

PARLIAMENT OF VICTORIA
LAW REFORM COMMITTEE

**REVIEW OF
LEGAL SERVICES
IN
RURAL & REGIONAL
VICTORIA**

REPORT

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Law Reform Committee

**Review of Legal
Services in Rural and
Regional Victoria**

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CHAIRMAN'S FOREWORD

It is with pleasure that I present the Law Reform Committee's report on its Inquiry into Access to Legal Services in Rural and Regional Victoria. The Committee has found this reference to be challenging in both its breadth and complexity. The reference required the Committee to consider difficult issues of adequacy of access and the most effective and equitable use of resources.

The Committee has embraced these challenges by seeking to inform itself of the broad range of issues involved in legal service delivery, through extensive public hearings held in rural and regional locations throughout Victoria as well as in Melbourne. The evidence received from those with first-hand experience was invaluable to the Committee's deliberations, not only for its factual content but also for providing the human context for the Report. While the Report's recommendations necessarily focus on the process of legal service delivery, our deliberations were assisted by the real life experiences heard from the many witnesses who appeared before us and to the extent possible we have included those experiences in the report.

The Committee sees a significant potential for the use of new technologies, particularly video-conferencing, to enhance rural and regional access to legal service delivery, and this is reflected in our recommendations. Members of the Committee have a vision of interconnected services, be they Victoria Legal Aid, community legal centres or the private legal profession, available to the client through clicking on an icon on a computer screen from a local access point. The Courts too must be part of this interconnectivity to the extent possible while maintaining their independent role in the legal system.

The Committee found that many communities lacked some services and has sought to address these gaps in service delivery in a co-ordinated way. I want to note in particular the needs of the Aboriginal community in rural and regional Victoria, who are significantly over-represented in the criminal justice system. While the Committee believes that the Aboriginal Justice Agreement marks the beginning of a serious commitment to a whole-of-government approach to this difficult issue, there was one factor which was raised with the Committee on a number of occasions and

which I believe bears drawing out even though it falls outside our terms of reference. This was the very high rates of unemployment and the lack of job skills among sectors of the Aboriginal community in rural and regional areas. A link was often drawn between unemployment and the frequency of court appearances and the Committee is of the view that the availability of employment and the provision of job skilling would go a long way towards reducing the Aboriginal participation in the criminal justice system.

The Report contains 125 recommendations arising from seventeen chapters, reflecting the very complex and broad ranging nature of the Inquiry. The overwhelming outcome from this Report is that more could and should be done to improve access to legal services for country Victorians. The Committee believes that this Inquiry has provided the opportunity to draw together a number of related issues and make recommendations which will allow a co-ordinated and sector wide response.

I wish to thank the many witnesses who attended our public hearings around Victoria. In particular those who in addition to committing the time to speak to us also had to travel long distances to be present at our hearings. The Committee is also grateful for the many written submissions received.

I would like to thank the other Members of the Committee for the time and thought put into this Report. They too undertook a considerable amount of travel. The range of personal experience brought to the Committee by Members was of great assistance in considering the many challenging issues raised by the reference.

Thank you also to the Committee's research and administrative staff who ably steered the Report to its conclusion. Their hard work in undertaking the substantial task of co-ordinating and organising the many public hearings, meetings and trips, both in rural and regional Victoria and interstate, is much appreciated.

I commend the report to the Parliament.

FUNCTIONS OF THE COMMITTEE

PARLIAMENTARY COMMITTEES ACT 1968

- 4E.** The functions of the Law Reform Committee are—
- (a) to inquire into, consider and report to the Parliament where required or permitted so to do by or under this Act, on any proposal, matter or thing concerned with legal, constitutional or Parliamentary reform or with the administration of justice but excluding any proposal, matter or thing concerned with the joint standing orders of the Parliament or the standing orders of a House of the Parliament or the rules of practice of a House of the Parliament;
 - (b) to examine, report and make recommendations to the Parliament in respect of any proposal or matter relating to law reform in Victoria where required so to do by or under this Act, in accordance with the terms of reference under which the proposal or matter is referred to the Committee.

TERMS OF REFERENCE

Under the powers found in Section 4F (1) (a) (ii) and Section 4F (3) of the *Parliamentary Committees Act 1968* the Governor in Council refers the following matters to the Law Reform Committee —

The Committee is requested to inquire into and report to Parliament on:

- a. the accessibility and adequacy of legal services in regional and rural Victoria and to examine the effect of any lack of services in these sectors of the community. In particular, to examine the accessibility and adequacy of:
 - i. legal aid facilities and services including Victorian Legal Aid, Community Legal Centres and pro bono services;
 - ii. court and tribunal facilities and services:
 - including the location of courts in light of population shifts;
 - appropriateness of current circuit arrangements
 - iii. legal professional services;
- b. how access to the services referred to in paragraph (a) may be improved through the use of current and emerging technology.

The Committee is requested to make its final report to Parliament by the first day of the Autumn 2001 Parliamentary sittings.

Dated, 22 February 2000, as gazetted on 29 February 2000

Responsible Minister: Hon. Rob Hulls, MP
 Attorney General

The same reference was referred to the Committee by resolution of the Legislative Assembly on
14 March 2000.

And

The future need for court facilities and court-based legal services in regional and rural Victoria, and to report to Parliament by 30 June 2001.

Referred by resolution of the Legislative Council of Wednesday, 1 March 2000

Because of the similarity of these references, the Committee has decided to combine and conduct these activities concurrently.

LIST OF RECOMMENDATIONS

Chapter 2: Rural and Regional Victoria — Context

Recommendation 1

That the Victorian Government establishes a litigant transport fund, administered by the Department of Justice through courts and tribunals. Such a fund should be available for needy litigants required to travel to Melbourne or to other regional centres to resolve their legal issues.

Recommendation 2

That technology throughout the court system be standardised and networked.

Recommendation 3

That an entity be formed to coordinate and implement the introduction and development of standardisation and networking throughout the court system.

Chapter 3: Public Access to Legal Information

Recommendation 4

That the State Library of Victoria examines the Legal Information Access Centre (LIAC) at the State Library of New South Wales and adopts a model based on LIAC's most useful features.

Recommendation 5

That the Department of Justice coordinates the preparation and distribution of core information on courts and tribunals, general information on the legal system and

legal process, and information on support services across Victoria. This information should be produced to facilitate its distribution in both electronic and printed forms.

Recommendation 6

That the overall strategy for the delivery of legal information and services recognises the need for the provision of information in paper-based and electronic form.

Recommendation 7

That the Department of Justice ensures that Legalonline has in its database all relevant services in rural and regional Victoria, so that a person searching on services in their area can obtain a comprehensive listing of local contacts.

Recommendation 8

That the Department of Justice ensures that Legalonline is continually updated and upgraded, especially in terms of its search capability, so that all information on its database is current and readily accessible.

Recommendation 9

That the Government provides to Fitzroy Legal Service, as a matter of priority, the additional funds necessary to develop The Law Handbook and associated products for online access through a Fitzroy Legal Centre website. The Legal Service must retain ownership and full editorial control of all products.

Recommendation 10

That Victoria Legal Aid provides access to information in community languages for rural Victorians through its 1800 number.

Recommendation 11

That Victoria Legal Aid streamlines existing delivery of phone services and advertises these services widely, especially in rural and regional Victoria.

Recommendation 12

That the State Government funds Victoria Legal Aid to staffing levels adequate to meet the increasing demand that more widely publicised services will produce.

Recommendation 13

That State and Federal call centres providing legal information and referrals be integrated.

Recommendation 14

That core information available through Legalonline in English be translated into community languages and made available on the Legalonline site.

Chapter 4: Victoria Legal Aid

Recommendation 15

The Committee recommends that either a Victoria Legal Aid regional office or a Community Legal Centre be established in Shepparton. If a Community Legal Centre is established it should be developed using a model of extended outreach services and video conference access to Victoria Legal Aid and specialist community legal centres.

Recommendation 16

That Victoria Legal Aid provides grants of aid to young people who are first offenders.

Recommendation 17

That Victoria Legal Aid continues with its work to improve access to advice services in rural and regional locations, particularly in locations that currently have neither a Victoria Legal Aid office nor a Community Legal Centre.

Recommendation 18

That Victoria Legal Aid does more to promote its telephone information services and telephone number particularly in those regions which have no Victoria Legal Aid office or community legal centre.

Recommendation 19

That the State Government funds Victoria Legal Aid to establish a phone advice service as a trial which is widely publicised in two rural locations. Access must be through a freecall or local call rate number.

Recommendation 20

That the State Government funds Victoria Legal Aid to establish a pilot video-conferencing facility in each of the five Department of Human Services regions. The facility would be available for use by Victoria Legal Aid, Community Legal Centres (including specialist centres) and for a fee to private legal practitioners.

Chapter 5: Community Legal Centres

Recommendation 21

That all regional Community Legal Centres be funded at a level which allows for a minimum of 3 full-time staff and an operational level equivalent to that provided to new centres at Mildura, Albury/Wodonga and Morwell.

Recommendation 22

That funding for rural and regional community legal centres includes a rural loading which acknowledges the additional costs involved in service delivery in rural areas.

Recommendation 23

That the Government ensures that sufficient data collection is undertaken by specialist centres so that usage levels can be accurately recorded by region.

Recommendation 24

That specialist centres (that have not already done so) focus on developing policies that facilitate access to their services by rural and regional clients.

Recommendation 25

That Community Legal Centres ensure that the membership of their management committees reflects the range of skills available in the community to enhance each Centre's development.

Recommendations 26

That there be greater recognition by funding bodies of the additional costs involved in operating Community Legal Centres in rural and regional areas and, in particular, recognition of the difficulty of attracting and retaining qualified staff and the consequent need to offer appropriate financial incentives to assist in recruitment.

Recommendation 27

That the Federation of Community Legal Centres establishes a formal program of professional support for solicitors in rural and regional Community Legal Centres through links with larger metropolitan centres.

Recommendation 28

That the State Government provides funds to an existing community legal centre in a rural location, to undertake a one-year pilot project to provide outreach legal services to at least two locations by the use of video-conferencing link in conjunction with regular circuits allowing face-to-face contact.

Recommendation 29

That the State Government funds the Federation of Community Legal Centres to undertake a feasibility study of the provision of legal advice to clients of rural and regional community legal centres by video-conferencing link to solicitors in the metropolitan area.

Chapter 6: Indigenous Victorians

Recommendation 30

The Committee commends all those involved in the setting up and running of the Warrakoo Station initiative. The Committee recommends the development of similar innovative projects, designed and managed by the Aboriginal community as alternatives to imprisonment, to be developed in Victoria for both women and men, with the support of the Department of Justice.

Recommendation 31

That the proposed review of the Aboriginal Community Justice Panel program be undertaken as a matter of priority.

Recommendation 32

That Victoria Police ensures that officers allocated to the position of Police Aboriginal Liaison Officer either have the appropriate cross-cultural training or are provided with such training, and that they have the necessary skills, experience and commitment to undertake the role effectively. Victoria Police should ensure that selection of the officer takes place in consultation with the relevant Aboriginal community.

Recommendation 33

That senior and local police command give priority to an evaluation of the Police Aboriginal Liaison Officer program and to ensuring its future improved effectiveness.

Recommendation 34

That the Victorian Aboriginal Legal Service reviews the workload, job descriptions and work practices of client service officers, with a view to ensuring they are readily contactable and available to clients within a reasonable time.

Recommendation 35

That the Victorian Aboriginal Legal Service considers re-establishing a solicitor's position at its Shepparton office for three days a week with the remaining two days each week spent undertaking circuit work in other regional towns.

Recommendation 36

That the Victorian Aboriginal Legal Service gives urgent consideration to providing enhanced access to solicitors in rural and regional areas, particularly in areas of civil and family law. This may be possible by increasing the time spent by solicitors in country areas (for example, solicitors being available the day before Magistrates' Court mention days), by the use of video-conferencing links where appropriate and available, or by locating more solicitors in regional offices.

Recommendation 37

That the Victorian Government funds an Indigenous women's legal service.

Recommendation 38

That, in offering a legal service to the Aboriginal community, the Victorian Aboriginal Legal Service gives greater priority to the legal needs of Aboriginal women.

Recommendation 39

That the mainstream service providers, namely Victoria Legal Aid and Community Legal Centres, review their methods of service delivery so that they become more accessible to Indigenous women.

Recommendation 40

That the Victorian Aboriginal Legal Service makes greater use of existing video-conferencing technology.

Recommendation 41

That, following consultation with the Aboriginal community in Robinvale and with the Victorian Aboriginal Legal Service, a pilot project be funded by the State Government to set up immediately a video-conferencing facility in Robinvale, possibly located at the Aboriginal Co-operative.

Recommendation 42

That, following a successful evaluation of the pilot project, undertaken within six months of its commencement, the Victorian Government financially supports the Victorian Aboriginal Legal Service to establish video-conferencing links to all rural and regional areas where VALS represents Aboriginal communities.

Chapter 7: Women

Recommendation 43

That the Women's Legal Service extends its casework services to women in rural and regional areas.

Recommendation 44

That consideration be given to a joint approach between the Women's Legal Service and other agencies, to the provision of legal advice and casework services to women in rural and regional areas using a combination of face-to-face and video-conferencing access. In particular, the Committee recommends that the Queensland Women's Justice Network be taken as a model for what is possible.

Recommendation 45

That the Magistrates' Court introduces a generic stamp for intervention order applications that does not identify the court at which the application is made.

Recommendation 46

That the ambit of the operation of the Crimes (Family Violence) Act and section 21A of the Crimes Act be referred for review to the Victorian Parliament Law Reform Committee, or the Victorian Law Reform Commission.

Recommendation 47

That the Department of Justice investigates and reports to the Attorney-General on the feasibility of an early implementation of a program modelled on the coordinated inter-agency approach of the Australian Capital Territory's Family Violence Intervention Program. If such a program can be introduced on a pilot basis, one of the pilot areas should be in rural Victoria.

Recommendation 48

That the Rural Women's Program of the Warrnambool Legal Centre be taken as a useful model for other Community Legal Centres in rural and regional areas to adopt.

Chapter 8: People with Disabilities

Recommendation 49

That the Department of Justice revisits the issue of disabled access and facilities in courts around Victoria and ensures that all existing as well as new courts have appropriate and adequate physical access and safety features.

Recommendation 50

That the Victorian Government conducts a public inquiry into all forms of disability and the criminal justice system in Victoria.

Recommendation 51

That the State Government provides adequate resources to ensure that at every court in Victoria, Magistrates have the opportunity to refer people with a disability to appropriate support services such as those provided by the Disability Coordinator at

Melbourne Magistrates' Court, with an extension of that service through a regular visiting program.

Recommendation 52

That the State Government funds a position in the office of the Disability Coordinator at the Magistrates' Court, to enable the development of the policy, reform and educative functions of the Disability Service.

Recommendation 53

That the Department of Human Services provides recurrent funding to Villamanta to enable it to increase its casework and expand its community education program.

Recommendation 54

That the Victorian Government provides funding to the Disability Discrimination Law Advocacy Service to support its community education programs on disability discrimination.

Recommendation 55

That the State Government provides adequate financial support to disability advocacy services, particularly those in rural and regional Victoria.

Recommendation 56

That the Victorian Government funds Victoria Legal Aid to employ a part-time coordinator to manage VLA's outreach casework services for people with a mental illness.

Recommendation 57

That the Victorian Government funds the project proposed by the Mental Health Legal Centre which would train rural and regional legal practitioners in advising and representing people with a mental illness.

Recommendation 58

That the Department of Human Services funds the Mental Health Legal Centre to provide outreach casework services to Ballarat.

Recommendation 59

That the Department of Human Services and the Department of Justice lead a research project, involving all relevant agencies, into the existing delivery of legal services to people with a mental illness, with a view to developing a more appropriate, holistic and outcome-focussed approach.

Recommendation 60

That, in the design of community access points for information services, access for people with disabilities is a priority, including physical access to the building and provision of specialised technology appropriate for use by people with disabilities.

Chapter 9: Non-English Speaking Background Communities

Recommendation 61

That Magistrates and court staff receive training in cross-cultural awareness and working with interpreters as a priority.

Recommendation 62

That ‘open days’ for migrant communities at Magistrates’ courts throughout Victoria be arranged on a regular basis.

Recommendation 63

That the Department of Justice undertakes a comprehensive study on the use of interpreters in the legal system, focussing on unmet need especially in rural and regional Victoria.

Recommendation 64

That the Law Institute of Victoria develops a continuing legal education program for legal practitioners on cross-cultural awareness, the use of interpreters and how to determine the adequacy of a client's level of English.

Recommendation 65

In recognition of significant evidence of unmet demand, that video-conferencing be used as a primary way of addressing the need for interpreters in rural and regional Victoria.

Recommendation 66

That the Government encourages the uptake of the use of video-conferencing in the provision of interpreter services, by training interpreters in its use, making access points available in rural and regional areas and actively promoting the availability of these facilities to people of non-English speaking background including through the ethnic media.

Recommendation 67

That other providers of legal information to the community actively consider the provision of this information in a range of community languages.

Recommendation 68

That the Department of Justice expands the range of information available in languages other than English, in particular the information on intervention orders.

Recommendation 69

That the Attorney-General raises the issue of the adequacy and accessibility of immigration advice and legal assistance, including the lack of access to interpreting and translating services in rural and regional areas and the effect on justice issues, at the next meeting of the Standing Committee of Attorneys-General.

Chapter 10: Prisoners

Recommendation 70

That Victoria Legal Aid more actively promotes its services to prisoners, and makes written information available at the prison in community languages.

Recommendation 71

That Victoria Legal Aid timetables regular visits to all rural prisons.

Recommendation 72

That Victoria Legal Aid and prison management work together to develop a system for booking appointments with VLA solicitors. The system must be widely known about by prisoners, and providing information about it should be part of prisoner reception activities.

Recommendation 73

That the Department of Justice funds a Prisoners' Community Legal Service attached to, or in association with, an existing community legal centre.

Recommendation 74

That prisoners in rural and regional areas be given access to the Victoria Legal Aid 1800 telephone information and advice number and the VLA Prison Advice Service telephone number.

Recommendation 75

That CORE and the private prison operators develop programs of legal education workshops for prisoners that focus on how the legal system works and where assistance can be gained both inside and outside prison. Introductory workshops should be run on a frequent and regular basis to ensure that all prisoners have access to them.

Recommendation 76

That, where a number of prisoners have similar legal issues, prison authorities undertake to arrange for workshops on these issues (for example, child residence/contact or debt-related matters). This could be done by requesting that a workshop be presented in the prison by Victoria Legal Aid or a local community legal centre.

Recommendation 77

That CORE considers the feasibility of allowing prisoners limited access to email subject to appropriate security restrictions.

Recommendation 78

That the issue of the procedures for Parole Board Hearing and Internal Disciplinary Hearings, including the issue of representation for prisoners, be considered as a topic for future reference to a Parliamentary Committee or the Victorian Law Reform Commission.

Recommendation 79

That Victoria Legal Aid's promotion of its services to prisoners includes information about the advice that can be provided in relation to Parole Board and internal disciplinary hearings.

Recommendation 80

That the Office of the Correctional Services Commissioner, as part of its role in developing and maintaining state-wide policy and standards, establishes a policy in relation to internal disciplinary hearings which provides for the basic principles of natural justice to be accorded to prisoners. This should include providing accurate and sufficiently detailed information about the nature of the allegations or charges against them; adequate notice of the hearing date; and information about the possibility of seeking advice from Victoria Legal Aid or other sources prior to the hearing.

Recommendation 81

That Victoria Legal Aid considers developing a written protocol for the use of video-conferencing technology for contact with prisoners. The protocol should cover issues such as the circumstances in which video-conferencing contact is appropriate and the practical requirements for its use, including the need to ensure confidentiality.

Recommendation 82

That this protocol be made available to both in-house solicitors and private practitioners on the Victoria Legal Aid panel.

Recommendation 83

That access to a space that allows for privacy to conduct interviews with legal practitioners be a minimum requirement afforded to all people in custody.

Recommendation 84

That providing such access be accorded a high priority when resources within prisons are being considered.

Recommendation 85

That the Office for the Correctional Services Commissioner takes up this issue in their standards setting and monitoring activities.

Chapter 11: Children and Young People

Recommendation 86

That a pilot project similar to the Wyndham Youth Justice project be investigated for establishment in a regional centre such as Shepparton. The project must include a multi-disciplinary support team including a social worker and a youth worker and be undertaken with police liaison.

Recommendation 87

That the Department of Justice reviews the current level of service delivery for Children's Court matters in rural and regional areas with a view to improving access to the ancillary support services and providing training for Magistrates in the range of issues that arise in dealing with Children's Court matters.

Recommendation 88

That the Magistrates' Court considers placing a Juvenile Justice Liaison Officer in a large regional centre to improve services to young people in rural and regional areas.

Recommendation 89

That Legalonline expands its links to relevant youth sites including LawStuff.

Recommendation 90

That the State Government provides a funding input to existing youth-related law services provided through the internet.

Recommendation 91

That the Commonwealth Department of Family and Community services considers a further expansion of child contact centres in regional areas of Victoria.

Chapter 12: Tenancy and Consumer Services

Recommendation 92

That the Melbourne Magistrates' Court allows the Tenants Union solicitors access to its video-conferencing facilities for the purpose of representing tenants in rural and regional locations when Victorian Civil and Administrative Tribunal circuit sittings are held at local magistrates' courts that have video-conferencing facilities.

Chapter 13: Private Legal Professional Services

Recommendation 93

That the Victorian Bar promotes the use of video-conference technology by barristers for client conferences, particularly in rural and regional Victoria.

Recommendation 94

That the Victorian Bar works with the Law Institute of Victoria to develop protocols between solicitors and barristers in the use of technology with a view to minimising the cost of legal representation to rural and regional consumers.

