rests with both the Commonwealth and State and Territory Governments. The federal Attorney-General, the Hon Robert McClelland MP, is working on improving cooperation between the two levels of government in the delivery of legal assistance. The Attorney-General is discussing legal assistance issues with his State and Territory colleagues in the Standing Committee of Attorneys-General.

Pro bono

27. The National Pro Bono Resource Centre's national survey (released on 10 September 2008) indicated that about 200,000 hours have been delivered pro bono by 25 of Australia's largest law firms in the past year. This is an enormous contribution by the private sector towards enhancing access to justice. Pro bono work is in no way a substitute for legal aid or other legal assistance programs. Pro bono work complements the existing legal aid system.

28. On 26 September 2008, the Attorney-General held a pro bono roundtable at the University of New South Wales. This was an opportunity for the federal Attorney-General to hear from experts and practitioners in the field about the current issues facing pro bono work. The roundtable showcased the rich and

interwoven fabric of pro bono work undertaken by the private sector across Australia.

29. Private law firms provide pro bono services to remote areas and are key players in the framework of cooperative legal service delivery that involve legal aid commissions and community legal service providers. They face the same difficulties with recruitment and the high cost of delivering services in regional, rural and remote areas as other service providers. The Attorney-General is further considering the issues surrounding pro bono work.

Conclusion

30. These are some of the many examples of collaboration to deliver legal services in regional, rural and remote areas. This collaboration is essential if we are to make the most of the resources and expertise we have available to ensure that the most disadvantaged and vulnerable Australians have access to justice regardless of where they live.

31. The Attorney-General's Department is aware that many challenges remain to ensure equitable access to justice for people living in regional, rural and remote areas. Key practical issues on the ground facing service providers—namely finding suitable accommodation, recruitment and retention of staff, and professional isolation—will present ongoing challenges. From the Commonwealth's perspective, RIPLS and other measures mark important steps to address legal service delivery issues unique to non-metropolitan areas.

Governments and service providers must continue to work together and to innovate to improve access to justice for disadvantaged people living in non-metropolitan areas with the resources that are available.