Recommendation 95

That the Law Institute of Victoria takes a leadership role in the application of information technology in best practice management and service delivery particularly in meeting the needs of rural and regional practitioners.

Recommendation 96

That the Law Institute trains legal practitioners in new technologies in best practice management and service delivery, including its members in rural and regional Victoria.

Recommendation 97

That the Law Institute works with Country Law Associations to develop a framework for providing continuing legal education online, by video-conferencing or by other distance education methods, to rural and regional legal practitioners.

Recommendation 98

That government authorities and local councils located in rural and regional areas develop strategies to ensure that their legal work is, where appropriate, carried out by local practitioners.

Recommendation 99

That the Victorian Government, in conjunction with the country law associations through LIV and universities, researches ways to promote working in regional and rural practices to law graduates, including education and placements at the undergraduate level and initiatives such as scholarships for rural students.

Recommendation 100

That the Victorian Government gives priority to the installation, in consultation with local communities, of video-conferencing facilities in rural and regional locations.

Chapter 14: Pro Bono Services

Recommendation 101

That the Law Institute of Victoria and the Bar Council develop opportunities for rural and regional legal practitioners to access specialised advice to assist them in undertaking pro bono work.

Recommendation 102

That the Law Institute of Victoria and the Country Law Associations consult with their members on the innovative use of volunteer legal practitioners, focussing on rural and regional areas.

Recommendation 103

That the Law Institute of Victoria in consultation with the Country Law Associations develops an electronic bulletin board for legal practitioners to publicise pro bono work.

Recommendation 104

That Legalonline includes a list of pro bono services available, and links to websites where appropriate.

Recommendation 105

That the State Government, in conjunction with the Law Institute of Victoria and the country law associations, sets up a pilot scheme in one regional location using innovative models of pro bono service delivery such as the utilisation of retired lawyers to provide pro bono legal service.

Recommendation 106

That the Law Institute of Victoria, through its Country Law Associations, encourages the recording of pro bono activities carried out by rural practitioners, and undertakes collation of findings and research to determine the nature of such work, with a view to establishing suggested guidelines for targeted pro bono work within rural communities.

Recommendation 107

That the Law Institute of Victoria investigates the setting up of a scheme for institutional matching of law firms and public interest organisations in rural and regional Victoria.

Chapter 15: The Magistrates' Court in Rural and Regional Victoria

Recommendation 108

That there be no delay in the construction of the new Warrnambool Court.

Recommendation 109

That the Magistrates' Court and Coronial Services investigate the causes of the delay in receiving autopsy reports consequent on the transfer of all Geelong's autopsies to Melbourne, and take the necessary steps to expedite the turnaround time.

Recommendation 110

That the Department of Justice examine the need to reopen the Kyabram Court and report to the Attorney-General within three months.

Recommendation 111

That the Magistrates' Court revises its summons form to include words to the following effect: 'If you are pleading guilty and you wish to have your case heard at the court nearest your place of residence or employment, contact the court registrar'.

Recommendation 112

That the Department of Justice investigates the construction of an easily accessible court complex in the Latrobe Valley that incorporates the Magistrates', County and Supreme Courts in the region.

Recommendation 113

That the Department investigates the availability of appropriate court facilities in Lakes Entrance.

Recommendation 114

That, in designing and building new court houses, the Department of Justice examines the needs of the legal profession and court support services as well as investigates, in consultation with the local community, the multiple purposes that the complex could serve for the people of the area.

Recommendation 115

That the Department of Justice reviews the adequacy of soundproofing in rural and regional courthouses, and upgrades sound-proofing in interview rooms on a prioritised basis where there is no likelihood of the immediate provision of a new court complex.

Recommendation 116

That the Magistrates' Court of Victoria undertakes a pilot program of the provision of outreach registrar services to rural and remote communities.

Recommendation 117

That the Department of Justice and the Magistrates' Court investigate the expansion of the role of court registrars.

Recommendation 118

That the Department of Justice prioritises the establishment of video-conferencing facilities in all Magistrates' Courts across rural and regional Victoria.

Recommendation 119

That the Government provides extra resources to expand Court Network services in regional and rural Victoria.

Recommendation 120

That the Government enacts legislation to provide a framework for the diversion program and in particular to allow for diversion options such as further education, training, job-skilling and job placement.

Recommendation 121

That the State Government establishes an Aboriginal court in a regional location as a matter of priority.

Chapter 16: Circuit Courts

Recommendation 122

That the County Court develops a system of identifying cases that involve child victims of crime as witnesses and expediting their hearings in rural and regional circuit locations.

Recommendation 123

That the Department of Justice equips all courts with county court circuits in regional and rural Victoria with video-conferencing facilities.

Recommendation 124

That the Victorian Civil and Administrative Tribunal recognises the role of country registrars in providing information to the community and seeks to ensure that country registrars are fully trained in understanding VCAT procedures and have access to information about cases in their region.

Chapter 17: Alternative Dispute Resolution

Recommendation 125

That the Dispute Settlement Centre of Victoria and other alternative dispute resolution services be more effectively promoted on the government website Legalonline.

LIST OF ABBREVIATIONS

AARP	Association of American Retired People
ACA	Australian Communications Authority
ACCC	Australian Competition and Consumer Commission
ACT	Australian Capital Territory
ADR	Alternative Dispute Resolution
ADSL	Asymmetric Digital Subscriber Line
AGPS	Australian Government Publishing Service
AIC	Australian Institute of Criminology
AJIA	Australian Institute of Judicial Administration
ALAO	Australian Legal Aid Office
ALR	Australian Law Reports
ALRC	Australian Law Reform Commission
AustLII	Australasian Legal Information Institute
CAN	Customer Access Network
CBD	Central Business District
CD	Compact Disc
CDEP	Community Development Employment Program
CEO	Chief Executive Officer
CJEP	Criminal Justice Enhancement Program
CJP	Community Justice Panel
CLA	Country Law Association
CLC	Community Legal Centre
CLE	Community Legal Education
CLMS	Case and List Management System
CPLG	Country Public Libraries Group
Cr	Councillor
CREDIT	Court Referral and Evaluation for Drug Intervention and Treatment
CSO	Client Service Officer
Cwlth	Commonwealth
DDLAS	Disability Discrimination Law Advocacy Service
DEET	Department of Employment, Education and Training
DEWRSB	Department of Employment, Workplace Relations and Small Business
FCLC	Federation of Community Legal Centres
FHA	Department of Human Services
DSCV	Dispute Settlement Centre of Victoria
DX	Document Exchange
EFT	Effective Full-time
EOCV	Equal Opportunity Commission Victoria
FACS	Family and Community Services

FVIP	Family Violence Intervention Program
GPO	General Post Office
HDSL	High-Speed Digital Subscriber Line
IAG	Implementation Advisory Group
ISDN	Integrated Services Digital Network
IT	Information Technology
IWLRG	Indigenous Women's Legal Resource Group
LACV	Legal Aid Commission of Victoria
LAQ	Legal Aid Queensland
LEADR	Lawyers Engaged in Alternative Dispute Resolution
LGA	Local Government Area
LIAC	Legal Information Access Centre
LIV	Law Institute of Victoria
MHLC	Mental Health Legal Centre
mil	million
MTIS	Multilingual Telephone Information Service
MWCC	Metropolitan Women's Correctional Centre
NAATI	National Accreditation Authority for Translators and Interpreters
NADRAC	National Alternative Dispute Resolution Advisory Council
NATSEM	National Centre for Social and Economic Modelling
NCYLC	National Children's and Youth Law Centre
NESB	Non-English Speaking Background
NSWLRC	New South Wales Law Reform Commission
NTN	Networking the Nation
OES	Order Entry System
OLAP	Online Legal Access Project
OPA	Office of the Public Advocate
PC	Personal Computer
PDR	Primary Dispute Resolution
PERIN	Penalty Enforcement by Registration of Infringement Notices
PILCH	Public Interest Law Clearing House
RAMUS	Rural Australia Medical Undergraduate Scholarship
RPA	Recognised Professional Association
SCAG	Standing Committee of Attorneys-General
SGF	Solicitors Guarantee Fund
TIS	Translating and Interpreting Service
TM	Tribunals Management
UBC	University of British Columbia
v	versus
VALS	Victorian Aboriginal Legal Service
VC	Video-Conferencing
VCAT	Victorian Civil and Administrative Tribunal
VGRS	Victorian Government Reporting Service
VITS	Victorian Interpreting and Translating Service
VLA	Victoria Legal Aid
VOLS	Volunteers of Legal Service
WAN	Wide Area Network
WJN	Women's Justice Network
WLS	Women's Legal Service

WLSV	Women's Legal Service Victoria
WRISC	Women's Resource Information and Support Centre

EXECUTIVE SUMMARY

The Committee found that there was scope for innovation and improvement in legal service delivery in rural and regional Victoria. While acknowledging the many excellent efforts of existing services, many people in regional and rural Victoria do not have the same level of access as those in Melbourne. This is particularly so for Aboriginal Victorians.

The Committee, in its recommendations, has placed a specific focus on new technology which has a significant role to play in making legal services accessible to country Victorians and extending the reach of specialist legal services in rural and regional Victoria.

Legal Information

The Committee's recommendations focus on a coordinated approach to the delivery of legal information and emphasise the importance of flexibility in modes of delivery. In providing access to the range of legal information available, the recommendations are that **core information is provided in the range of formats, printed and electronic, that render them accessible to all Victorians.**

Where legal information is provided by telephone, the Committee's recommendations focus on **enhancing the access that rural and regional Victorians enjoy to telephone information services to overcome the effects of distance in the provision of legal information.**

In the electronic provision of information, the Committee's recommendations are focussed particularly on the provision of information by peak bodies. The Committee recommends that **Legalonline, the government's peak provider of legal information, turn its attention to the expansion, upgrading and updating of its functions and that it provides a core section of its online information in community languages.**

Fitzroy Legal Service is a peak provider of legal information in the non-government sector, and the Committee believes that **the State government should fund Fitzroy Legal Service to produce *The Law Handbook* in online format.**

Courts and Tribunals

The situation in rural and regional Victoria requires initiatives to ensure that country Victorians enjoy the same level of legal service as their city counterparts. A key initiative in **infrastructure** change is the focus on **standardisation and networking of the electronic administration of the court system**, to ensure a best practice legal system across the State. In addition, those courts that sit regularly in regional and rural Victoria, namely **the Magistrates and County Courts, should extend their video-conferencing capabilities in rural and regional areas.**

The Committee was very concerned at the lengthy delays between the reporting of offences of sexual assault against children and child witnesses being called to court, and recommends **that cases involving child witnesses be given priority in County Court case listings.** In Children's Court matters there is a need for **improved access to the ancillary support services available at the court**, and for the **provision of training for Magistrates in the range of issues that arise in dealing with Children's Court matters.** In ensuring the adequacy of court processes for young people in rural and regional areas, **the Magistrates' Court should consider placing a Juvenile Justice Liaison Officer in a large regional centre.**

The Committee sees the diversion program run by the Magistrates Court as an important contribution to justice, and recommends that **the Government enacts legislation to provide a framework for the diversion program** and to allow its expansion into areas such as job skilling and job placement.

The Committee urges innovation in the courts in response to the over-representation of Aboriginal people in the system. The Committee recommends that **an Aboriginal court be established as matter of priority.**

In its consideration of court coverage across Victoria, the Committee saw the need for **a review of the current provision of court services in Kyabram, Lakes Entrance and the Latrobe Valley.**

The Committee believes that the role of registrars in the Magistrates' Court warrants consideration, and that the reach of court services could be extended by **expanding**

the role of registrars in regional courts through the registrar outreach services from courts in regional towns.

Assistance with Legal Services for Rural and Regional Victorians

The Committee sees the provision of publicly funded legal assistance to rural and regional Victorians as in need of extension. **Existing VLA services providing telephone information should be advertised more widely, and telephone services providing advice should be extended on a pilot project basis to two rural areas.** The Committee further sees the need for **an extensive video-conferencing link-up in the five Department of Human Services regions, so that clients outside regional centres can be linked to VLA services and regional CLCs, Melbourne-based specialist CLCs and members of the Victorian Bar and the Law Institute of Victoria.**

The Committee also sees the need for more face-to-face services in the Hume region, and recommends the **establishment of a Community Legal Centre or a VLA regional office in Shepparton.**

The Committee recognises that some CLCs in country areas need additional resources to maintain their services. CLCs require **a minimum of three full-time staff and their operational budgets all need to be equivalent to those of the new centres in regional areas.** In addition, the Committee recommends a range of measures to assist in attracting and retaining legally qualified staff to regional CLCs, including **the introduction of a rural loading for regional CLCs, financial incentives for staff to make employment at a regional CLC more attractive, and a formal program of professional support for staff in rural and regional CLCs.** Sufficient resourcing and support for regional CLCs would assist them in providing **rural outreach.**

Specialist Legal Services

Specialist legal centres perform a valuable role in representing people with particular requirements and particular disadvantages in their dealings with the legal system. In addition, they do important work in their advocacy functions and law reform activities in these areas. The Committee found that specialist casework services were under-supplied in rural and regional areas. The development of a video conference network in rural and regional Victoria will expand access to specialist legal services.

Disability

Specialist disability services are under-resourced. The Committee therefore recommends **additional funding for the Mental Health Legal Centre, Villamanta Legal Service and the Disability Discrimination Legal Advocacy Service**, all of which are specific providers for people with a disability. **Victoria Legal Aid should also receive additional funding to enable it to provide rural and regional casework for people with a mental illness.**

The Committee recommends that **systemic difficulties in the justice system in its treatment of people with a disability be investigated by a public inquiry.** The Committee notes that these difficulties require more policy work in the field, and recommends in the first instance that the **office of the Disability Coordinator at the Melbourne Magistrates' Court receives funding for an additional position to enable it to further develop its policy and law reform functions.**

Women

The issue which was by far the most commonly raised with the Committee in relation to legal services for women was domestic violence. The Committee was impressed with the **interagency, coordinated approach of the ACT Family Violence Intervention Program, and recommends that a similar model be evaluated for implementation in Victoria.** Such a coordinated approach, involving appropriate agencies, could be applied to domestic violence in Aboriginal communities where the Committee heard of the need for flexible responses that take account of cultural difference.

A recommendation that can be applied immediately is **the introduction of a generic stamp for intervention order applications which does not identify the court at which the application is made,** thereby attaining a greater level of protection for women making such applications. The Committee has already approached the Attorney-General on this matter.

Victorians of Non-English Speaking Background

Given the settlement patterns of migrant communities in rural and regional Victoria, ethno-specific legal services often cannot be provided economically and speedily. **The Committee believes that video-conferencing technology can be applied very productively to ethno-specific service provision, and that access to interpreter**

services and legal information could be enhanced for ethnic communities in rural and regional areas through the use of technology.

Prisoners

The Committee has recommended a range of measures designed to ensure **the expansion of legal services and legal information available to prisoners in rural and regional prisons**, both through face-to-face and technologically assisted means. These measures include the **establishment of a Prisoners Legal Service attached to an existing community legal centre**. The Committee received evidence of **current procedures in internal disciplinary hearings**, and recommends the **establishment of best practice guidelines for ensuring natural justice in such proceedings**. The Committee also sees the need for an **inquiry by a parliamentary committee or by the Victorian Law Reform Commission on Parole Board Hearings and Internal Disciplinary Hearings**, which includes an examination of the issue of representation for prisoners.

Private Legal Profession

The Committee believes that **the private legal profession should fully integrate the use of information technology into systems for practice management and client contact**, thereby improving rural and regional clients' access to their services and reducing overheads for those clients. In addition, **the legal profession and government should consider ways of attracting law graduates to rural and regional practice and of retaining legal practitioners in rural and regional areas.**

CHAPTER 1 - INTRODUCTION

Background to the Inquiry

The Committee received two references from Parliament. From the Legislative Assembly, the Committee received a reference asking it to inquire into legal services in regional and rural Victoria. From the Legislative Council, the Committee received a reference asking it to inquire into court-based services in rural and regional Victoria. The overlap in the two references prompted the Committee to combine the references into the one inquiry, of which this is the report.

Parliament referred these inquiries to the Law Reform Committee in recognition of the need for a detailed examination of country Victorians' current level of access to legal and court services, given the absence of any current substantial investigation of this matter.

In an environment in which the nature of service provision itself is changing, the important goal in delivery of legal and court services is maintaining equity and access for all Victorians. These inquiries emerged in the context of a decline in service provision to some areas of rural and regional Victoria, and a perception that this was set to continue. In this context, it was clear that there was a need to establish new priorities for service delivery for rural and regional Victorians in an effort to close the gap between them and their metropolitan counterparts.

Scope of the Inquiry

As the Committee's reference states, the scope of the inquiry was to investigate the accessibility and adequacy of legal and court services in rural and regional Victoria, and to examine appropriate solutions where the Committee identified a lack in service delivery.

At times this inquiry necessitated considering the legal system as a whole, and examining the ways in which the whole functions in its responses to its rural and

regional constituents. At other times, it necessitated concentrating on specific service providers to rural and regional Victoria, and in others still on regions where particular problems emerged.

During the course of its investigations the Committee convened public hearings throughout rural and regional Victoria, as well as in Melbourne. Through these hearings and in written submissions the Committee heard from the range of people involved in legal service delivery in country Victoria, including people who access these services as consumers.

The Committee's Approach

The Committee determined that it was of primary importance to understand the situation in rural and regional Victoria in the broadest terms. Although there are clearly lifestyle benefits to living in country Victoria, in its examination of key demographic data the Committee found that rural and regional Victorians fare less well than their metropolitan counterparts on some key indices of well-being, particularly in employment, income and education. This differential, combined with a diminution of services in some areas, leads to a perception that rural and regional Victoria is not a priority in government policy or service delivery.

In the course of public hearings held throughout country Victoria, the Committee heard from country Victorians themselves of their sense of disconnection from the city. The Committee recognises that this sense of disconnection is good neither for country Victoria nor for Victoria as a whole. Finding appropriate responses to this problem became a key factor in establishing the Committee's approach to its inquiry. What measures could the Committee recommend to develop a more cohesive and connected society, given the myriad issues involved in service delivery to rural and regional areas?

The Committee sees as its responsibility addressing the question of how first-rate services can be delivered to the country. Partly the answer lies in building the best possible justice system for all Victorians, and ensuring adequate funding to metropolitan providers so that they can roll out their services to the regions. It also involves ensuring that the services that are provided to the country are tailored to meet the needs of rural and regional Victorians, rather than automatically being replicas of the metropolitan services.

In asking itself and others what the best possible justice system looks like, the Committee identified three characteristics: speed, cost and credibility. All three are indispensable qualities of a best practice justice system. Where the outcome of the legal process is not seen as credible, the fact that it was delivered quickly or cost-effectively is of little value. In this report the Committee has benchmarked practices within legal service delivery that have the capacity to produce this three-pronged outcome.

The use of technology is an integral part of this benchmarking process. While it is clear that information technology is not the sole solution to a large and complex set of circumstances, it can enhance delivery of information and services, particularly where distance would otherwise be a prohibitive factor. The Committee believes that appropriate use of information technology (IT) could lead to a diminution of the sense of disconnection pervading rural and regional Victoria.

The Committee is of the view that best practice models of service delivery involve a coordinated approach. Currently delivery of services is led too often by the structures and processes of individual agencies. The emphasis needs to shift from this agency-led approach to one that places the person at the very centre of the process.

A coordinated approach to legal service delivery is one that has as its goal the seamless use of the system by the person who accesses it, at whichever point that person does so. The end-users' experiences should be that the connections between providers are communicated to them in a straightforward manner, and that the system features ease of access, so that information is obtained readily and contact with appropriate people is facilitated. Then, users should experience ease of interaction, so that services are experienced as efficient, effective and of a high standard.

The Committee believes that this seamless interaction with the system should be accessible to all Victorians. Where people do not have sufficient resources to meet market prices for services, other mechanisms should be in place, and accessed with the same efficiency and delivered with the same effectiveness. Where rural and regional Victorians are concerned, it is crucial that methods are adopted to overcome the effects of distance, and the application of technology is an essential part of this process.

This coordinated approach necessitates flexible service delivery, where the mode of delivery is appropriate to the person in receipt. Government must be at the forefront of implementing such flexible service delivery, continually developing ways to reach the

populace in need of the information and services, and pioneering the intra-agency and inter-departmental infrastructures that must be in place for this to occur.

There is a need for a similar commitment to flexibility in the private profession as well. Clients in rural and regional Victoria would benefit from more attention being given by the profession's peak bodies to the question of how the private profession can represent their clients better given the distance from Melbourne. Again, the individual must be placed at the centre of service delivery.

An essential component in implementing a best practice coordinated approach with technology at its centre is the provision of appropriate training and infrastructure. If people are asked to adopt new technologies in accessing information and services provided to the public, they need to be assisted in doing so. While the Committee sees IT as an integral part of this approach, the overarching idea is that the range of existing end-users receives appropriate services, including those people who are without the skills, opportunity or desire to obtain training that would enable them to use services provided through IT. An integral part of a coordinated approach, then, is to maintain high standards of information and service delivery in a range of formats. How achievable is such a vision?

The Committee recognises the funding constraints that apply in all areas of information and service delivery, and supports efficiency gains by streamlining services. It is clear in this context that more efficient methods of communication will take precedence to some extent, particularly given their cost-effectiveness. In rural and regional Victoria, many people are willing, able and in some cases very enthusiastic to use new technologies to achieve these gains. The Committee believes, however, that alternative services in core areas should be available for those who do not embrace these methods.

Most importantly, the Committee believes that government must accept that people will always need face-to-face services, whether they are technologically literate or not. The need for direct service delivery will not expire with the introduction of new technologies, and new technologies should not be the new poor man's service. Provision of technology must go hand in hand with the extension of face-to-face services where required. Specialist legal services need to be enabled and funded to provide follow-up services to technologically provided first-base information and advice.

Several of the Committee's recommendations in areas fundamental to the provision of legal information and services in rural and regional Victoria have funding

implications. The Committee has attempted to offset this expenditure by making savings in other areas. In recommending the implementation of technology in the streamlining of service delivery, the Committee urges the Government to allocate additional resources for those who cannot avail themselves of the services delivered in this way.

In its recommendations, the Committee has aimed to harness existing infrastructure in the development of delivery options to rural and regional Victorians. In the delivery of legal information, for example, the Committee has recommended that people trained in electronic information management and retrieval are available to mediate between the person and the information they seek, and that these people are employed in places where the public can or already does gain access easily.

The Committee believes that this principle should underlie delivery of legal services as well. Electronic delivery of services should be resourced sufficiently to enable people to use the technology easily. The Government should respond quickly to evaluations of IT projects in legal service provision, such as those recommended in this report, and implement key evaluation findings designed to make ongoing projects run efficiently. This commitment on the part of government will enable the uptake of technological solutions.

The Current Situation of Legal Service Delivery in Rural and Regional Victoria

The Committee views the administration of the courts as a key area in delivering this streamlined service to the community. Benchmarks in court administration have been established elsewhere in Australia, and these could be applied by Victorian courts in implementing a system that is built on technological advance and that provides a structure for seamless interaction within the court. The Committee sees the current system of administration in the courts as missing such a coordinated approach and lacking processes for flexible delivery. The current system is hampered by its separatist, court-specific approach, an approach that has produced the current situation where four different kinds of case-management systems are operating within the one State court administration. A system of seamless internal communication and interaction would provide a best practice model of delivery for the services of the courts.

There are aspects of court procedures where this flexible approach is in place to some degree. The Committee notes, however, that that flexibility does not filter through the

system. The Committee would like to see the courts streamline their procedures all the way down, so that everyone who comes before the court, in the range of capacities in which they do so, is not unduly inconvenienced by the experience. The Committee heard that people in general, and rural and regional Victorians in particular, find the court an intimidating place, and the Committee believes, once again, that the person should be placed at the centre of legal administrative practices and therefore also of the process of administrative reform.

The private profession is by far the most widespread provider of legal services in rural and regional Victoria. Many people in rural and regional Victoria will have their first contact with the justice system through their local solicitor, who is often an important person in the life and economy of the town. Through country law associations, solicitors in particular areas keep in touch with each other, and the associations form a loose network of groups of solicitors across rural and regional Victoria. The Committee is keen to encourage the peak body for solicitors in Victoria to use available infrastructures to develop further the services they offer. In the same way, the Committee encourages the peak body for barristers to continue its adoption of technology for the benefit of its members, and encourages it to examine the innovative delivery of barristers' services to rural and regional clients.

Victoria Legal Aid (VLA) and Community Legal Centres (CLCs) both have key roles in rural and regional Victoria. VLA is the largest provider of legal services to disadvantaged people in rural and regional Victoria, with much of the work being undertaken by private practitioners. Particular communities identified the need for more VLA services. The Committee sees VLA as an important service for those people needing to access the legal system but who have insufficient resources to do so unaided, and VLA itself wants to increase its capability for rural outreach. The Committee therefore wants to enable VLA to expand into under-serviced areas in rural and regional Victoria, and has explored innovative ways in which this process can be streamlined by way of the introduction of new technologically driven services. In this, the Committee is rationalising the use of resources, but insists that it is vital that evaluation of these projects be undertaken before ongoing funding is provided.

The Committee believes that CLCs are a cost-effective way of delivering specific kinds of legal services to people who might not otherwise be able to access legal advice and who therefore may be unable to achieve just outcomes. The opening of CLCs at Wodonga, Mildura and Morwell has put more infrastructure in rural and regional Victoria, and the Committee has made recommendations that build on this

infrastructure. As CLCs were well received in many of the towns the Committee visited, this seems to be a very effective way of extending legal services.

The Need for Innovative Responses

The Committee also turned its attention to those situations where existing frameworks of information and service delivery are inadequate in dealing with the situation on the ground. There were two key areas where this occurred. Firstly, the situation of the Aboriginal communities in the country. The Committee believes that specific interventions need to be made for the Aboriginal community, and in this belief endorses the findings of the Victorian Aboriginal Justice Agreement. The Committee recognises the Agreement as a significant contribution to policy in this area.

In the course of its inquiry, the Committee found that the Aboriginal community fared markedly less well on all indices of well-being than their counterparts, both metropolitan and rural and regional. In relation to justice for Aboriginal people in Victoria, the Committee has focussed on the current operation of legal service delivery in the context of these indices. Its recommendations pertain to adopting a coordinated approach that includes specific provisions for enabling members of Aboriginal communities to attain the same life standards as other members of the community.

In its investigations, the Committee examined the operation of the Nunga Court in South Australia, and was impressed with the ways in which that court has opened the justice system to achieving outcomes that enfranchise the South Australian Aboriginal community. The Committee endorses this approach to justice for Aboriginal people in Victoria, and notes that similar initiatives are being developed in Victoria with Shepparton likely to be the first location trialed.

The issue of disability and the justice system also struck the Committee as one in which existing frameworks are inadequate. Many people in the field alerted the Committee to difficulties at both systemic and individual levels. There was evidence from a range of experts on the need for research into disability and the justice system, particularly with regard to intellectual disability and mental illness. In making a recommendation for research in this area, the Committee stresses the need for an examination of existing frameworks of legal service delivery and their appropriateness for people with a disability.

The Committee was also concerned about current levels of resourcing in that sector. Many people attested to the difficulty experienced by people with a mental illness in

obtaining legal representation, particularly in rural and regional areas. These problems are occurring in a sector that has experienced substantial decreases in funding in key areas in the last few years.

In recommending an examination of existing frameworks in such key areas of need, the Committee refers to its model of flexible delivery within an overall coordinated approach. The Committee believes that maintaining flexibility as a central aim of the legal process will ensure that it remains responsive to the needs of all people who come into contact with it, enabling access to the justice system for all Victorians.

CHAPTER 2 - REGIONAL AND RURAL VICTORIA – CONTEXT

The Committee travelled widely across regional and rural Victoria to take evidence on the accessibility and adequacy of legal services, and received evidence from a broad cross-section of the community including court officials, senior and junior legal practitioners, community workers, police and the public. The regional and rural consultations not only highlighted the diversity of experience of legal services but also the variations between regions based on history, settlement patterns and economic and social developments.

While the terms of reference require the Committee to look at court circuits and locations in light of population shifts, a broader demographic analysis is required to obtain a picture not only of regional variation but of those features that are common to the communities outside metropolitan Melbourne. This understanding of the diverse and particular needs of regional and rural populations is necessary for the appropriate targeting of service delivery.

The first section of the chapter outlines the Committee's decisions regarding the delineation of boundaries in rural and regional Victoria, and analyses the demographic data pertaining to these boundaries. In undertaking such an analysis, the chapter examines population distribution across regional and rural Victoria and looks at population projections. It also examines a number of indicators, including age, education, employment and migration, that are likely to impact upon the sorts of services needed in country Victoria both presently and in the future. Separate attention is given to the demographic profile of Victoria's Indigenous population, as in key areas it differs markedly from the profile of the general population, and this has consequences for the analysis of the Indigenous community's legal information and service needs. Levels of computer usage and access amongst Victorians living in rural areas is also profiled in order to provide a background against which to assess the utility of technology-based models of legal service and information provision.

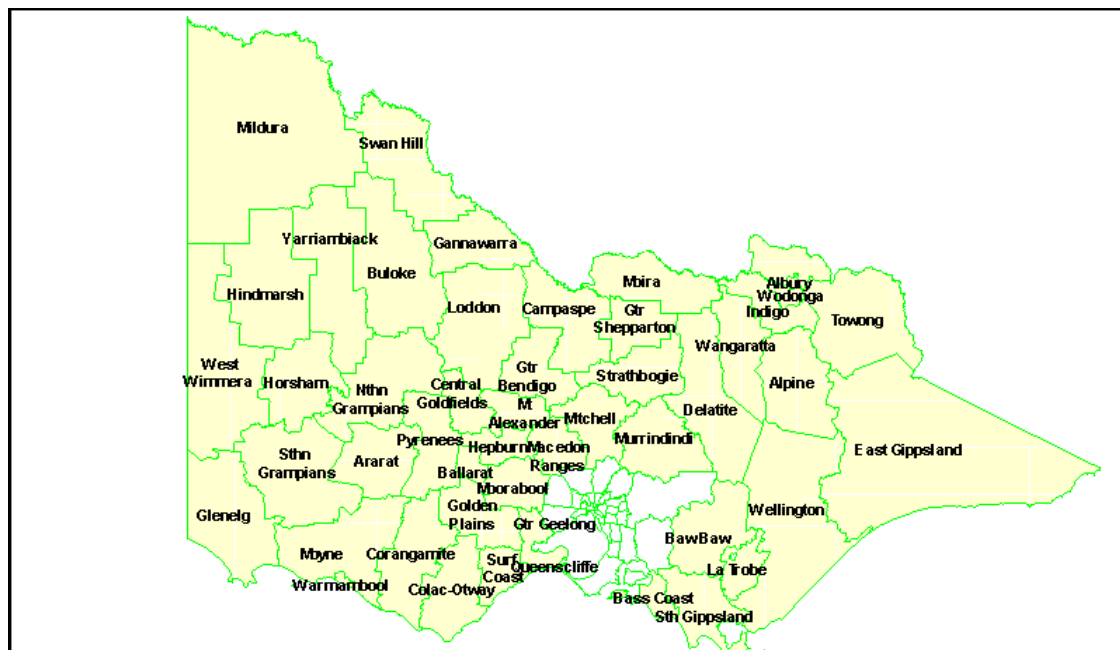
The second section of the chapter introduces the key themes regarding infrastructure in rural and regional Victoria: transport, telecommunications and support services. It

outlines the particular issues for the delivery of legal services highlighted by changes in infrastructure in rural and regional Victoria, by differences in infrastructure between metropolitan and country Victoria, and by the particular infrastructure requirements of regional and rural Victoria.

Regional and Rural Victoria

The geographical size and population base of regional and rural Victoria varies depending on which divisions are used. Different agencies delineate the boundaries and composition of regional and rural Victoria in different ways. Some agencies use local government areas (LGAs) as the determinants of areas in Victoria, while others use the Department of Human Services Divisions or indeed, like courts, determine their own boundaries. The Committee found the latter sources inadequate for its purposes in most cases: the Department of Human Services Divisions are only five in number, making it difficult to determine and analyse differences within such broad areas; and the divisions used by the courts are not used commonly outside the legal system itself. The Committee's view is that these varied definitions of regions can be confusing and do not promote consistent statistical collection, which is vital in planning and delivering services. As LGAs represent the most commonly used divisions for statistical collection and for service delivery, where possible the Committee will be utilising LGAs to analyse statistical information, and where information is not provided according to these areas this information will be used with caution. The map below shows all LGAs representing rural and regional areas in Victoria, and also shows where they meet the boundary with metropolitan Melbourne. Rural and regional areas are all those beyond this boundary of metropolitan Melbourne.

REGIONAL VICTORIA – LOCAL GOVERNMENT AREAS



Map 1

Source: Department of Infrastructure

The varied definitions of regional and rural Victoria also produce variations in the statistics for the population and composition of regional and rural Victoria. For instance, the Federal Attorney-General’s Department uses a figure of 35 per cent of the Victorian population living in regional and rural areas.¹ However, Australian Bureau of Statistics (ABS) figures, based on statistical divisions as well as LGAs, show that in mid-1998, 28 per cent of Victorians lived in regional and rural Victoria.²

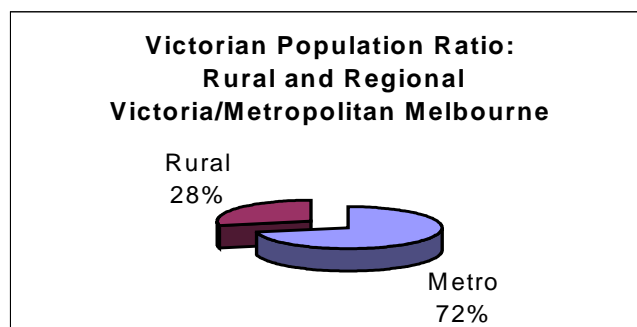


Figure 1

Source: Data from Birrell et al, p. 7.

To promote consistency, the Committee will utilise ABS data from the 1996 census (updated where possible) as well as ABS’s division of metropolitan and rural and

¹ Attorney-General’s Department (Commonwealth), *Scoping Study: The Scope for Delivery of Legal Services to Regional, Rural and Remote Australia via Telecommunications Channels*, <http://www.law.gov.au/agh/commaff/flad/lawbytele/welcome.html>, p. 9.

² B Birrell, J Dibden and J Wainer, *Regional Victoria: Why the Bush is Hurting*, Centre for Population and Urban Research, Monash University, 2000, p. 7.

regional, for the purposes of this report. This division between metropolitan and rural Victoria is represented on the map above and also forms the basis for the definition of regional and rural Victoria used by the Department of Infrastructure.³ Often it is sufficient to regard rural and regional as distinct from metropolitan Melbourne. It is important to note, however, that the distinction between ‘rural’ and ‘regional’ can be significant, and that specific needs and problems relating to obtaining legal services and information also apply in each case.

Population of Regional and Rural Victoria

According to Birrell et al, the demographic pattern in Victoria has changed dramatically since the early 1990s. In the period between 1986 and 1991 regional Victoria grew at the same rate as Melbourne, at approximately 6 per cent. Since then Melbourne’s rate of population growth has been considerably larger than in regional Victoria with a growth rate of almost double the level of the early 1990s. While Melbourne’s population has increased by some 50,000 people per annum in 1996–97 and 1997–98, regional Victoria has grown by only 6,500 people per annum in the same period. Large regional centres that were growing at a faster rate than Melbourne prior to 1991, have fallen behind Melbourne. The turnaround is even starker in smaller regional centres and rural areas, which have experienced a net loss of people since 1991.⁴

In their analysis of this turnaround, Birrell et al identify its three major components, the first of which is that losses from Melbourne to regional Victoria have diminished. An important factor here is that a ‘serious outflow’ of young people from regional Victoria continues. While migration from regional areas to urban centres is a fact across rural Australia, the number of young people leaving regional Victoria (largely for metropolitan Melbourne) has increased substantially since 1991.⁵

A second component in this demographic change is the turnaround, in the last few years, in the number of people leaving Victoria for other States. Prior to this, both Melbourne and regional Victoria experienced large net losses to other States.⁶ The economic downturn of the early 1990s particularly affected the population growth of

³ This Chapter relies on ABS data, Centrelink data and Department of Infrastructure data.

⁴ B Birrell, J Dibden and J Wainer, *Regional Victoria: Why the Bush is Hurting*, Centre for Population and Urban Research, Monash University, 2000, p. 11–15.

⁵ *ibid* p. 13

⁶ There has been some recent volatility in these figures, with 1998 representing the first recorded gain in Victoria’s net interstate migration — the net gain to Victoria was 1,206 persons (see Department of Infrastructure, *Victoria in Future: Regional Victoria in Future —the Victorian Government’s Population Projections 1996–2021*, Department of Infrastructure, Melbourne, 2000).

regional Victoria, with larger numbers of people seeking work interstate and fewer people leaving Melbourne.⁷

Finally, Melbourne attracts a far greater number than regional Victoria of the State's overseas migration gains. Non-English speaking background communities and their services tend to be concentrated in Sydney and Melbourne. Regional Victoria has had difficulty attracting recent migrants, with Melbourne gaining 92 per cent of overseas migrants to Victoria in the period 1991–96.⁸ The table below represents the 1996 population figures in rural LGAs.

Current employment patterns may influence population change. While growth in employment in particular locations does not necessarily lead to population growth, nevertheless it can be a key element in attracting people to an area. Later in the chapter we look at regional variation in employment growth in rural and regional Victoria (see page 26). Further information on the relation between employment growth and population shifts in rural and regional Victoria could be obtained by comparing 1996 Census data with data obtained from the up-coming Census, and comparing this with employment data for the same areas. This would illuminate the relationship between employment growth and population change in rural and regional Victoria.

⁷ Department of Infrastructure, *Victoria in Future: Regional Victoria in Future — the Victorian Government's Population Projections 1996–2021*, Department of Infrastructure, Melbourne, 2000.

⁸ Birrell et al, *Regional Victoria: Why the Bush is Hurting*, Centre for Population and Urban Research, Monash University, 2000, p. 15.

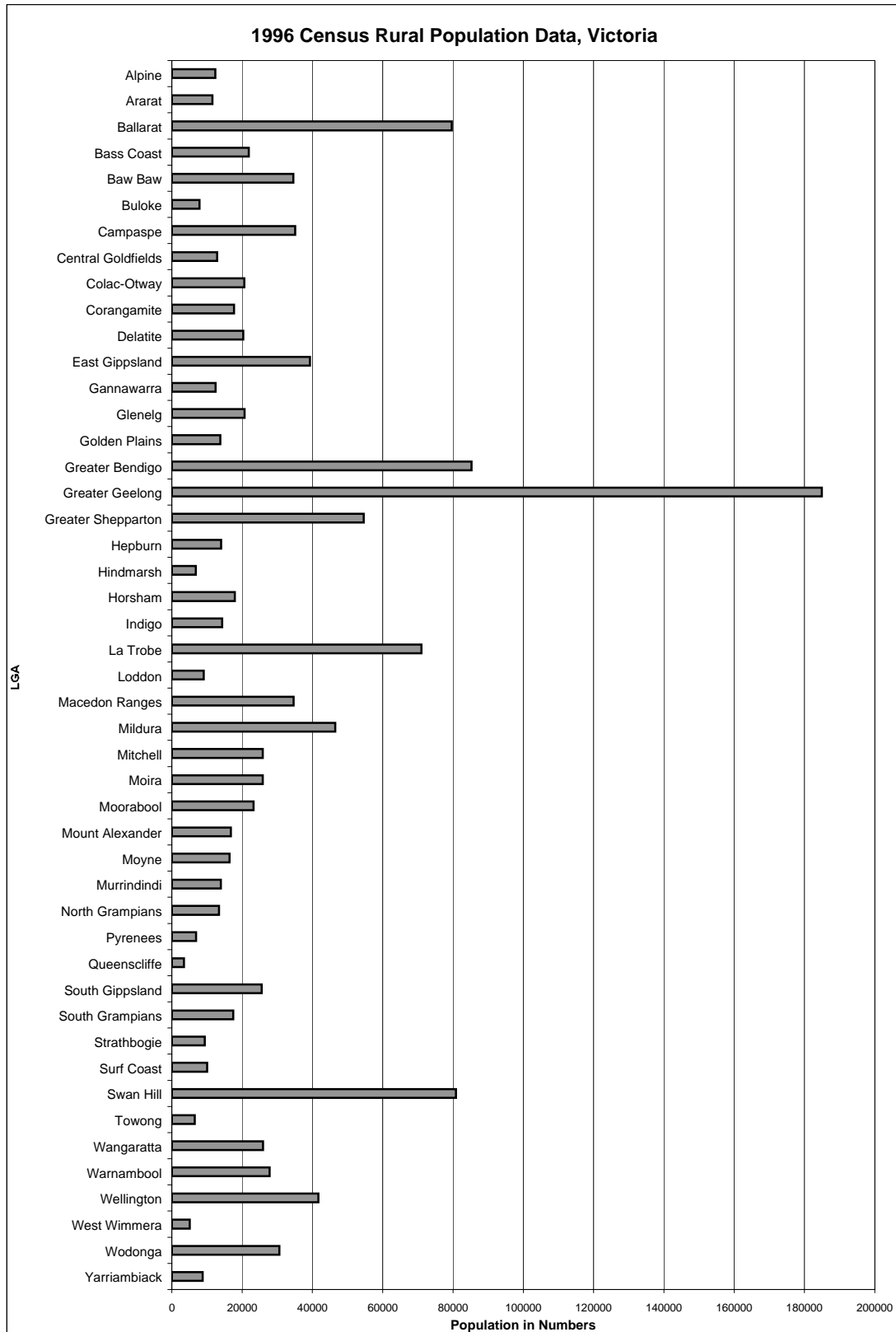


Figure 2

Source: ABS, *Population, Victoria*, 30 June 1997, Cat. No. 3234.2.

The projected population trends indicate that while population growth is likely to be higher than it was in the early 1990s, the rate of population growth in regional Victoria is expected to be lower than it was in the 1970s and 80s. Regional Victoria as

a whole is expected to grow at a rate of 0.4 per cent compared with 0.7 per cent in metropolitan Melbourne between 1999 and 2021.⁹ Figure 3 provides figures for expected population growth across regional LGAs.

As the table shows, there is expected to be a substantial amount of regional differentiation in growth rates across regional and rural Victoria. According to the Department for Infrastructure, areas adjoining the fringe of Melbourne are likely to experience the strongest population growth. The fastest growing areas are projected to be:

Bacchus Marsh and Ballan to the west; Gisborne, Romsey and Woodend to the north-west; and Wallan, Kilmore, Wandong and Heathcote Junction to the north.¹⁰

⁹ Department of Infrastructure, *Victoria in Future: Regional Victoria in Future — the Victorian Government's Population Projections 1996–2021*, Department of Infrastructure, Melbourne, 2000, p. 16.

¹⁰ *ibid*, p. 3.

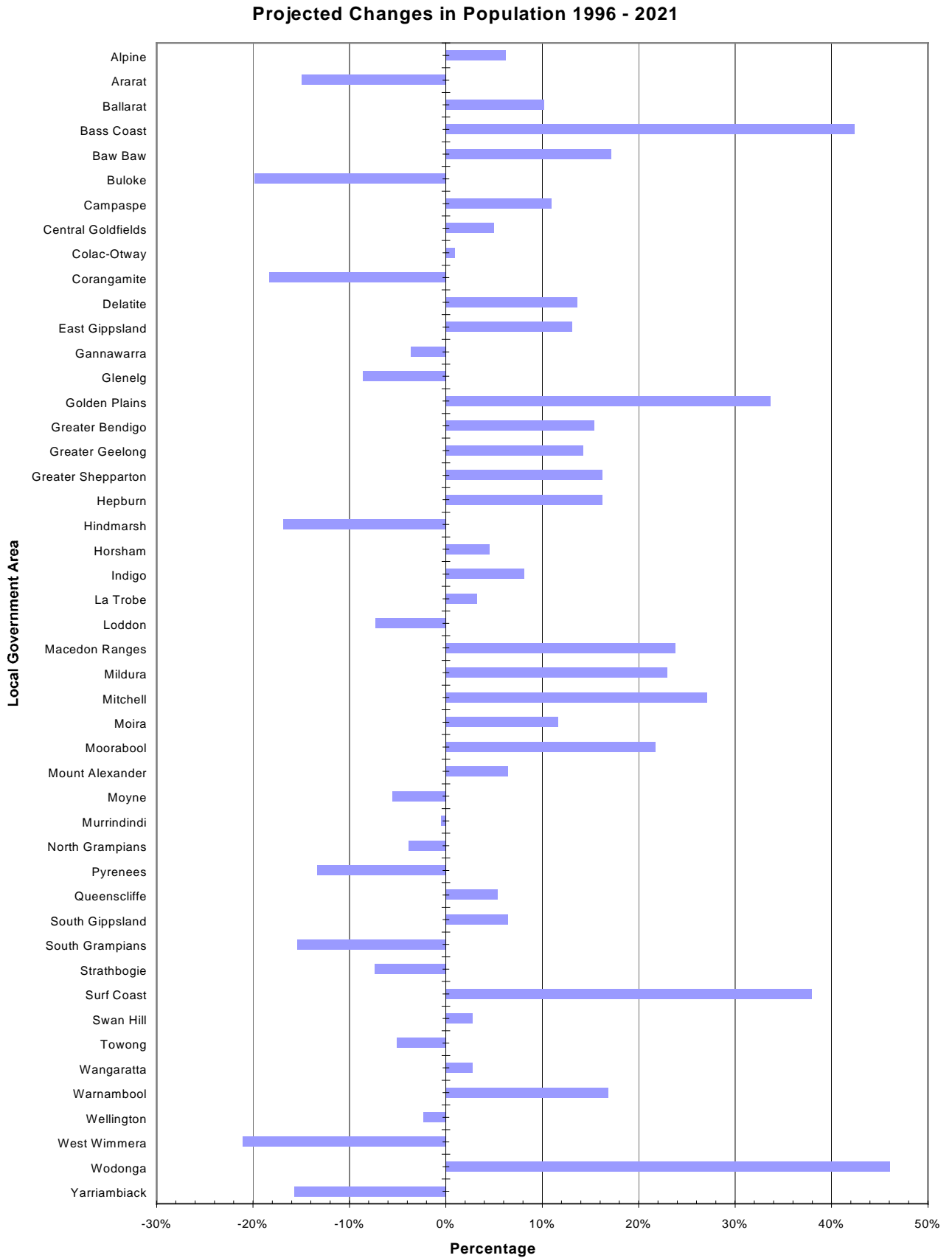


Figure 3 Source: Generated from data in Department of Infrastructure, *Victoria in Future — Overview: Victorian Population Growth Projections 1996–2021*, Department of Infrastructure, Melbourne, 2000.

The Department of Infrastructure has examined the whole of rural and regional Victoria, and estimated future changes in population within eight different regions.¹¹ The Ovens-Murray region is set to be the fastest growing region in regional Victoria in the next two decades with strong population growth predicted for areas around Wodonga. The Loddon Region is also among the fastest growing regions in the State with the city of Greater Bendigo predicted to experience strong population increases largely comprising retirees from Melbourne. With declining demand for local services resulting from continued rural restructuring and loss of population in the rural hinterland, in general, areas to the west of Bendigo are likely to face population decreases. Within the Barwon region, the City of Greater Geelong is projected to have the largest numerical population growth, while the Surf Coast is expected to have the fastest rate of population growth in the next two decades.

The Central Highlands region is expected to show relatively high rates of population increase over the next 20 years, with growth concentrated in centres such as Ballarat and Bacchus Marsh while areas further west are predicted to decrease in population. The Goulburn region with its strong and diverse rural economy, is projected to continue to boast consistent population gains. Shepparton is expected to experience substantial population gains while Echuca, Cobram and Yarrawonga are expected to grow as the Murray river region continues to attract people seeking rural lifestyles especially retirees. Areas of the Gippsland region are expected to grow especially around the Bass Coast, Warragul and Drouin in western Gippsland, and East Gippsland. With the current high rate of unemployment in the Latrobe Valley the region is expected to have little population growth and much of the South Gippsland Shire and southern parts of the Wellington Shire are likely to experience decreases in population. Western Victoria is unlikely to experience population increases over the next twenty years where the population loss of young people is likely to continue to have an impact on the overall population of the area.¹²

A common feature of the population projections is that regional centres will continue to grow at the expense of smaller rural communities. The non-metropolitan population is clustering around the major regional centres and this pattern will intensify. A key factor behind population movement is opportunity for employment. Whilst employment grew in all regions in Victoria between 1991 and 1996, it was

¹¹ These regions are: Exurban areas (those adjoining the fringe of Melbourne); the Barwon region; the Central Highlands region; the Loddon region; the Goulburn region; the Ovens-Murray region; the Gippsland region; and Western Victoria.

¹² The material on which this summary is based can be found in the Department of Infrastructure, *Victoria in Future: Regional Victoria in Future — the Victorian Government's Population Projections 1996–2021*, Department of Infrastructure, Melbourne, 2000, p. 19-35.

concentrated in the larger regional centres. More recent employment patterns are discussed below (see page 26).

Profiles of Population in Regional and Rural Victoria

Age Profile

Figure 4 shows comparisons between regional Victoria and Melbourne based on current populations as per the 1996 Census by age group.

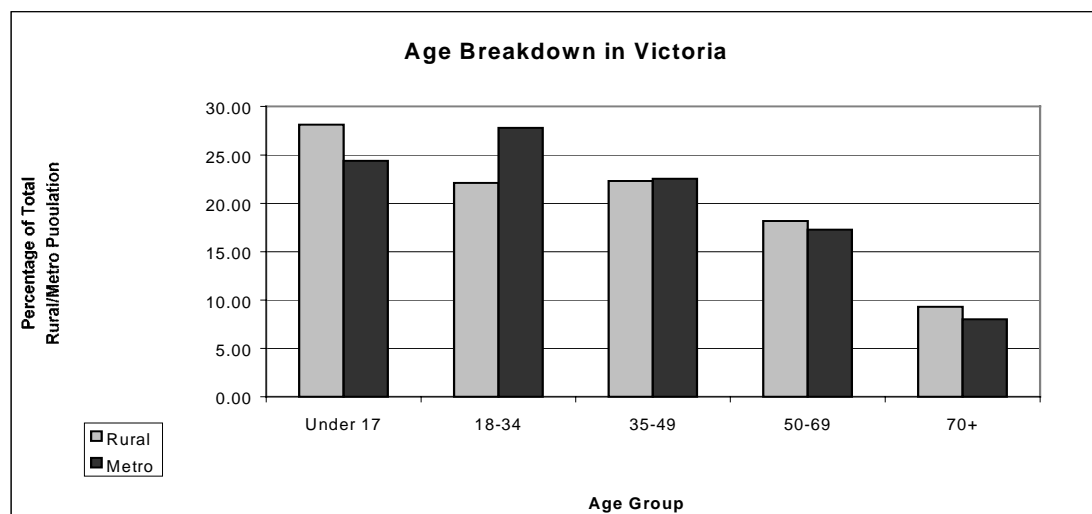


Figure 4 Source: Generated from data in Department of Infrastructure, *Regional Victoria in Fact*, Department of Infrastructure, Melbourne, 1998.

The table confirms anecdotal evidence gathered by the Committee of increased migration away from regional areas by young people and higher percentages of aged populations.

The population projections for regional and rural Victoria suggest that average population age will increase more strongly in regional Victoria than in Melbourne. In 1996, 18 per cent of regional Victorians (compared with 16 per cent of Melburnians) were aged 60 years or over. By 2021, these figures are projected to reach 31 per cent in regional Victoria in comparison with 23 per cent in Melbourne.

The increase in the degree of population ageing is partly explained by the migration patterns of different age groups, with younger adults leaving regional Victoria to pursue education and employment prospects while retirees continue to be attracted to regional centres. As regional economies are not as large and diverse as those in metropolitan areas, young adults who move to Melbourne for higher qualifications are more likely to find employment within Melbourne after graduation. The Committee's

evidence confirmed this, with several witnesses stating that the perceived and real lack of career opportunities in regional areas meant that it was difficult to attract educated young adults back to their region of birth. The fact that the net migration levels in the 15–39 age group are likely to remain negative in regional Victoria is a cause for concern.

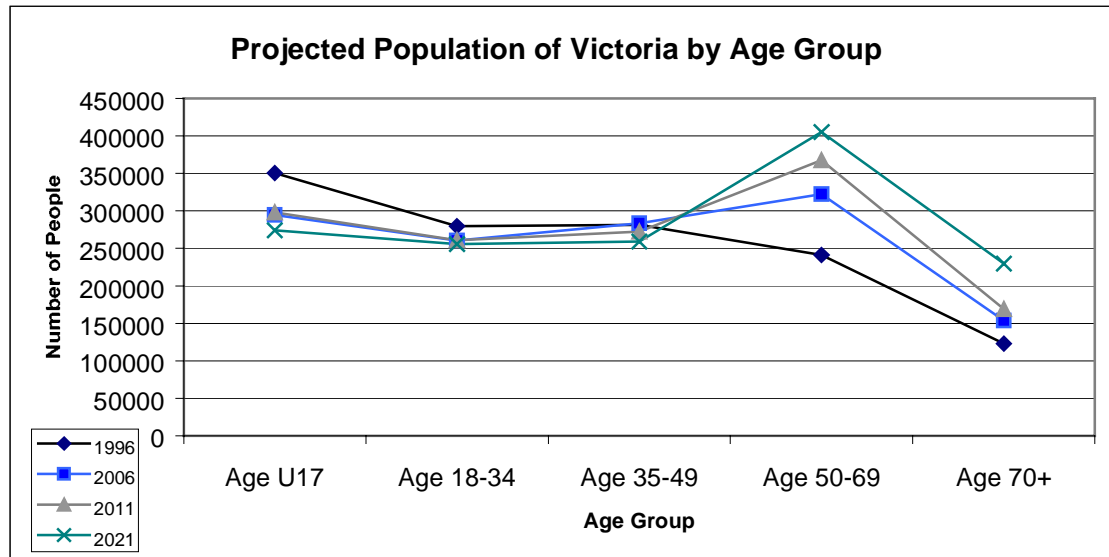


Figure 5

Source: Department of Infrastructure: *Victoria in Future*, 2000

The marked increase in aged populations across regional Victoria has to be taken into account in planning services for Victoria. Further, the geographical variation in age profiles should be reflected in formulating and delivering services.¹³ The continuing increase of aged populations in regional Victoria has implications for the workforce and for increasing dependence on public services. Clustering of older populations also means transport infrastructure will become increasingly important for social and community reasons.¹⁴ These implications are also seen in the analysis of household income levels, unemployment and age pensions, the higher unemployment rate in regional and rural areas, and net migration losses particularly in the working age group.

¹³ For a discussion of the policy implications of an ageing population, see F McKenzie, 'The Ageing of Regional Victoria: Problem or Opportunity?', Paper presented at The Future of Australia's Country Towns Conference, Latrobe University, Bendigo, June 2000, <http://www.abc.net.au/rural/town/paper1b.htm>.

¹⁴ For a discussion of the lack of public transport in regional and rural areas see F McKenzie, *ibid*.

Employment and Income Profile

Employment

Employment levels have grown in regional Victoria in the last decade, but not to the same extent as they have in Melbourne. The Department of Infrastructure has analysed data from the ABS Labour Force Survey, and has found that between 1993 and 1997 employment in regional and rural Victoria grew by 4 per cent compared with 11 per cent growth in Melbourne.¹⁵ Birrell et al's figures, based on ABS data up to 1999, show this disparity increasing.¹⁶

The Labour Force Survey also showed, for the year to July 1997, a slightly different pattern of employment change among the State's regions, a pattern with the following features:

- The total number of people employed declined in three regions — South Western (male and female employment declined); Northern (male employment declined) and North Eastern (female employment declined); and
- Both male and female employment grew in the Western and Gippsland regions with Gippsland showing the highest growth in female employment of all regions.¹⁷

Recent figures show a turnaround in the growth rates for metropolitan Melbourne and rural and regional Victoria. Figures from the Commonwealth Department of Employment, Workplace Relations and Small Business (DEWRSB) for the year to September 2000 show that there have been recent improvements in most regional labour markets in Australia. The Department's figures for Victoria show that employment growth for the Melbourne area was 3.7 per cent, compared with 3.8 per cent for Western Victoria and 5.2 per cent for Eastern Victoria.¹⁸ DEWRSB's figures for the December quarter 2000 provide figures for employment growth that apply to

¹⁵ Department of Infrastructure (Victoria), *Major Trends and Inferences 1991–1997: Rural and Regional Strategy*, Rural and Regional Strategy, Melbourne, Department of Infrastructure, 1998, p 19.

¹⁶ Birrell et al, *Regional Victoria: Why the Bush is Hurting*, Monash University, 2000, p. 5.

¹⁷ Department of Infrastructure (Victoria), *Major Trends and Inferences 1991–1997: Rural and Regional Strategy*, Rural and Regional Strategy, Melbourne, Department of Infrastructure, 1998, p 19.

¹⁸ Department of Employment, Workplace Relations and Small Business (Commonwealth), *Small Area Labour Markets: September Quarter 2000*, Labour Market Policy Group, DEWRSB, Canberra, p. 4, p. 8. The Department generates its figures from Centrelink data, the ABS Labour Force Survey at labour force region level and Census labour force data at SLA level. DEWRSB adjusts the demographic structure to produce totals that are the same or nearly the same as those for ABS States and regions. See Map in Appendix for delineation of DEWRSB's demographic boundaries.

smaller areas within Victoria, and show the number of new jobs for the year to December 2000 for Barwon-Western (up by 24,900), Central Highlands-Wimmera (up by 2,100), Loddon-Mallee (up by 6000), Goulburn-Ovens-Murray (down by 7,900), and all of Gippsland (up by 6,500).

DEWRSB acknowledges that, due to the small samples involved, their figures may not be indicative of actual changes in the labour market, and should be used with caution.¹⁹ In fact, shortly after the figures were released, the La Trobe Valley Mayor joined several Gippsland councils in disputing the figures that showed job growth in Gippsland, citing population and demographic change as key mitigating factors.²⁰ The CEO of the Greater Bendigo Council, on the other hand, agreed that Bendigo had enjoyed increased employment in the past year.²¹ There is general agreement, however, that for regional Victoria as a whole there was employment growth, and DEET Victoria's figure for growth for the year to December 2000 was 2.1 per cent for metropolitan Melbourne compared with 5.7 per cent for regional Victoria, continuing the trend that we have seen since 1998 of greater growth in regional Victoria.

For the purposes of the current Inquiry, it is interesting to note that job growth has been most significant in both Melbourne and regional Victoria in legal and accounting services and computing services.²²

Unemployment

Prior to the 1990s rural and regional Victoria had a lower unemployment rate than Melbourne, a trend that altered dramatically in the 1990s. The unemployment rate rose beyond that of Melbourne's between July 1993 and July 1994, and by July 1997 regional and rural Victoria's unemployment rate was at 10 per cent in comparison to 8 per cent in Melbourne.²³ The gap between regional and metropolitan Victoria seems to be closing, with ABS figures for May 2000 indicating an unemployment rate for regional and rural Victoria of 7.5 per cent compared with 6.5 per cent in Melbourne, and DEET's figures for December 2000 confirming the trend with a slight reduction

¹⁹ The Victorian government released figures for the year to December 2000, and a comparison with DEWRSB figures shows just how much variation is possible: while the figures for some regions are not significantly different, the Victorian Department of Employment Education and Training's figures show a decrease of 4,900 jobs in the Central Highlands-Wimmera area and a much less pronounced rise in Gippsland at only 2400 new jobs (Department of Employment Education and Training, *Victorian Labour Market Report*, Issue 14, January 2000, DEET, Melbourne, p. 5.)

²⁰ 'Regional Mayor Blasts Job Figures', *The Age* 6 February 2001, p. 5.

²¹ id.

²² Birrell et al, *Regional Victoria: Why the Bush is Hurting*, Monash University, 2000, p. 5

²³ Department of Infrastructure (Victoria), *Trends and Inference: 1991-1997*, Melbourne, Department of Infrastructure, 1998, p. 20.

in the rate in both areas at 6.9 per cent and 5.7 per cent respectively.²⁴ The whole of Gippsland recorded the highest unemployment rate of the State at 10.7 per cent.²⁵ While employment growth and unemployment rates give us an indication of the labour market, income profiles tell us more about the standard of living in regional and rural Victoria.

Income Profiles

Birrell et al, using data derived from successive censuses, have examined income disparities since 1981 between metropolitan and regional areas and have found them to be long-standing, with regional and rural areas consistently worse off in terms of household incomes. In both the 1991 and 1996 census, all regions had a higher proportion of households with low incomes and a lower proportion of households with high incomes in comparison with Melbourne. In 1996, 31.1 per cent of regional Victorian households fell in the lowest quartile of incomes in comparison with 22.6 per cent of Melbourne households.

Furthermore, the disparity between household incomes for regional and metropolitan areas is increasing, with greater differences in the higher income end. The percentage of regional Victorian households in the top quartile of incomes has decreased from 19.2 per cent in 1981 to 16.2 per cent in 1996. The latter figure is significantly lower than the 28.5 per cent of Melbourne households who receive incomes in the top quartile.²⁶ Gippsland has recorded the sharpest changes in regional and rural Victoria with the largest share of high-income households in 1991 dropping to the lowest share of high-income households in 1996.²⁷

Overall, it can be said that regional and rural households are relatively worse off in income terms, than their Melbourne counterparts.

The position for Victoria seems to be that there is a widening imbalance between relatively well off and relatively not, and that this imbalance is wider in regional and rural Victoria than in Melbourne.²⁸

²⁴ ABS, *Labour Force, Victoria: May 2000*, 6202.2, Table 10, p. 13. Department of Employment, Education and Training (Victoria), *Victorian Labour Market Report*, p. 5.

²⁵ ABS, *Labour Force, Victoria: May 2000*, 6202.2, Table 10, p. 16.

²⁶ B Birrell, J Dibden and J Wainer, *Regional Victoria: Why the Bush is Hurting*, Centre for Population and Urban Research, Monash University, 2000, p. 16

²⁷ Department of Infrastructure (Victoria), *Major Trends and Inferences*, 1998, p. 68.

²⁸ B Birrell, J Dibden and J Wainer, *Regional Victoria: Why the Bush is Hurting*, Centre for Population and Urban Research, Monash University, 2000.

The low incomes of households in regional Victoria is reflected in the proportion of families in 1998 assessed as needing income support in the Commonwealth's Greater than Minimum Family Allowance (FPG) system.²⁹ There are two ways for a family to qualify for the allowance.³⁰ One is if the mother is in receipt of a pension or benefit and the other is if the joint or single family income is low. The means test cuts in at a family taxable income of \$23,550 with the majority of families claiming the allowance reporting incomes of less than \$30,000 per annum. The statistics show that far more children live in families eligible for the FPG in rural and regional Victoria (53 per cent) than in Melbourne (37 per cent). The proportion of children living in families where parents depend on pensions and benefits is also higher in regional Victoria.³¹

The data that Birrell et al have sourced from Centrelink also indicates that approximately 21 per cent of families in regional Victoria are without a breadwinner compared with 18 per cent in Melbourne. In regional Victoria, sole parents who are not breadwinners head over 15 per cent of all families. Closer studies of the figures indicate that just over one in every five families with children aged 0–15 years in regional Victoria are without a breadwinner, suggesting that

...the hard edge of family deprivation is not limited to a small minority of families. Moreover, in the regional urban areas, including Bendigo and Ballarat, the figure is around 25 per cent, or one in every four families.³²

The Census figures also indicate a sharp increase of 29 per cent in the number of sole parent families in rural and regional Victoria between 1991 and 1996. This demographic shift to increasing proportions of sole parent families is explained by some commentators as stemming from

...the worsening income and employment situation experienced by many men, particularly those who lack skills which would enable them to seek more secure and lucrative employment in the city. The low incomes and insecure employment experienced by many regional Victorian men may result in a high level of family stress which increases the risk of marriage or relationship breakdown.³³

²⁹ Family assistance is no longer referred to as the FPG system. There is now a new payment, administered through the Family Assistance Office, called Family Tax Benefit Part A, which comprises those formerly known as Minimum Family Allowance, Family Allowance and Family Tax Benefit Part A. (www.familyassist.gov.au/)

³⁰ Centrelink defines a family as including a parent or parents and a dependant or dependants. Dependants can be up to 24 years of age, but their family's eligibility for assistance depends on a means test of the parent or parents. (Information provided by Centrelink, Canberra. The *Social Security Act 1991*, which includes the definition of a couple, can be found at <http://centrenet/corp/ssleg/ssact/ssasect1.htm>).

³¹ B Birrell, J Dibden and J Wainer, *Regional Victoria: Why the Bush is Hurting*, 2000, p.20.

³² *ibid*, p.24.

³³ *ibid*, p.26.

The high numbers of households that can be characterised as working poor along with the number of families that are welfare dependent are an indicator of the disadvantage experienced by regional Victorian families and confirms the importance of affordable access to justice.

Education Profile

Of all States and Territories in Australia, Victoria has the highest school participation rate, with over three-quarters of all school students completing the full thirteen years of schooling.³⁴ However, the rate of early school leaving in rural and regional Victoria is significantly higher, with figures as high in some areas as 30 per cent of girls and 40 per cent of boys failing to proceed to completion of Year 12.³⁵ According to 1996 Census data, 74.9 per cent of young people in the Melbourne metropolitan area had completed the highest level of secondary school, whereas only 70.5 per cent of 19-year-olds in the rest of Victoria had done so.³⁶

The proportion of the rural and regional Victorian population with no post-secondary qualification (62.1 per cent) is higher than that for the metropolitan Melbourne population (56.9 per cent).³⁷ However, it is important to note that the difference between these figures has closed up since 1991. Like metropolitan Melbourne, regional Victoria has benefited from growth in computer services, and legal and accounting services, but as Birrell et al point out, this is growth from a much lower base.³⁸ While the number of people in professional employment has risen, the Committee repeatedly heard about the difficulties in securing professional-level workers in regional centres. Birrell et al also cite anecdotal evidence to this effect.³⁹ In light of population shifts and the strong job market in Melbourne, especially for lawyers, this deficit of qualified people in rural and regional areas is explainable.

Profile of the Aboriginal Population

The Victorian Aboriginal Justice Agreement provides a demographic snapshot of the Victorian Aboriginal community, based on statistics drawn from the 1996 National

³⁴ Office for Youth, *Victorian Youth Strategy Discussion Paper*, DEET, Melbourne, 2001, p. 16. The slightly lower national figure for school retention rates in 1999 for students from Years 10–12 was 74.4 per cent (ABS, *Schools, Australia*, Cat. No. 4221.0, 1999, p. 3.).

³⁵ Office for Youth, p. 16.

³⁶ *ibid*, p. 17.

³⁷ Department of Infrastructure (Victoria), *Regional Victoria in Fact: 1996 Census Statistics for Victoria's Local Government Areas*, Melbourne, Department of Infrastructure, 1998, p. 18, 19.

³⁸ Birrell et al, p.5.

³⁹ *ibid*, p. 36.

Census. The Aboriginal Community makes up about 0.5 per cent of the total Victorian population. Fifty per cent of the Aboriginal community lives outside the metropolitan area (compared to 28 per cent of the total Victorian population).

The Aboriginal population is much younger than the overall population, with 1996 census data showing that 57 per cent of Victorian Aboriginal people are under the age of 25, compared with 39 per cent of the overall population. Only 3 per cent of Victorian Aboriginal people are over the age of 65 compared to 12 per cent of the total population. The profile of the non-Aboriginal population in rural and regional Victoria is weighted in the opposite direction, as we have seen, with the outflow of young people complemented by the influx of retirees. The unemployment rate for Aboriginal people in Victoria is 21.4 per cent with evidence that this rate is significantly higher in rural areas.⁴⁰

There are several risk categories which Aboriginal people in Victoria occupy in disproportionate numbers. Aboriginal men have a life expectancy of 18 years less than the State average. Aboriginal people in Victoria are significantly over-represented in prisons. Aboriginal adults are 11.5 times more likely than non-Aboriginal people to be imprisoned, and juveniles are 14.5 times more likely to be placed in juvenile justice custodial facilities. For juveniles this over-representation rate has reduced since 1991 when the figure was 38 times more likely.⁴¹ This is the context in which the delivery of legal services to Aboriginal people takes place. Community needs must be viewed in the light of this background of social and economic disadvantage.

⁴⁰ The Committee heard evidence of extremely high unemployment rates in rural and regional Aboriginal communities. A witness from Echuca estimated the unemployment rate for young Indigenous people to be between 80 and 90 per cent (D Walsh, *Minutes of Evidence*, 25 July 2000, p. 673). A witness from Horsham estimated the figure for Aboriginal unemployment in that area to be close to 100 per cent (A Burns, *Minutes of Evidence*, 28 September 2000, p. 1050).

⁴¹ Victorian Aboriginal Justice Advisory Committee, *Victorian Aboriginal Justice Agreement*, Department of Justice, 2000, p.10, p. 8.

Profiles of Computer Usage

Access to the Internet

With population changes, many regional areas are having difficulties sustaining traditional service delivery from their locations. Governments and the private sector have tended to see emerging technologies in electronic service delivery as an answer to access to services for these communities. The Committee is strongly supportive of the use of new technologies to provide better access to services. It is important to ensure that regional and rural communities have access to appropriate technology and telecommunications. Recent ABS figures show that 57 per cent of people in metropolitan Melbourne have access to a computer at home, compared with 46 per cent of regional Victorians. The same study shows lower rates in both areas for internet access but roughly the same differential, with 38 per cent of metropolitan households compared with 26 per cent of rural households now having home internet access.⁴² While there is a divide between metro and rural access, the growth rate is staggering and is expected to continue. According to the Online Services Manager with the Department of Justice, the growth rate from May 1998 to May 2000 was 235 per cent.⁴³

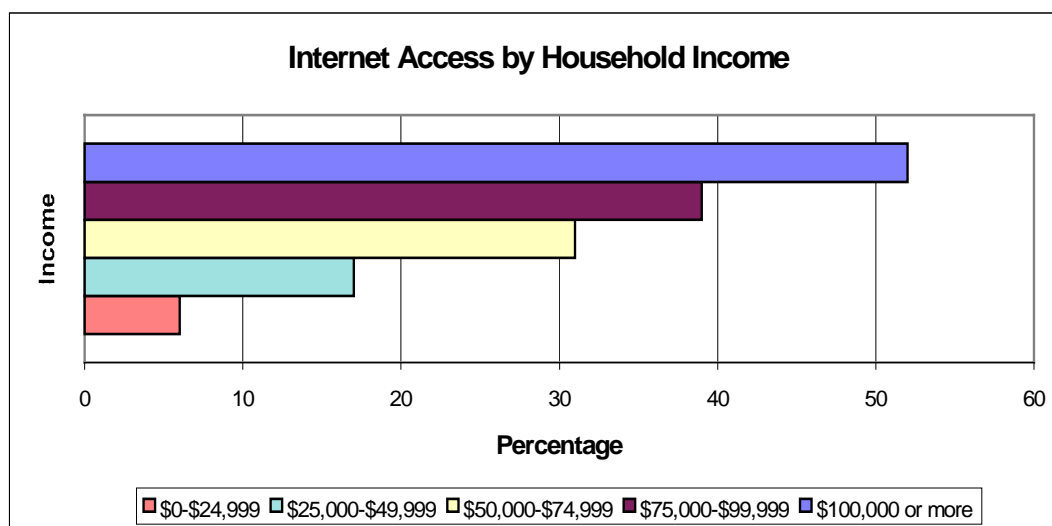


Figure 6 Source: ABS - Household use of Information Technology - 8146.0 - 1999, p. 10.

As Figure 6 shows, there is a strong link between household income and internet access. While only 6 per cent of households in Australia in the lowest income category (less than \$25,000) have internet access at home, for those in the highest

⁴² ABS, *Use of the Internet by Householders*, 8147.0, August 2000, p.3

⁴³ M Lambert, *Minutes of Evidence*, 25 September 2000, p.975

income category (over \$100,000) the figure leaps to 52 per cent.⁴⁴ The differential in the figures is slightly greater when comparing internet access at work. When looking at access to the internet from any site at all, without limiting it to household access, the divide is still pronounced, with ABS figures showing that 73 per cent of people earning \$80,000 or more have accessed the internet, whereas 34 per cent of people earning less than \$40,000 have done so.⁴⁵ The point at which the income differential ceases to make any appreciable difference is in the figure for internet access at sites other than home or work: 23 per cent for those with an income of \$80,000 or more, and 22 per cent for those with an income of less than \$40,000.⁴⁶

For the purposes of the Inquiry, the Committee was interested to find out where most people access the internet, and heard that people in lower income brackets are accessing it through libraries, friends' houses, community centres and their children's schools.⁴⁷ While access to the internet is increasing for all groups, it is important to recognise that there is still a discrepancy between rural and metropolitan access and that households with lower incomes are much less likely to have utilised the internet. The latest quarterly figures show the pattern seen in the figures for the whole of 1999 continuing: in August 2000 adults with incomes of \$40,000 or more were twice as likely to be internet users as adults with incomes under \$40,000 (74 per cent compared with 39 per cent); adults with incomes of \$40,000 or more were far more likely than adults with incomes of under \$40,000 to have accessed the internet both at work (51 per cent compared to 14 per cent) and home (52 per cent compared with 22 per cent).⁴⁸

The Committee believes therefore that it is extremely important for the Government to continue to ensure that the public has good access to the internet, at a fair price, through appropriate public venues. The Committee also believes that the Government should continue to prioritise access to and training in the use of internet technologies.

Summary of Demographic Findings

Long-term projections indicate that metropolitan Melbourne will continue to outstrip regional Victoria in population growth. Within regional Victoria itself significant variations will remain, with regional centres continuing to grow at a much greater rate than smaller communities. At the same time, regional Victoria is attracting retirees

⁴⁴ ABS, *Household Use of Information Technology*, Australia, 1999, Cat. No. 8146.0, p. 10.

⁴⁵ ABS, *Household Use of Information Technology*, Australia, 1999, Cat. No. 8146.0, p. 12.

⁴⁶ *ibid*, p. 13.

⁴⁷ M Lambert, *Minutes of Evidence*, 25 September 2000, p. 975.

⁴⁸ ABS, *Use of the Internet by Householders*, August 2000, 8147.0, p. 8.

and low-income earners whilst losing a significant number of its young people to metropolitan Melbourne. This change in the make-up of the population means that regional Victoria faces a declining base upon which to build growth in employment in some key sectors. Although the difference between the unemployment rates for metropolitan Melbourne and regional Victoria is declining, income profiles show that rural and regional Victorians are on the whole worse off than their metropolitan counterparts with more families falling into the category of working poor or welfare dependent.

Overall there is a widening gap between regional and urban Victorians in terms of social and economic wellbeing. This situation is not easily remedied as it is favouring Sydney and Melbourne relative to their regional hinterlands.⁴⁹

...clear that the economic processes associated with the globalisation of Australia's economy

The disparity in standard of living between Melbourne and regional Victoria can be seen in the figures for ownership of home-computers and internet access, with regional Victoria lagging behind metropolitan Melbourne by over 10 per cent in both cases. In regional Victoria itself, internet access is significantly determined by income, with much greater levels of home and work access for people on higher incomes. Significantly for the purposes of this inquiry, internet usage at venues other than home and work was almost identical for each income level, suggesting that maintaining public venues for internet access is crucial for the viability of service provision by electronic means. In terms of demographic findings for specific groups, there are significant differences between Aboriginal communities in rural and regional Victoria and their non-Aboriginal counterparts. A much higher proportion of the State's Aboriginal population lives in regional areas than the figure for the non-Aboriginal community. In addition, the age profile of this population is significantly younger compared with the figures for the non-Aboriginal population. Aboriginal communities in general have significantly higher rates of unemployment, lower levels of income, and their members are over-represented in major risk categories.

In identifying the problems faced by regional and rural Victoria, the Committee does not wish to detract from the positive developments that are taking place across regional Victoria. The Committee noted the variation between regions and the innovative responses of local communities to gaps in service delivery. The Committee believes that the variation between regions requires more detailed demographic

⁴⁹ B Birrell, J Dibden and J Wainer, *Regional Victoria: Why the Bush is Hurting*, Centre for Population and Urban Research, Monash University, 2000, p. 36.

analysis that should inform the formulation and delivery of appropriately targeted services to rural and regional Victoria.

Infrastructure in Rural and Regional Victoria

Transport Infrastructure

Several witnesses identified the need for better public transport infrastructure in regional and rural Victoria. While Victoria does not have the large expanses of other States, distance remains a significant barrier to access to legal services. The difficulty is compounded by the lack of public transport and infrastructure. When the demographics of country Victoria are taken into account, the lack of public transport becomes more serious. The Law Institute put it in these terms:

[T]he conclusions we reached were that the court closures had had a dramatic effect on the accessibility by the public to the provision of legal services; and the process of regionalisation had been undertaken seemingly without due regard for the tyranny of distance and the absence of any proper transport system.⁵⁰

Without adequate public transport, people need to rely on their family cars to access legal services. As a community worker in Horsham said:

A lot of the families I work with are struggling to meet the basic care needs of their children and are under high stress. They have complex problems, and often to access courts they have to go to Ballarat or Melbourne. The issues for them are sufficient finance to access the courts and transportation to actually attend court. The travel time from Horsham to Ballarat is 2 to 2 and a half hours; and Horsham to Melbourne is 4 hours. If you are in the northern boundaries the family could be looking at 3 and a half hours to go to Ballarat or 7 and a half hours to travel to Melbourne. Transport is predominantly around the private family car, and some families in this area struggle to maintain a car: the increase in petrol prices puts more burdens on families in the area.⁵¹

The lack of transport exacerbates isolation for many families and can add significant expense to a household's budget:

Many rural towns do not have a regular public transport system, or if they do they may only have one service that goes per day, which means that often by the time they get to the town where the hearing is listed they may be too late, or they may have to go the day before in order to get there for the time the hearing is listed, which again creates another expense of having to stay overnight in another town.⁵²

⁵⁰ D Faram, *Minutes of Evidence*, 15 May 2000, p. 98

⁵¹ T Mellings, *Minutes of Evidence*, 28 September 2000, p. 1082

⁵² R Ritchie, *Minutes of Evidence*, 26 July 2000, p. 708.

As discussed in later sections of this report, regional and rural Victorians often have to travel to a regional centre or to Melbourne to access courts, legal advice and support services. Such travel can cause hardship for families and can represent a major inconvenience. The Committee believes that all Victorians regardless of where they live should have easy access to legal advice and dispute resolution. To this end the Committee believes that the Government should establish a litigant travel fund administered by the Department of Justice through courts and tribunals.⁵³

Recommendation 1

That the Victorian Government establishes a litigant transport fund, administered by the Department of Justice through courts and tribunals. Such a fund should be available for needy litigants required to travel to Melbourne or to other regional centres to resolve their legal issues.

Telecommunications Infrastructure

The feasibility of utilising communications technologies to deliver legal services to non-metropolitan Victorians clearly depends on the availability of the appropriate infrastructure and associated services. There are three key elements of infrastructure: hardware, software, and networks. The ability to deliver video-conferencing and video phone calls effectively, to email information and advice, and to provide access to websites over the internet is dependent on minimum bandwidths (digital transmission rates).

Bandwidth affects the time taken to access content, as determined by search activities and download processes.⁵⁴ ISDN bandwidth is available to 96 per cent of the Australian community. The remaining 4 per cent have bandwidth access via an asymmetric capability, where download occurs at 64Kbits/sec but upload is significantly slower. So, Australia has 100 per cent access to bandwidth capability, with most lines to houses capable of 56Kbits/sec.⁵⁵

There are factors other than bandwidth capability that affect the quality of internet access. Research shows that there is often a significant discrepancy between the capacity of the bandwidth in rural and regional areas, and the availability of that bandwidth to the consumer or the take-up of the capacity by the consumer. One of the

⁵³ The establishment of such a fund was also recommended by Job Watch, Submission no. 59, p. 8.

⁵⁴ Attorney-General's Department (Commonwealth), *Scoping Study: The Scope for Delivery of Legal Services to Regional Rural and Remote Australia via Telecommunications Channels*, July 1999, p. 33

⁵⁵ Australian Communications Authority, Notes of Discussion, 12 April 2001.

issues identified in many submissions to the national bandwidth inquiry was the low data transfer rates provided by parts of the current Customer Access Network (CAN), which in turn restricts the bandwidth available to the end-user.⁵⁶ The report also identified limitations on availability of the resources required to actually connect up customers, and poor internal communication between the carriers' engineers and marketers.⁵⁷ Other issues include the resources of the end-users themselves; for example, adequate modem capability.

The various forms of the digital subscriber line (xDSL) transmission technique can counter some of the problems experienced by some rural and regional people. This technology has the capacity to deliver high bandwidth to all end-users connected by less than four or five kilometres of copper wire to their nearest telephone exchange or remote multiplexer (effectively the end of the optic fibre cable).⁵⁸ Data speed reduces dramatically where this distance exceeds four kilometres, and this would affect rural customers particularly.

The most prominent of these DSL technologies is ADSL.⁵⁹ Telstra is in the process of rolling out its ADSL technology, a process to be completed by 2002. Current coverage of the ADSL network beyond the borders of metropolitan Melbourne extends only to areas around Geelong and Corio, Point Lonsdale and Torquay.⁶⁰ Given this limited coverage, it is clear that for regional home-users, dial-up access remains the most likely option for internet access.

As ADSL technology is installed, Telstra is upgrading the CAN. These improvements to the CAN, also known as the local loop, will improve internet access for people with dial-up facility only. With the ACCC's decision to compel Telstra to provide access to its local loop to other service providers, residential customers in all areas should be able to choose from several providers for dial-up services.⁶¹

The cost-effectiveness of ADSL depends very much on the end-user's data needs. To justify the costs incurred, data needs would have to be substantial, so for rural and regional businesses and farms whose usage is high, the benefits of ADSL would make

⁵⁶ National Office of the Information Economy, *National Bandwidth Inquiry: Report of the Australian Information Economy Advisory Council*, Department of Communications, Information Technology and the Arts, Canberra, 2000, p. 65.

⁵⁷ *ibid*, p. 72.

⁵⁸ *ibid*, p. 66.

⁵⁹ ADSL is Asymmetric Digital Subscriber Line, where the download speed is much higher than the upload speed. HDSL stands for High-Speed Digital Subscriber Line with equal (symmetrical) download and upload speeds.

⁶⁰ www.telstra.com.au/adsl/vic.cfm

⁶¹ Australian Communications Authority, Notes of Discussion, 12 April 2001.

it an attractive and cost-effective option.⁶² For individual users with low volume of internet traffic, ADSL may be less viable, and in this case dial-up technology may remain the best option.⁶³

At the national level, the funding of telecommunications infrastructure for rural and regional areas is managed under the Federal Government's Networking the Nation (NTN) program.⁶⁴ The NTN's Internet Access Fund has allocated \$36 million over three years (1999–2002) for internet access for people in rural or regional areas at a reasonable cost and involving a reasonable bandwidth. This program funds projects designed to stimulate internet service delivery in regional and rural Australia, in a manner that will enhance the competitive roll-out of these services. The aim is to provide all Australians with access to the internet for at least the equivalent cost of untimed local call access. Funds are also available to establish community-owned internet points or private sector owned and operated facilities established in partnership with community organisations.⁶⁵

The Regional Connectivity Project, an initiative under Networking the Nation, has established community enterprise centres in the Grampians, with the aim of encouraging business use by the community through the technology and office set-up. Knowledge navigators are engaged in the centres to assist people wishing to use the facilities. Victoria Legal Aid (VLA) considers these centres suitable for the provision of legal advice sessions, provided they can give access to a private area where confidential video-conferencing sessions could be conducted.⁶⁶

At the State level, policy development and funding commitment has resulted in VicOne, which involves the Victorian Government in conjunction with AAPT attempting to address the bandwidth issue for regional Victoria — a state-wide bandwidth infrastructure linking Victorian Government sites. VicOne is currently used by more than 3,500 government offices, schools, hospitals, courthouses and police stations throughout Victoria. The recent announcement of an upgrade of the

⁶² Telstra's prices for ADSL installation and monthly access can be found at www.telstra.com.au/adsl/price.htm.

⁶³ Where people do not have access to ISDN services, there may be a government rebate available for the purposes of accessing other appropriate services. For instance, under the Special Digital Data Service Obligation, Telstra supplies Satellite users with a 50 per cent capped subsidy on the purchase and installation price associated with the hardware required to use the service (<http://www.bigpond.com/broadband/satellite/products.asp>).

⁶⁴ The Federal Government recently announced a telecommunications upgrade for 'the bush', which involves provision for untimed local calls including calls for internet connection. 'Bush Scores \$150m Telecommunications Upgrade', ABC News Online, 14 February 2001.

⁶⁵ See <http://www.dcita.gov.au/rtif.html>

⁶⁶ Victoria Legal Aid, 'Scoping Study: For Implementation of Telelegal Service Delivery to Regional Victoria', VLA, Melbourne, 2000, p. 14. Confidential document provided to the Victorian Parliamentary Law Reform Committee upon request.

State's telecommunications infrastructure is expected to extend coverage of the VicOne network to 90 per cent of rural and regional Victoria and reduce telecommunication costs in regional Victoria by up to 70 per cent.⁶⁷ The Committee often heard throughout its Inquiry that the appropriate infrastructure is crucial in ensuring that the tangible benefits of electronic service delivery reach communities in rural and regional Victoria.

The Victorian Government is currently setting up a series of access centres through the State in rural and regional areas, putting computer terminals in a wider range of community access centres. Currently Victorian Business Centres are part of a network, and the Department of Human Services will also provide terminals through community health centres. The Government also aims to see computer terminals available at appropriate locations. All of these are to carry the Legal Channel, which is the Department of Justice's gateway into Legalonline, its public forum for the provision of legal information. The Department hopes to work in tandem with this government-provided access for provision of its other services.

The Committee heard evidence from the Department of Justice on the application of current and emerging technology to legal service delivery. The Department's recent information technology infrastructure upgrade has been designed, firstly, to improve the provision and accessibility of online information, for example about court, legal services, etc. In the context of the Committee's reservations about Legalonline, this improvement is to be welcomed, but the Committee nevertheless notes that Legalonline needs work, both in content provision and search capabilities. Secondly, these infrastructure improvements have led to the expansion of services for people wishing to transact their business with the Department online. Key cards are made available to people who have a business need to dial into the department through its computing facilities.

Infrastructure improvements also involve efforts by the Department, the courts and tribunals to set up all courtrooms with video-conferencing, multimedia and evidentiary facilities. Each court has developed its own stand-alone system, and the Committee would not necessarily endorse this type of approach in the many other situations where technologically assisted legal services could be supplied. The problem with the current situation is that, because each court has a stand-alone system, interaction between the various courts and tribunals is prevented. This lack of

⁶⁷ Hon John Brumby, Minister for Regional and State Development, Major Upgrade of Regional Telecommunications Infrastructure – more access less cost, Media Release, 6 November 2000.

interactivity between the electronic systems of the courts will become a greater problem as electronic administration becomes more widespread in the legal system.

Recommendation 2

That technology throughout the court system be standardised and networked.

Recommendation 3

That an entity be formed to coordinate and implement the introduction and development of standardisation and networking throughout the court system.

Electronic Provision of Legal Services and Information

The Victorian Government is currently implementing its policy 'Connecting Victoria', the aim of which is to have all appropriate information and suitable transactions available online by December 2001. The justice delivery strategies contained within this policy are: to ensure public access to online departmental information and transactions with the government; to expand the use of technology in courts; to enhance the court's accessibility to regional Victorians; and to improve workflows.⁶⁸

The Committee heard evidence on current and proposed methods of electronic management of justice that would have application right across Victoria, and received a submission from the Department of Justice on its Criminal Justice Enhancement Program (CJEP), a program which is being modified to include a civil component. The aims of CJEP are to improve access, quality and efficiency in the criminal justice system through process redesign, information systems development and related cultural change amongst key stakeholders.

The potential significance of this project for regional Victoria is that it aims to address problems that are felt acutely outside the metropolitan area. These include outdated technology, absence of efficient case-management capabilities, lack of technological integration for the management and exchange of data, lack of hardware and computer literacy in prison management, and limited network access in rural and regional Victoria to communications bandwidth. These deficiencies create further difficulties: lengthy delays; growing backlog of cases, particularly in the County Court; high rates of adjournment; long and uncertain waiting times; less efficient means of determining

⁶⁸ Peter Harmsworth, Department of Justice, Submission no. 74, p. 4

alternatives to conventional court processes; and the inability of the current system to track and report on trends thus rendering it unresponsive to its own deficiencies.

IT-related tasks such as maintaining accused persons' details, case listing and case management can be devolved to the place where the work is performed, rather than rely on centralised management systems. For court users, the Department envisages reduction in waiting times through improved listing and scheduling, as well as reduction in the length of cases and more accurate hearing dates through improved case management. For accused people, the CJEP is designed to put electronic systems in place which ensure consistency in treatment of all accused people. It also aims to provide, as a matter of course, information as to charges, evidence and options for representation to all people while in custody, as well as to keep them automatically informed and reminded of the court's procedures and processes once they leave custody.

In cases where the accused is Aboriginal, electronic link-up with the Victorian Aboriginal Legal Service (VALS) would mean speedy communication of briefs and potentially immediate attention for the prospective VALS client. VLA lawyers would also be able to access briefs for their clients in advance, thus being better prepared to advise clients and allowing for more efficiency in preparation and faster and better planned dispatch of resources and people. The Magistrates' Court and Victoria Police are seeking to involve community advisory bodies in the guidance and development of these programs to meet local needs.

In general, the Committee heard that technological solutions were welcomed by people in regional and rural Victoria. There was, however, also a strong theme emphasising the need for technology to be complemented by face-to-face delivery of services, especially in those areas already experiencing a diminution of direct service delivery. The Committee believes that while new technologies have the potential to transform legal service delivery, this will not occur unless the use of technology is properly complemented with face-to-face contact and the public educated in the use of these new systems.

Research consistently indicates that people tend to turn to other people in the first instance in seeking information, and this is the case regardless of level of education, income and migrant-status.⁶⁹ The Committee recognises that, even though this mode of information seeking may be changing with the increased availability of information

⁶⁹ Sue Scott, 'How Do People Access and Use Legal Information? Implications of the Research for Delivery via the Internet', Law Foundation of New South Wales, Sydney, 1999, p. 2 (www.lawfoundation.net.au/olap/user/legal_info.html).

online, these findings on the continuance of certain forms of information-seeking behaviour cannot be ignored. It is important to note here that technology may enable this process of making contact, not necessarily prevent it.

The Committee supports the application of technologically assisted methods of enabling people in rural and regional areas to make contact with people who hold the information they need, notwithstanding the distance between them. Interactive technologies and technologies facilitating speedy communication include bulletin boards and email. In enabling access to such modes of communication, as well as to information that these services exist, the internet may lead to increased demand for workers to supply these services.⁷⁰ Making the services more accessible is to produce more demand, particularly in the context of the increasing use of the internet, including in regional Victoria.

A key issue where there is increasing demand in an area that is new for many is the provision of education and training in the use of these technologies, both for users themselves and for people who are assisting users to find the information they need. These other forms of assistance are crucial in ensuring that the internet is an effective tool for accessing legal information.⁷¹

Another key issue is tailoring the information according to user demand rather than to agency concerns, and to ensure that resources are user-centered. There is a need not only for collaboration between agencies, but also for ongoing research into users' information needs, and dissemination of these findings.⁷² A recent report into the provision of government information and services on the internet bears out these views, as it notes that there is in Australia a vast range of government material available online for use by businesses and citizens, but that it is not easily accessible via one point of entry and is agency-centric rather than customer-focussed.⁷³

In terms of legal service delivery, VLA's community consultation in its scoping study for the provision of telelegal services to rural and regional Victoria unearthed 'overwhelming enthusiasm' for delivery via video-conferencing and the internet:

⁷⁰ Sue Scott, *op cit*, p 3. Scott cites the number of hits to the Law Society of NSW's Legal Help page in its first month of operation, 203,000 (p. 4).

⁷¹ *ibid*, p. 7.

⁷² *ibid*, p. 8.

⁷³ A brief outline of the report, by consulting firm Accenture, was given at www.theaustralian.com.au on 4 April 2001 in an article by Selina Mitchell, 'Clever Country Loses Edge in Online Race'.

The idea of being able to communicate directly with a specialist in a specific area of law, such as mental health or financial services, was deemed very important in the rural areas.⁷⁴

Support Services

The Committee found through its consultations that even where there was no glaring lack of legal services in regional and rural areas, there exists a profound lack of support services in many areas visited. Groups assisting people of non-English speaking background commented on the lack of support services. For example, the Committee received evidence from NESBlinks:

We find conflicts of interest arising almost every day, especially with NESB women in mixed marriages and domestic violence issues... It is hard to find a solicitor who can help because a partner in the relationship may have visited the solicitors in the area. Then the woman has to leave the Ballarat area to find somebody who can give advice. I do not know how the problem can be solved. We do not have any support services apart from the voluntary services. There are no paid support services for NESB issues.⁷⁵

Community Legal Centres and other legal service providers commented on the difficulties associated with finding appropriate support services within a geographical area to refer clients to for additional assistance. Legal issues rarely exist in isolation and people seeking legal advice often need other forms of support including financial advice, counselling and other support services. The view of VLA's General Manager of Regional Offices was that these are lacking in regional areas:

So far as support systems go, it is my view and the view I get from staff in the regional offices that there are not many specialist housing services. Particularly, there are not many specialist welfare referral services, such as victim counselling services. There is a fairly good spread of victim support networks throughout the state, but again it depends on where you live. If you live near a large regional centre you will be able to speak to someone, but if you are in a more geographically remote area it is going to be almost impossible, particularly if you do not have transport or secure housing.⁷⁶

The need for support services is particularly relevant when looking at issues such as domestic violence:⁷⁷

Women who have experienced domestic violence are usually in emotionally vulnerable states. They commonly experience feelings of powerlessness, shame, fear and so on. They usually have a wide range of practical needs for housing, medical, legal and support services, as well as needs for their children's safety. A woman's experience of domestic violence is intensively personal and it can be embarrassing — not to mention unsafe — for women to make the transition from hiding their experience to seeking help from outside services. The legal system

⁷⁴ Victoria Legal Aid, 'Scoping Study: For Implementation of Telelegal Service Delivery to Regional Victoria', VLA, Melbourne, 2000, p. 9.

⁷⁵ S Dhanapala, *Minutes of Evidence*, 27 April 2000, p. 42.

⁷⁶ M Wighton, *Minutes of Evidence*, 15 May 2000, p. 72–73.

⁷⁷ J Le Cornu, *Minutes of Evidence*, 27 April 2000, p. 60.

and the legal services play a crucial role in that transition from the private realm to the public sphere... It is therefore vital to assist that transition by providing skilled and supportive assistance so women do not retreat into the private realm where they experience violation and danger. For many women their experience of the legal system — including the law, lawyers and the courts — may be intimidating, confusing, disrespectful, scary, disempowering, frustrating and alienating... More specifically, there are many difficulties in providing adequately serviced delivery to rural areas of Victoria.

In metropolitan areas, people have the ability to access a range of services that would assist their interaction with the legal system and ensure that there is the necessary follow-up. However, geographical distance and isolation from support services can compound rural and regional Victorians' alienation from the legal process and can prolong issues that would otherwise be resolved. The Committee believes that in planning and delivering legal services, the Government needs to recognise the need for adequate support services in regional and rural areas. Rather than looking at legal services in isolation, the Committee strongly believes that they need to be viewed in the context of a range of other services including health, financial and alternative dispute resolution services.

CHAPTER 3 - PUBLIC ACCESS TO LEGAL INFORMATION

No person's access to justice and the legal system should be prejudiced by reason of their incapacity to obtain adequate information about the law or the legal system or their inability to afford the cost of independent advice or legal representation.¹

[T]here appears to be a general lack of knowledge about the legal system among Australians and...lack of knowledge denies many people the opportunity to participate in the process or to understand the reason why the legal system affects them in particular ways.²

Access to legal information and legal advice is an integral requirement in achieving effective access to justice. The Committee sees the provision of information as an indispensable component of proper delivery of legal services. Proper provision of legal information enables people to gain adequate knowledge of their own legal situation, to determine paths enabling further enquiry, and to assess the range of legal services available and their place within the overall operation of the legal system. This chapter focuses on access to legal information in recognition of its importance in the effective use and management of the legal system.

Accurate and simplified legal information assists in preventing legal disputes and promotes informed decision-making. The Committee believes it is an integral component of the legal system, the effective provision of which would increase the efficiency of the system. The Committee believes that the responsibility for providing easily accessible and understandable legal information is primarily a government one, shared by the courts, with other organisations taking up particular roles as appropriate.

The most direct routes to legal information form a complex system comprising community sector, government sector, public advocacy agencies and the legal profession. In Victoria, information can be accessed through the community sector at neighbourhood houses and community health centres, women's refuges and sexual

¹ R Percival et al, *Simplicity versus Targeting: A Legal Aid Example*, Discussion Paper No 25, NATSEM Canberra 1997.

² Australian Law Reform Commission, *Multiculturalism and the Law*, Report No 57, Sydney, 1992.

assault centres, dispute resolution services and migrant resource centres. Directly through the government, information is available from the Department of Justice and from Court Registries. There is a range of information available through public advocacy agencies such as the Equal Opportunity Commission Victoria. Access to material in languages other than English is discussed later in the chapter.

The Committee has found that access to current and simple legal information is not only important for the public but also for the legal profession and information intermediaries such as community workers and librarians. In regional and rural Victoria the importance of accessible legal information cannot be overstated especially in light of the limited opportunities to obtain a range of legal advice and the lack of comprehensive community services.

The terms of reference for this Inquiry specifically require the Committee to consider the ways in which new technologies can increase access to justice for regional and rural Victorians. The Committee believes that information technology (IT) offers new opportunities to meet the obligations that government and courts have to provide the community with simple information on the law. However, the Committee recognises that rapid developments in IT potentially create a new division in society between the information rich and the information poor.³ The Committee acknowledges that regional and rural communities do not enjoy the same level of access to technology as their metropolitan counterparts.⁴ Nevertheless, access to, and comfort with the use of, new technologies is growing rapidly. The Committee believes that technology is one possible solution to the growing problem, for some rural communities, of lack of face-to-face contact with legal service providers. Technology offers opportunities to develop innovative solutions to this tyranny of distance and also enables limited human resources to be better utilised. However, it is the Committee's view that technology is ultimately a tool that should complement face-to-face contact.

This chapter will briefly outline the importance of access to legal information and discuss some of the research findings on the way people access legal information. It will analyse common modes of information provision and then go on to evaluate the potential effectiveness of these various models for Victoria. This chapter will also explore technological solutions to information provision and strategies to ensure that the traditionally marginalised groups within society are not further disadvantaged by the adoption of technology in the legal system.

³ D Tapscott, *The Digital Economy: Promise and Peril in the Age of Networked Intelligence*, McGraw Hill, New York, 1996.

⁴ See Chapter Two for details.

Importance of Access to Legal Information

Informed participation in the legal system is integral to democratic and civil society. Knowledge of the law is a necessary basis for civic activity, and for people's capacity to comply with, use, and critique the law.⁵

The courts are open to the public, as they have been since the great movements to create a democratic public space during the Enlightenment. However, the nature of society and of communications...changed so much between the eighteenth and the twentieth centuries that the traditional means of the courts' communication with the public is badly out of step.⁶

Information about the law and an individual's legal rights is widely recognised as a vital ingredient of a democracy. A central aspect of access to justice is access to legal information. If citizens have access to accurate and simple legal information their options potentially expand, thereby relieving some of the pressure on the system. Providing the public with accessible information has preventive potential, saving cost, time and anguish for many litigants. Research suggests that simple legal questions can be efficiently resolved with plain English information while more complex issues that need legal advice are expedited if clients are well informed.⁷

Many studies have alerted us to the need for courts, governments, the profession and community organisations to provide accurate and accessible information on the law.⁸ This need is exacerbated in regional and rural areas where information is less readily available, where there are fewer qualified professionals to seek advice from and as services in various areas are in decline.

Governments have an obligation to provide access to the law, particularly as ignorance of the law cannot be used as a defence. A citizen often has to spend large amounts of money on legal advice and materials in finding 'the law'.

Information about the legal system and legal processes also plays an important role in public confidence in the justice system. Professor Stephen Parker's study into *Courts and the Public* found that while most Australian courts are moving towards a customer-centric approach, the public largely finds courts hostile, unfriendly places

⁵ S Scott, 'Law Online', (1999) 24 *Alternative Law Journal* 24, p.24.

⁶ H Gamble and R Mohr, 'Courts and Communities'. In R Mohr and S Lloyd (eds.) *Delivering with Diversity*, University of Wollongong, 1996, p. 7.

⁷ Elizabeth McKibbin, Legal Information Access Centre, Submission no. 47, p. 1.

⁸ Australian Law Reform Commission, *Multiculturalism and the Law*, Report No. 57; *Equality before the Law*, Report No 69

and does not have confidence in the processes or sufficient awareness of the improvements implemented in the courts.⁹

Professor Parker's views are borne out by some of the evidence taken by the Committee. Some witnesses stated that the courts and the legal system can still be 'intimidating' and 'confusing',¹⁰ for users, and that people are unaware of innovations in the system¹¹ or lack 'confidence' in using them.¹²

To retain and build public confidence in the system, courts have to improve their interaction with the public. An integral aspect of achieving this transformation involves providing access to information about court processes. Providing legal and court information in an accessible and inexpensive form is also emerging as a critical issue in light of the growing number of unrepresented litigants.

Information technology offers the opportunity to improve legal information provision to the average citizen. The effective use of IT could mean that everyday legal concerns not currently met because of the cost of legal advice and lack of information could be catered for, especially in rural areas. While the internet provides the ideal tool to publish accurate and timely legal information, the Committee found that in rural Victoria the internet was better understood when mediated or complemented by human contact to ensure that information was fully comprehended. The Committee notes that, in the absence of this human contact, people in country Victoria may well feel more isolated in their legal problems when confronted with the necessity of using new technologies in order to access information. The internet has the capacity to amplify the tyranny of distance as well as to alleviate it, and people need to be provided with the training and assistance to use it effectively.

How is Information Accessed?

Despite the seeming dominance of the written word in our society, oral cultures dominate in the area of information seeking. Research has consistently found that people turn to other people as their first preference when they have an information need. This is as true of highly educated professionals as it is of the urban poor.¹³

As discussed in Chapter Two, people seek out other people as the first port of call in obtaining information. People choose the 'path of least resistance' in seeking

⁹ S Parker, *Courts and the Public*, AIJA, 1998.

¹⁰ J Le Cornu, *Minutes of Evidence*, 27 April 2000, p. 60.

¹¹ P Marwood, *Minutes of Evidence*, 25 July 2000, p. 671.

¹² D Walsh, *Minutes of Evidence*, 25 July 2000, p. 669.

¹³ S Scott, 'Law Online', *Alternative Law Journal* 24, 1999, p.24.

information, and information is much more likely to be utilised if it is readily and easily accessible. A study in the United States found that people collect information for a variety of reasons including gaining self-control, social support and clarifying causes rather than merely to obtain facts.¹⁴

While these findings were generally borne out in the evidence received by the Committee in regional and rural Victoria, there were also some areas where the particular effects of living in this region were most evident. The Committee repeatedly heard of the importance of confidentiality in country Victoria to the point that some witnesses expressed concern at being sighted anywhere near a facility that might indicate to the community that they had a legal issue. This was well explained by the Women's Legal Service:

Seeing a solicitor in a rural community is pretty different from seeing one in a city, where there can be an element of anonymity. In rural communities engaging a solicitor or even going and asking for advice can be noted by people in the community. That makes it very hard for women to go out and seek stuff like pre-separation advice or to find out their legal options in, say, domestic violence situations, where confidentiality is an issue. We have had reports of women going outside their regions to get confidential services. One of the things that makes our service quite popular is that women can ring without anyone else in the community knowing that they have questions they want answered.¹⁵

Another clear theme was that while people seek out general information on issues like health and education, this is not the case with legal issues. It appears that people generally do not seek out legal information or advice until they have a specific legal issue that needs resolution, and this failure to seek advice early may compound the problem:

It is often after people have signed things and found themselves in deep trouble that they come to us, and we say, 'There is an agency that could have helped'. There is a lack of knowledge about seeking initial advice.¹⁶

Finding answers to legal issues is also not a simple task for the public. The volume and scope of law, the various jurisdictions of law making, the procedural aspects of law, the nature of changes and the way the law is published make it difficult for non-legally trained people to gain access to and comprehend the law. Information is of little use unless the person comprehends the material and is able to assimilate and utilise the information. As Hazel Genn notes:

¹⁴ B Dervin, *The Development of Strategies for Dealing with Information Needs of Urban Residents*, Seattle, Washington University, 1993.

¹⁵ A. Foster, *Minutes of Evidence*, 11 September 2000, p. 799.

¹⁶ L Sinha, *Minutes of Evidence*, 13 September 2000, p. 921.

Information alone is not helpful for all types of people for all types of problems. Members of the public with low levels of competence in terms of education, income, confidence, verbal skill, literacy skill and emotional fortitude are likely to need some help in resolving justiciable problems.¹⁷

Comprehension is related to readability and accessibility of information — a vital issue in an area like law. It is also linked to the level of literacy in English. In 1996, ABS's study on aspects of literacy found that almost half of Australians aged 15–74 have 'poor' or 'very poor' literacy skills and therefore are likely to experience difficulty in using much of the printed material they encounter in everyday life.¹⁸

The Committee believes that these findings are important in determining how best to deliver information to the public. In the context of an increasing amount of primary legal information and substantial amounts of general information on courts and the legal system being available over the internet, it is imperative to examine the ways people access information and whether the growing plethora of legal information is of use to the general population. This is especially the case as more agencies consider that their obligations to provide access to law have been met by publishing information on the internet.

In summary, people seek information through others, and where they obtain written information first still want to supplement this with face-to-face contact. Combine this need with the complexity of some legal information and the ABS findings on the numbers of people who have difficulty understanding everyday written materials, and it is clear that provision of information over the internet does not solve many problems associated with the effective delivery of legal information. The Committee repeatedly heard of the need for face-to-face contact in regional and rural Victoria, and this confirms findings on the importance of intermediaries in accessing legal information.¹⁹ Legal information is more readily understood when skilled assistance is provided to guide people through it. As discussed below, the Committee believes that the NSW model of using librarians as such skilled assistants provides a good model for the delivery of legal information.

¹⁷ H Genn, paper presented at the ALRC Managing Justice Conference, Sydney, May 2000.

¹⁸ ABS, *Australian Social Trends 1998: Education — Educational Attainment: Literacy Skills*, Australia Now, ABS, Canberra, 1998.

¹⁹ See for example papers from AIJA Technology for Justice conference, 8–10 October 2000, Melbourne. (see www.aija.org.au)

A Coordinated Approach to Legal Information Delivery in Rural and Regional Victoria

The Committee strongly believes that there needs to be a coordinated approach to legal information delivery. Government is best placed to serve this coordination role to ensure access to current information and that there is no duplication of effort in producing information. The Committee believes that the Department of Justice's Legal Channel represents part of the strategy required. However, in light of the fact that many Victorians and in particular many regional and rural Victorians do not have access to technology, there has to be a strategy that incorporates paper-based materials and online information. The Committee believes that the Department of Justice should develop a coordinated legal information strategy for the public that utilises a mix of technologies and paper-based materials to ensure access to accurate and comprehensible legal information and referral where necessary. In developing such a strategy, the Department should evaluate the LIAC model described below.

The LIAC Model

The Legal Information Access Centre (LIAC) is a joint initiative of the State Library of NSW and the Law Foundation of NSW. It was established in 1990 to provide free access to legal information to the general public in New South Wales. LIAC's experience of delivering legal information for a decade has led them to suggest that 'access to information allows people to make more effective and efficient use of the legal system; increases the confidence necessary for people to assert rights; and can defuse peoples' anger and frustration with the law and the legal system'.²⁰

In response to the barriers faced by the community in accessing legal information, LIAC has developed a model that provides tiered information pathways to the law. People can research as little or as much as they wish with the pathways providing a framework which enables people to move from resources intended for the non-lawyer, to those written for lawyers.

At a basic level, LIAC provides access to pamphlets on various legal issues. This is coordinated on the internet using a 'pamphlet index' that helps people locate printed pamphlets or those published on the net. The next level of information is called practical guides, which are plain English texts that summarise and explain the law. LIAC ensures the consistency and accuracy of this information by putting together a range of plain English guides in a 'legal toolkit'. This kit has been distributed to all

²⁰ Elizabeth McKibbin, Legal Information Access Centre, Submission no. 47, p. 1.

public libraries in NSW. The next pathway utilises legal texts. LIAC selects legal texts in a collection called 'Law Books for Libraries'. This collection has been bought by over 50 public libraries across NSW. The fourth pathway includes lawyer's tools which includes loose-leaf services and other legal research tools. LIAC in Sydney has a comprehensive range of legal research material that trained librarians utilise to answer legal questions. The final pathway is primary legal material that is accessed through the AustLII internet site.

LIAC has been effective in the last ten years because the model uses an existing information infrastructure, namely public libraries, allowing for almost 400 service points. Local libraries are an ideal mechanism through which to provide access to legal information. This is especially the case for rural and regional Australians for whom a local library remains an accessible service:

[Local libraries] are located in almost every community. They are accessible, free and widely used by a high per centage of the population. Working with the State Library they are now an integral part of a highly effective network delivering access to reliable legal information to people across the state, irrespective of where they live.²¹

The Committee was impressed with the LIAC model as it not only ensures access to legal information to rural clients but also ensures a mixture of delivery mechanisms and the provision of consistent and accurate information. The network allows for standards to be delivered and monitored both in the collections and the training of staff. Librarians across the network receive training on the resources, and this enables them to answer queries and to differentiate between information and advice. The main LIAC service answers enquiries beyond the resources and skills of local public librarians. This service is accessible by phone, fax, email or in person. Regional and rural clients can request information and the research is conducted for them in Sydney if necessary with relevant information sent to them.

The Committee believes that LIAC represents a best practice model of legal information delivery. It involves a systematic approach to delivering information that is clearly client focussed. It also uses knowledgeable intermediaries in the form of trained librarians to explain and demystify legal problems and processes for the general public. LIAC also utilises a mixture of published and internet-based information to ensure that a majority of the population's information needs are met. The Committee strongly recommends that the Victorian Government, in conjunction with the State Library of Victoria, considers the implementation of a similar model of legal information delivery. The Committee believes that such a model can be

²¹ *ibid*, p.2.

modified for Victorians and can make even greater use of technology to deliver legal information.

Application of the LIAC System to Victorian Regional and Rural Libraries

The Committee believes that the LIAC model with appropriate modifications can assist regional and rural Victorians gain better access to legal information. In time, the Committee believes that the model can be utilised by a range of community organisations that provide basic legal information for clients. LIAC's blending of online catalogues and information with paper-based resources is particularly appropriate in light of recent initiatives to expand online access to non-metropolitan libraries.

In October 1998, the Country Public Libraries Group of Victoria (CPLG) in conjunction with the State Library of Victoria applied for funding under the Commonwealth Networking the Nation Project to improve access to internet and other electronic resources of information for rural Victorian libraries. This application was successful attracting \$3.47million in funding for the Rural Libraries Online Project. The Project was conceived because:

In regional and remote areas poor telecommunications infrastructure combined with the high cost of connecting to existing networks has created inequity of access to information resources of all types and in particular the Internet.²²

The project aims to address this inequity by building a long-term sustainable network of infrastructure that:

- Is comprised of a flexible mix of technologies
- Is built around local availability
- Is cost-effective, sustainable and expandable
- Builds on local initiatives, capacity and relationships
- Provides online connectivity for every rural, remote and regional library and to participating community public access locations.

A pilot project was instituted and evaluated with proposals for the extension of a satellite-based system in all nineteen regional and rural library services. The Country Public Libraries Group of Victoria noted:

²² see www.libraries.vic.go.au/infonet/rlol.htm

With proper resources and management, public libraries can be positioned as vibrant community centres in rural communities; centres able to offer vital services from a variety of government levels.²³

The Committee believes that this project could provide an important vehicle for the better distribution of legal information to rural and regional Victoria, and, more specifically, create an ideal environment in which to implement the LIAC system in Victoria.

In May 2000, the Government also launched the Victorian Virtual Library,²⁴ which provides for:

- Online searching of 39 library catalogues;
- A database of reference queries;
- A list of recent events/hot topics;
- Book suggestions; and
- A directory of free web-based e-mail facilities.

The Virtual Library ensures that Victorians regardless of where they live can access online catalogues and search free information and reference databases.²⁵

The Committee believes that initiatives to increase access to technology should be combined with new services and products that will confirm the value of the technology for rural and regional clients. With increased connectivity from regional and rural libraries, citizens can access new services like the Virtual Library that provide them with information across the wide network of public libraries. The Committee believes that the Government in conjunction with the State Library of Victoria should evaluate the NSW LIAC model with a view to implementing a similar project in Victoria. Such a project would also be connected to other recent initiatives such as the Department of Justice's legal channel and should aim for maximum coordination of resources to ensure access to basic legal information for all Victorians.

²³ Country Public Libraries Group of Victoria, 'Making a Difference: Network Activity Plan 2000 –2002'.

²⁴ www.libraries.vic.gov.au

²⁵ <http://www.libraries.vic.gov.au/infonet/lor/LOLVirtualLibrary.doc>

Recommendation 4

That the State Government, with the State Library of Victoria, examines the Legal Information Access Centre (LIAC) at the State Library of New South Wales and adopts a model based on LIAC's most useful features.

Printed Materials

There is a wide range of pamphlets and other written community legal education material available to the public produced by courts, the Victorian Civil and Administrative Tribunal, Victoria Legal Aid, Community Legal Centres and various other community agencies. A common theme in the Committee's review is that while such material is available, the public may not know of its existence or how to access the information. This lack of knowledge is compounded in rural and regional areas by the fact that agencies do not always receive the most up-to-date printed material.

The Committee recognises that it is difficult to ensure that printed material remains up-to-date and understands the desire of agencies to publish information on the internet as an easy and cost-effective way of ensuring currency of information. However, as discussed later in this chapter, access to, and the ability to use, new technology cannot be taken for granted and there is still a very real need for basic printed information. In regional and rural areas where the avenues for face-to-face legal advice are fewer, this need for printed material is even more apparent. Most rural courts visited by the Committee did have easily accessible information on legal issues for the public. However, there were differences in the material available depending on the region of Victoria. While the Committee recognises the importance of local information, it believes that there is a need for consistent written information on the legal system and process. To this end, the Committee believes that the Department of Justice should coordinate the preparation and distribution of core information on courts and tribunals, general information on the legal system and process, and information on support services across Victoria. Such information should be available at all courts and local libraries, and information should be formatted in a way that enables local communities to customise the information to include available local services.

Recommendation 5

That the Department of Justice coordinates the preparation and distribution of core information on courts and tribunals, general information on the legal system and process, and information on support services across Victoria. This information should be produced to facilitate its distribution in both electronic and printed forms.

Recommendation 6

That the overall strategy for the delivery of legal information and services recognises the need for the provision of information in paper-based and electronic form.

Victoria Legal Aid's Community Legal Education Publications

Victoria Legal Aid distributes a range of publications as part of its community legal education program. These are produced either by VLA in-house, or by specialists such as the Mental Health Legal Centre or the Office of the Public Advocate. These publications are mostly available free of charge, with some available also in languages other than English.

Pamphlets in English containing basic information can be obtained on: the Child Support Service; paternity testing; the legal problems associated with being in debt; legal and health issues for injecting drug users; paying maintenance or Child Support; and issues involving children and the court system. Pamphlets or fact sheets also produced in a range of community languages include information on how to determine if the problem you have is a legal one, and on power of attorney.

VLA also distributes more substantial information in booklet form. Booklets in English only are available on questions about the law for young people, applying and responding to an intervention order, common legal issues, legal aspects of child-care, the Family Court and special medical procedures for children, and making a complaint in Victoria. In English and other languages, booklets are available on citizens' rights and police powers, on family law, and on attending court when charged with a minor offence.

Information on Discrimination and Human Rights: the Equal Opportunity Commission Victoria

The Equal Opportunity Commission Victoria (EOCV) is one of three government bodies with responsibility for handling equal opportunity, discrimination and human

rights issues in Victoria.²⁶ The Commission is a peak provider of information to the general public of Victoria on these issues, informing people of their equal opportunity rights and responsibilities and providing training and education programs about equal opportunity, discrimination and harassment. It deals with discrimination complaints lodged under the *Victorian Equal Opportunity Act* and receives complaints lodged under the federal Racial, Sex and Disability Discrimination Acts. In all these functions, the Commission plays a role in legal information and service provision to rural and regional Victoria.

The Committee heard from the Equal Opportunity Commission on the delivery of its services outside metropolitan Melbourne.²⁷ The Commission operates a toll-free number that country callers can use to obtain information and to make appointments for further discussion of complaints. Commission staff will follow up with a visit to the country area if required, although the EOCV pointed out that its resources in this outreach are limited. Twice each year the Commission holds an 'Equal Opportunity Week' in a rural and regional location to raise awareness of equal opportunity rights and responsibilities and to inform the public of the Commission's complaint-handling process. As part of this rural outreach, the Commission is implementing partnership projects across Victoria, teaming up with organisations that have a local presence with a view to achieving both wider dissemination of information and development of strategies that target local groups and sectors.

The rural outreach program is designed to give people information that might prevent disputes from escalating, but is particularly focussed on training people in local agencies to assist complainants in going through the formal procedures of grievance resolution. The rural outreach program is also designed to inform people that they do not have to visit Melbourne to obtain assistance in resolving matters of discrimination.

The Commission believes there is a need for the expansion of this program, and identifies from its research several groups that should be targeted at the local level. These include Aboriginal people and people from non-English-speaking backgrounds. The Commission identified these groups as particularly subject to discrimination and also harder to reach with appropriate information, for language, cultural or geographic reasons. The Commission noted that appropriate advice and support services are also more difficult to secure as a member of either of these two groups, and the cost of obtaining them where they do exist can also present more of a difficulty. The Commission itself does publish a limited amount of information in community

²⁶ The other bodies, who have different roles and functions, are the Victorian Civil and Administrative Tribunal and the federal Human Rights and Equal Opportunity Commission.

²⁷ Equal Opportunity Commission, *Minutes of Evidence*, 15 May 2000, pp.133–138.

languages on equal opportunity principles and how to make a complaint. This information is available both in electronic format on their website and in printed form.

Physical Access to Primary Legal Materials

Research demonstrates that simply written legal information is important in introducing legal concepts and areas of law to non-lawyers. However, as people develop an understanding of a legal issue, they want more detailed information and use more complex resources ‘which they understand better than has generally been assumed’.²⁸

In metropolitan Melbourne, most legal practitioners and members of the public can physically access primary legal materials such as current legislation, case law and commentaries from law libraries or the State Library. Rural and regional Victorians do not enjoy the same access. Regional and rural courts by and large do not have up-to-date law libraries. Most public libraries in rural areas do not have extensive and up-to-date primary and secondary legal materials. While most rural law firms would subscribe to publications offered by legal publishers, the public has few opportunities to find the law without utilising new technologies.

New Technologies and Legal Information Provision

Information is power, and access to information empowers the population. This, of course, is dependent on equitable access to the technology and access to technology of a standard which is equal to that available in metropolitan areas.²⁹

Information technology can deliver up-to-date information widely for very limited cost. In utilising IT to disseminate information, legal agencies should be aware that a number of delivery mechanisms need to be considered because no single distribution vehicle will reach Victoria’s diverse population.³⁰ The Committee believes that in considering IT solutions, it is also imperative to realise that access to technology and ease of use of technology vary greatly across the community. The Committee believes that providing access to computers, upgraded continually to keep pace with technological developments, is a key factor in ensuring that IT methods of information provision can be taken up by the community.

²⁸ Elizabeth McKibbin, Legal Information Access Centre, Submission no. 47, p. 2.

²⁹ Cr Chris Hazelman, ‘Rural and Regional Victoria — Decline or Revival’ paper presented at the Centre for Public Policy, University of Melbourne. 27 March 2000, p. 11.

³⁰ S Biondo, cited in Victorian Law Reform Committee, *Technology and the Law*, Parliament of Victoria, Melbourne, 1999, p. 218.

With genuinely improved telecommunications reliability and cheaper prices, technology will increase access to law for regional and rural Victorians. As discussed in Chapter 2, the Government through VicOne is attempting to improve the technological infrastructure and cost structures for rural and regional Victoria. A Government project that will assist further access to technology is the establishment of access centres in regional and rural Victoria. While the Government is currently rolling out computer terminals for public access in community health centres, the aim is for access to technology in a wide range of community access centres.³¹

The Internet

Legalonline

In its report *Technology and the Law* (1999), the Committee had recommended the establishment of a 'Victorian Legal Channel' that would act as a single online entry point for a range of legal information and transactions.³² The Committee saw this as an important way of certifying and consolidating the ever-increasing amount of legal information on the internet. The Committee was pleased to see that this recommendation has been implemented with the launch of Legalonline in October 2000.

Legalonline is the Victorian Government's online gateway to legal information.³³ It provides practical information on the law in ten different client-focussed categories. It also provides valuable referral links and links to other information sites. The Committee believes that Legalonline represents a good start at providing a gateway for legal information and services for the public and hopes that the content on the site will continue to grow and improve.

The Committee notes the importance, in the provision of on-line information, of continual upgrading of the site, in terms of both information and technical aspects. Searching mechanisms at the site should be upgraded as frequently as possible to make finding information easier for a wide range of users.

Recommendation 7

³¹ M Lambert, *Minutes of Evidence*, 25 September 2000, p. 975.

³² Victorian Law Reform Committee, *Technology and the Law*, Parliament of Victoria, Melbourne, 1999, Recommendation no.18, p. 76.

³³ www.legalonline.vic.gov.au

That the Department of Justice ensures that Legalonline has in its database all relevant services in rural and regional Victoria, so that a person searching on services in their area can obtain a comprehensive listing of local contacts.

Recommendation 8

That the Department of Justice ensures that Legalonline is continually updated and upgraded, especially in terms of its search capability, so that all information on its database is current and readily accessible.

Websites of Courts

The Committee notes that some of the American courts have become very sophisticated in the ways they present interactive information to the public with guided tours, consumer information and the opportunity for feedback.³⁴ In Australia, the High Court, Family Court and Federal Court websites provide information that is clearly targeting the general public and State courts are attempting to follow this lead.³⁵

The Supreme Court of Victoria, County Court of Victoria, and Magistrates' Court of Victoria websites all feature clear and comprehensive information about the courts' respective functions, compositions and jurisdictions. All three also provide search facilities and publish their court lists.

In addition the County Court provides on-line information designed specifically for the public under headings such as 'Costs and Fees', 'Court User Information' and 'Contact Points'.

The Magistrates' Court website also adopts a user-friendly approach in including sections on 'Serving the Community' and 'Court Services' that contain practical information on matters such as going to court, receiving a witness summons and the assistance available from organisations such as the Salvation Army and Court Network.

³⁴ See e.g., California Courts Homepage, <http://www.courtinfo.ca.gov/>; Colorado Courts Homepage, <http://www.courts.state.co.us/ct-index.htm>; New York State Unified Court System Homepage, <http://ucs.ljx.com>; Federal Judiciary Homepage <http://www.uscourts.gov>; Arizona Judicial Department Self Service Centre <http://www.supreme.state.az.us/selfserv>;

³⁵ <http://www.hcourt.gov.au>; <http://www.familycourt.gov.au>.

Other Websites Providing Legal Information

The internet has already ensured that vast amounts of conventionally published material can be accessed on the web. While there is an increasing amount of legal information on the internet, at present it consists mostly of primary material that is not easily understood by the general public. The Australasian Legal Information Institute (AustLII)³⁶ is an excellent example of a website that provides free and comprehensive access to all Australian legislation and case law. AustLII is internationally recognised as representing best practice and as having pioneered the dissemination of free legal information, though the Committee notes that while it may be best practice in its dissemination of information to legal practitioners, its search engine could be improved to facilitate its effective use by a broader clientele. Nevertheless, AustLII has ensured that Australia has the largest amount of legal material available on the internet of any country. The Australian Institute of Judicial Administration during their 2000 Technology and Law Conference recently judged AustLII as the best overall legal website.³⁷

While AustLII's focus on the provision of primary legal information may limit its utility for the general public, the growth in the number of unrepresented litigants and the increasing amount of secondary legal material available on the internet suggests that it will increasingly become a very valuable community resource.

It is important to note that more sophisticated forms of information delivery are constantly being developed allowing for interactive applications whereby users can be taken through complex issues on a methodical question-and-answer basis.³⁸ As the cost of information technology continues to decrease, increasing numbers of private households will have some form of computer that connects them to the internet, which will enable them to conduct a range of business and financial transactions online.³⁹ The web will become the 'natural first port of call' for information or guidance on almost any issue. The development of these technologies and the continual emergence of smarter technologies will mean that in time users will be able to obtain '*all but only*' the material and information they require.⁴⁰

³⁶ www.austlii.edu.au

³⁷ AIJA Technology for Justice, 8-10 October, 2000, Melbourne. See www.aija.org.au

³⁸ R. Susskind, *The Future of Law: Facing the Challenges of Information Technology*, Clarendon Press, Oxford, 1998, p. xiv.

In our daily lives, this means that on-line services will replace the middleman or agent. For example, booking and arranging travel on-line is already a more efficient way of organising holidays or business trips. Travel agents are finding that they need to add value to the service they provide to continue to survive as an industry.

³⁹ Justice L Olsson, 'Coming Ready or Not: Courts and Information Technology', *Reform* 10(71), 1997, p. 13.

⁴⁰ *ibid*, p. xvii.

The Committee notes that while there is a wide range of legal information available on the internet, there are very few good attempts at packaging information for the public by drawing together resources to provide pathways through the maze.

One of the best examples of an internet guide to law for the public is a website called 'lawstuff' funded by the National Children's and Youth Law Centre and the New South Wales Law Society.⁴¹ Lawstuff is a site that informs young people of their legal rights. The site has specific information on each State and uses cartoon characters and stories to answer questions ranging from sexuality and workplace violence to pollution and police interrogation.⁴² The site also features a service called Lawmail that enables young people to obtain individual legal advice through email.

While Lawstuff is aimed specifically at children and young people, the Law Foundation of New South Wales website provides information and referral resources for the wider community.⁴³ The website has won recognition from the Australian Institute of Judicial Administration for representing the best public sector website. The Law Foundation of NSW not only provides access to resources through its website but also conducts research projects on the accessibility of online information. The Online Legal Access Project (OLAP)⁴⁴ of the Law Foundation involves a number of research and policy initiatives designed to improve the accessibility and quality of online legal information. The work carried out by OLAP is unique and invaluable as it provides us with empirical research on the ways in which people access information, research OLAP uses to develop standards for information delivery.

In the community sector, the Tenants Union website is a good example of an effective and comprehensive site, which provides a great deal of its information in community languages.⁴⁵

The Fitzroy Legal Centre and The Law Handbook

The Fitzroy Legal Centre produces an annual publication, *The Law Handbook: Your Practical Guide to the Law in Victoria*, which the Committee regards as an excellent source of legal information in Victoria. *The Law Handbook* is produced and edited by the Fitzroy Legal Service with the content provided by leading experts in the

⁴¹ <http://www.lawstuff.org.au>.

⁴² The Committee did, however, hear evidence that the current waiting period for an answer from the Lawmail service can be as long as six weeks. See S Nicholson, *Minutes of Evidence*, 25 September 2000, p. 963.

⁴³ www.lawfoundation.net.au

⁴⁴ www.lawfoundation.net.au/olap/index.html

⁴⁵ See Chapter 12 for more information.

profession. Contributors volunteer their time to provide sections in their particular fields of expertise. These specialists range from academics to private practitioners to those working in public advocacy and advice. *The Law Handbook* provides information on the most common areas of the law where people have problems. It is also used extensively by members of the profession as a preliminary reference point in areas of law with which they are not familiar. *The Law Handbook* is a reliable and up-to-date source of general legal information, given in enough detail to enable most readers to assess their situation and to access the services they require in order to deal with the matter.

The Committee heard evidence from the Fitzroy Legal Service on the production of *The Law Handbook* and the place it occupies within the overall activities of the Legal Service.⁴⁶ The Service's Community Development Worker, Mr Sam Biondo, made it very clear to the Committee that the various operations of the Fitzroy Legal Service form a finely balanced entity, and that the continued success of the paper-based product is crucial to the ongoing operation of the Legal Service itself. The Committee realises that it is important for the Fitzroy Legal Service to be able to protect its own interests in this matter, and to be able to continue to explore on its own behalf the commercial opportunities *The Law Handbook* offers.

The Service has already produced a CD version of *The Law Handbook* and is in the process of carefully investigating options for extending the reach of the *Handbook* via electronic delivery and assessing potential markets for a range of online products. The Committee was interested to hear Mr Biondo's ideas on this matter, given the expertise the Legal Service has in the provision of high-quality, low-cost and sought-after legal information to a broad cross-section of the community. The service that Fitzroy currently provides with *The Law Handbook* is, in fact, the kind of service which the Committee would like to see being offered by government in partial fulfillment of the information needs of rural and regional Victorians.

With this in mind, the Committee asked Fitzroy Legal Service about the possibility of achieving greater distribution of *The Law Handbook* via a website. Clearly, Fitzroy Legal Service has given much attention to this question over the last few years, and has built up a significant bank of ideas. These include providing legal forms relevant to particular information, providing links to other websites where material may be searched at greater depth, providing links to primary sources of information such as legislation, and customising *The Law Handbook* for use in schools.⁴⁷

⁴⁶ *Minutes of Evidence*, 6 February 2001, p. 1153–1161.

⁴⁷ *Minutes of Evidence*, 6 February 2001, p. 1159.

The Committee would like to encourage the government's use of *The Law Handbook* to enhance the provision of legal information to the public via the internet. Of course, such a resource would not only be used by the public, but also by service delivery agencies who could thereby link people with appropriate information. Clearly, Legalonline is the most appropriate government website to provide access to this important reference book. The Committee does not wish to preclude planned and future initiatives by the Department of Justice in its process of development of this site. However, in the context of the improvements needed to Legalonline, in substantive content as well as referral details, and the fact that Legalonline is the gateway to government legal information, the Committee would like to see discussions take place between key representatives from the Department of Justice and Fitzroy Legal Service on the possibilities for innovative online uses of *The Law Handbook*. The Committee stresses its view that Fitzroy Legal Service must be able to maintain editorial control over all aspects of the *Handbook* in either electronic or printed form. Any potential arrangement may entail the Government negotiating a licensing arrangement with Fitzroy Legal Service to provide access to these products via a link from Legalonline.

Recommendation 9

That the Government provides to Fitzroy Legal Service, as a matter of priority, the additional funds necessary to develop The Law Handbook and associated products for online access through a Fitzroy Legal Centre website. The Legal Service must retain ownership and full editorial control of all products.

Information Kiosks

Kiosks located in court buildings can provide a range of legal information, freeing registry personnel from answering routine queries from members of the public. Kiosks comprise touch screens and a keyboard, and can include payment facilities and printing capacity. Many of these systems use basic artificial intelligence to interact with users and guide them through the process of filling in the required forms.

Built by North Communications Pty Ltd, one of the first successful legal kiosks was the Arizona 'Quickcourt', which is an interactive multimedia system that uses text, graphics and an on-screen narrator to guide the client through the legal process. Quickcourt offers its services in Spanish and English and has the capacity to print out forms based on the information gathered from the user. Quickcourt was introduced in Arizona in 1993 as a means of making courts more accessible and responsive.

In May 1997, Legal Aid Queensland introduced three kiosks developed by North Communications. The kiosk offers general information on the services provided by Legal Aid, legal information on family law, child support, and domestic violence. It enables a user to complete an application for dissolution of marriage, print out the form and then obtain further information on how to lodge the form. The kiosk also guides users through small claims and debt-recovery matters and enables users to print out blank Small Claims Tribunal and Small Debts Court forms while providing them with advice on how to prepare a case, file the form and comply with procedures.⁴⁸

The Legal Aid Queensland kiosks provide an interesting example of the use of technology to provide information and services to the public. The system would require little modification for use in other States because the majority of its information is family law based, which applies nationally. However, kiosk technology has always been seen as an intermediate step in the electronic provision of information to the public. The natural progression of such technology is to remove the physical constraint of a kiosk by locating the content in cyberspace on an interactive website. The Committee believes that rather than investing in kiosks, legal agencies should focus on the provision of interactive web-based services for the public.

The Fund for the City of New York has developed sophisticated systems that do not rely on kiosks, but utilise touch screens on basic PCs in conjunction with the internet. It has developed a touch screen system which guides a client through issues relating to domestic violence and public housing. The system asks a series of tick-box questions and automatically generates the relevant forms for lodgement. An important added feature of the system is that citizens can complete the questions in their own language and have the forms printed out in English and/or their preferred language. The plans for these systems include operation on voice recognition to complement the touch screen function.

Call Centres

The early 1990s saw a proliferation of call centres established by large corporations and government agencies whose core business was the delivery of services directly to

⁴⁸ Victorian Law Reform Committee, *Technology and the Law*, Parliament of Victoria, Melbourne, 1999. Parliament of Victoria, Law Reform Committee, Notes of Meeting with officers of Queensland Legal Aid, 6 February 1998. Similarly, a touch screen kiosk providing information and answering queries was constructed in the Blacktown Model Local Court project in New South Wales. However, the system was discontinued because the supplier of the system went out of business. See, Attorney-General's Department of New South Wales and the Law Foundation of New South Wales, *The Model Court Project*, Sydney, 1992.

clients. Recent developments in call centre technology take advantage of the integration between telephones and computers and incorporate the benefits offered by internet applications:

By integrating the Internet with the telephony systems in a call centre, callers can address their queries by phone, fax, email or via the centre's Website and receive a response by phone, fax or email. 'phone' in this context includes Internet voice so that a client sitting at a computer can have a telephone conversation with a member of the (organisation's) staff. A particularly useful function provided by this level of integration is the ability to click on an icon while browsing a Web Page and speak with a staff member.⁴⁹

As already noted in this chapter, the Committee received evidence as to the vital importance of confidentiality for rural and regional Victorians. Access to call centres for the purposes of obtaining legal information is one possible solution to the difficulty of maintaining confidentiality when living in small communities.

There are a number of models of legal information delivery through call centres around Australia. The Committee has investigated two models established by Legal Aid Commissions, namely the Legal Aid Queensland Call Centre and the Victoria Legal Aid Multilingual Telephone Information Service. The Committee believes that telecommunications offer interesting opportunities for government to provide legal information. However, it also notes that there has been some criticism of both the Queensland and Victorian call centres. The services provide only basic legal information with little or no follow-up and they rely heavily on referral to appropriate agencies. The Committee notes the views expressed by VLA:

Given the existing mandate of Telephone Information Services such as MTIS, and the pressing identified needs of rural and remote communities, it is not surprising that there are some criticisms of these services. The reality is that such criticism is an expression of concern about the adequacy of this specific service model as the sole option for legal service delivery. Whilst telephone legal information services are an important part of the legal service delivery framework they cannot operate alone or in isolation from other more comprehensive service options.⁵⁰

The Committee notes, however, that where no other type of service delivery is feasible, call centres such as those discussed above are a valuable resource for people seeking basic information and referral.

⁴⁹ Attorney-General's Department (Commonwealth), *Scoping Study: The Scope for Delivery of Legal Services to Regional, Rural and Remote Australia via Telecommunications Channels*, July 1999, p. 40.

⁵⁰ Victoria Legal Aid, Submission no 87, Supplement, p. 5.

Legal Aid Queensland Call Centre

In 1997, Legal Aid Queensland (LAQ) established a call centre to improve the delivery of advisory services to its clients and to improve efficiency by providing relief from time-consuming phone work for its officers. The Call Centre is operated by up to twenty Customer Service Operators who have been trained to provide legal information and referral. Operators are trained, accredited as Certificate Level 3 in Legal Information. The training consists of nine modules, which include a general introduction to the legal system, one module each on family, civil and criminal law, and then five others about general LAQ issues.⁵¹

LAQ now has a central 1300 number that costs the price of a local call regardless of where in Queensland the call is made from. All calls go through the call centre. The call centre does not provide legal advice but provides legal information based on a standardised legal information and referral database. These databases were developed in-house and contain over 180 legal information screens, contact details for 2000 referral agencies⁵² and a glossary of over 1000 legal terms. These databases are also accessible by the public through LAQ's website. LAQ also has a publications database that is used by call centre operators to arrange the dispatch of relevant publications to callers.

Between April 1998 and March 1999, the call centre received 161,914 calls seeking legal information of which 47 per cent concerned civil law, 41 per cent family law and 12 per cent related to criminal law.⁵³ LAQ has found that 40 per cent of calls are resolved at the first telephone call to the call centre. The average length of a call is 5 minutes and 14 seconds with 97 per cent of calls finalised within 3 minutes. The Centre operates on a budget of approximately \$2.2 million annually. The LAQ Call Centre has been important in providing legal information to a geographically dispersed population and LAQ regards it as having made a substantial contribution to increased efficiency and productivity.⁵⁴ As the call centre filters out the callers who don't need a lawyer, and only refers those on to lawyers who do require legal advice, the operation of the call centre results in a very efficient use of lawyer time.

⁵¹ Parliament of Victoria, Law Reform Committee, Notes of Meeting, Meeting with officers of LAQ, 20 September 2000.

⁵² LAQ also has a strategic partnership with the Law Society, which has access to its referral database to assist with direct referrals to solicitors.

⁵³ Notes of Discussion, D Daust, Manager, Client Service Centre, Legal Aid Queensland, 23 March 2001.

⁵⁴ Attorney-General's Department (Commonwealth), *Scoping Study: The Scope for Delivery of Legal Services to Regional, Rural and Remote Australia via Telecommunications Channels*, July 1999, p. 9; Parliament of Victoria, Law Reform Committee, Notes of Meeting, Meeting with officers of LAQ, 20 September 2000.

VLA Multilingual Telephone Information Service

Victoria Legal Aid operates a call centre for the provision of legal information to the Victorian general public. This centre, known as the Multilingual Telephone Information Service (MTIS), is located at the Melbourne VLA office and is operated by a staff of 16 legal information officers employed on a part-time basis, the equivalent of a staff complement of 7.5 full-time positions. Each officer speaks at least two languages enabling the centre to provide information in a range of community languages. A separate phone number is allocated for each community language, and this number is attended at certain times and on certain days depending on staff availability and demand.⁵⁵

The call centre provides English-only information via a free-call 1800 number to rural and regional clients, and this service operates from Monday to Friday from 9.00am to 4.00pm.⁵⁶ The dedicated 1800 number for country Victorians generates 38 per cent of all calls received by the service, 10 per cent higher than the figure for the percentage of Victorians who live outside Melbourne. During 1999–2000 MTIS received 63,018 calls with 43 per cent of calls related to family law, 40 per cent related to civil and 17 per cent related to criminal law.⁵⁷

Unlike most commercial call centres and unlike the LAQ call centre, the VLA service enjoys very low staff turnover.⁵⁸ Most importantly, MTIS is the only legal information service that is available in a range of community languages. The fact that the service is staffed by multilingual legal and paralegal staff provides an effective mechanism for responding to the information needs of a diverse community. However, the Committee notes that for NESB Victorians in country areas, access to the information service in community languages is through a non-1800 number, which is a disincentive for its use. The Committee also found that despite the usefulness of the service, many witnesses across regional and rural Victoria were not aware of it. The Committee therefore believes that VLA should investigate providing access for rural Victorians to information in community languages through the 1800 number and that VLA should publicise the MTIS service widely in regional and rural Victoria.

Recommendation 10

⁵⁵ For example, the Arabic service is available every weekday from 9.00am to 4.00pm except Thursdays while the Spanish service is available only on Wednesdays from 10.00am to 1.00pm.

⁵⁶ The number is 1800 677 402.

⁵⁷ Victoria Legal Aid, 'Scoping Study: For Implementation of Telelegal Service Delivery to Regional Victoria', VLA, Melbourne, p.11.

⁵⁸ Victoria Legal Aid, Submission no 87, Supplement, p. 4.

That Victoria Legal Aid provides access to information in community languages for rural Victorians through its 1800 number.

Recommendation 11

That Victoria Legal Aid streamlines existing delivery of phone services and advertises these services widely, especially in rural and regional Victoria.

Recommendation 12

That the State Government funds Victoria Legal Aid to staffing levels adequate to meet the increasing demand that more widely publicised services will produce.

Commonwealth Proposals for Call Centres

The Commonwealth Attorney-General's department established a scoping study into the delivery of legal services via telecommunications and accepted the recommendation for a national rural telephone information and advice service. The Commonwealth also has indicated that it will establish a national telephone hotline and internet site to provide information about family law and child support matters. The current Federal Government made an election commitment to provide \$3.1 million for this service. In the 1998–99 Budget, the Commonwealth also committed funding of more than \$3 million to a rural, regional and remote legal advice telephone service. These two initiatives have now been integrated to ensure the best possible delivery of information, advice and referral to counselling, mediation and other primary dispute resolution services. The combined service, now known as Law By Telecommunication⁵⁹ is to be operational by June of 2001. One of the two call centre bases out of which the new service will function is to be located in the Latrobe Valley.⁶⁰

Recommendation 13

That State and Federal call centres providing legal information and referrals be integrated.

⁵⁹ See Hon Daryl Williams, AC QC, Opening Address, 'Though Our Eyes' National Conference on the Legal Needs of Women in Regional, Rural and Remote Australia Albury, 14 June 2000, <http://law.gov.au/ministers/attorney-general/articles/CLSwomen.html>.

⁶⁰ Notes of Discussion, Chris Thornborough, Project Manager, Law By Telecommunication, Attorney-General's Department, 23 March 2001.

Multilingual Access to Legal Information

Equality before the law requires that efforts be made to ensure that information about the legal system, including such matters as bail and the jury system, is accessible, that explanations are available in community languages and that interpreting is available when necessary. [The Commission] has recommended that governments should take responsibility for removing barriers to equality and access to the legal system. This should be done by increasing awareness of legal rights, duties and responsibilities and the role of the state among the community in general and persons from non-English speaking backgrounds in particular.⁶¹

The lack of legal information for non-English speaking background Australians has been a significant issue for courts and governments. The 1996 census data demonstrates that 2.6 million Australians (16 per cent) aged five years and over speak a language other than English at home.⁶² The National Multicultural Advisory Council has found that some level of proficiency in English is essential for Australians from non-English speaking backgrounds to fully participate in society, enhance their sense of belonging and enjoy equity with other Australians.⁶³

Issues faced by non-English speaking background Victorians are exacerbated in country Victoria due to fewer services being available and fewer members within ethnic communities. In considering that people usually seek out information from another person, it can be difficult for NESB Victorians living in the country to access information through personal contact. For NESB Victorians, the lack of access to information compounds their bewilderment with the legal system. As a witness working in a Migrant Resource Centre explained:

One [problem] is the lack of knowledge by the client group of the roles of the agencies. There can be agencies they have never had any background in their own cultures and which provide tenancy support, advice on contract law and consumer law, and things like that. They can provide advice and support, but often it is too late.⁶⁴

New Technologies and NESB Communities

As new technologies are employed by courts, governments and legal professionals, the impact of these technologies on Australians who speak only a language other than English must be considered. There is a difficulty for people in accessing information in their own languages, as English is almost exclusively the language of information provision by government and legal agencies. For example, approximately 40 per cent

⁶¹ Australian Law Reform Commission, *Multiculturalism and the Law*, Report No 57, AGPS, pp. 14–15.

⁶² Australian Bureau of Statistics, *Australia Now: A Statistical Profile*, 1996, see <http://www.abs.gov.au>.

⁶³ National Multicultural Advisory Council, *Multicultural Australia—The Next Steps*, <http://www.liberal.org.au/ARCHIVES/MULTICULTURAL/settle7.htm>.

⁶⁴ L Sinha, *Minutes of Evidence*, 13 September 2000, p. 921.

of the population of Fitzroy Legal Service's catchment area, according to the Service's own data, consists of persons from non-English speaking backgrounds, and there will be a percentage of these people who speak only a language other than English. At this stage the Service does not offer information on its website in languages other than English. The Service attempts to deal with this problem by arranging for volunteer interpreters in community languages to be available on particular evenings. In the event of this not being possible, the Service relies on the free emergency Telephone Interpreter Service, unless a specific grant has been received from the Legal Aid Commission to provide for an interpreter. The Service itself identifies the fact that Community Legal Centres do not have access to the Legal Interpreting Service as creating 'great difficulties for a large proportion of agency users who come from non-English speaking backgrounds'.⁶⁵

Many immigrants with low proficiency in English have difficulty in accessing services and are unlikely to be able to access services offered using new technologies. Programs like Skills.Net that provide training in the use of new technologies need to target specific ethnic communities to ensure that they can access training to utilise new technologies.

Learning to use new technologies will only improve access to justice if courts and governments publish multilingual legal content and sites. Ethnic communities need to feel that there is relevant information that they can access before they will use new technologies. While some courts do publish brochures in languages other than English, this has yet to become a feature on their websites. At the very least, courts that already have brochures in community languages should publish them on the internet.⁶⁶

The Committee notes that there are innovative projects in the area of multilingual access to resources on the internet. The Libraries Online project of the State Library of Victoria established a multilingual access project. The purpose of this project is to make it easier for Victorians to access communications and information in languages other than English. The project aims to:

- a) Create a software package for public libraries and other locations (such as Skills.Net centres) which provides multi-font non-Latin character sets for internet browsers; and
- b) Create a multilingual portal to facilitate access to information on the internet for a wide range of languages used in Victoria.⁶⁷

⁶⁵ www.fitzroy-legal.org.au

⁶⁶ An easy method would be to publish PDF versions of the original pamphlets.

⁶⁷ <http://www.libraries.vic.gov.au/infonet/lol.htm>

The multilingual portal is called 'Open Road'⁶⁸ and is a website that provides links to information in languages from around the world. The Open Road Directory provides a starting point for accessing webpages in different languages. The Open Road project involves:

...a training program for Victorian public library staff, to enable them to provide multicultural public library services;

the configuration of public internet workstations in public libraries to handle multilingual internet access; and

the ongoing development of The Open Road directory as a starting point for multilingual surfing in public libraries.⁶⁹

This site was launched on 30 October 2000, with 11 languages available: Arabic, Indonesian, Greek, Spanish, Italian, Polish, Russian, Somali, Turkish, Chinese (Traditional script) and Chinese (Simplified script). The site has been designed so that additional language components can be constructed and once the components are complete they can be released and viewed and used by people visiting the site. Currently Vietnamese, Amharic, Hindi and Tamil are under construction with more languages to follow.

Translation Software

The internet search engine operated by Alta Vista offers translation of websites over the internet instantaneously to or from German, French, Italian, Spanish or Portuguese.⁷⁰ At present, the software used produces translations at about 90 per cent accuracy. However, translation software is likely to become more sophisticated and to include more of the community languages spoken in Australia.

The Committee finds that there is a need to monitor developments in the area of translation software, and to trial software as it is released. The Committee believes that government information generally and legal information in particular should be available in a range of community languages. The Committee notes that in North America multilingual access is becoming a priority in the design of several expert systems. The Committee recommended in its report *Technology and the Law* (1999) that Multimedia Victoria in conjunction with the Victorian Multicultural Affairs Commission identify, evaluate and obtains for implementation, translation software

⁶⁸ <http://www.openroad.vic.gov.au>

⁶⁹ <http://www.openroad.vic.gov.au/>

⁷⁰ <http://babelfish.altavista.digital.com>.

appropriate to Victoria's multicultural population.⁷¹ The Committee believes that investigation of automatic translation software should remain a Government priority.

The Committee notes, however, that the translation of legal materials and other relevant information can be done by people qualified as both lawyers and translators, and this information can be made available to the public both in printed form and electronically. The most appropriate electronic mechanism for the delivery of translated legal material is Legalonline, as it is the Victorian Government's gateway to its online legal information.

⁷¹ Victorian Law Reform Committee, *Technology and the Law*, Parliament of Victoria, Melbourne, 1999, Recommendation 42, p. 228.

Recommendation 14

That core information available through Legalonline in English be translated into community languages and made available on the Legalonline site.

Ensuring Access to Information for Rural and Regional Victorians

Parties with resources can easily exploit technology in the legal system to the detriment of those who are traditionally disadvantaged. Differences in capacity, resources, and experience may affect whether a person feels comfortable or is able to utilise new technologies.

With an expanding range of technologies available for the delivery of information, decision-makers are faced continually with choices about appropriate modes of delivery. One of the key factors for their consideration is the level of access to these technologies enjoyed by the people requiring information. We have already seen, in Chapter Two, that people in rural and regional Victoria have lower levels of take-up of computer technology and internet access than those living in metropolitan Melbourne. In this era of transition into the information economy, it is particularly important that governments and courts sustain different mechanisms to deliver information and services. The internet is one mode of information delivery which has the potential to reach people across large geographical distances. If it operates as the sole method of information provision, there will be people who cannot gain access to the basic information they need. Some people have little or no knowledge of how to go about obtaining information or performing transactions via electronic technologies.

The Committee believes that decision-makers should make non-exclusive choices about modes of information provision to rural and regional Victorians, always considering how to ensure that people can find out about sources of information and then obtain the information they need. Interpersonal assistance, paper-based material, video and audio tapes should be utilised in conjunction with interactive multimedia systems on the internet, kiosks and call centres to ensure that all Victorians enjoy improved access to the legal system. Special measures need to be taken to ensure that marginalised groups within society are given access and training in new technologies and that content on the internet is developed with a consciousness of the diverse needs of the Victorian community.

CHAPTER 4 - VICTORIA LEGAL AID

History and Overview

The development of State-provided legal aid in Victoria has been recorded in a number of publications.¹ Briefly, the first statutory schemes for the provision of legal aid in Victoria included the *Poor Prisoners Defence Act* (1916) and provisions in the *Court of Criminal Appeal Act* (1914) which provided limited assistance in serious criminal matters to clients deemed to be deserving poor.² The Victorian Public Solicitor's Office was established in 1928 but was poorly resourced and unable to meet demand.³

The Legal Aid Committee was established in 1964 pursuant to the *Legal Aid Act* (1961), being made up of nominees from the Law Institute of Victoria and the Victorian Bar Council. The scheme was self-funding, deriving funds from costs awarded in successful cases and recovery of client contributions.⁴

The *Legal Aid Act* of 1969 clarified the roles of the Legal Aid Committee and the Public Solicitors Office, leaving the latter with only criminal work. The Act also provided for some money from the investment of trust funds held by solicitors to be paid to the Legal Aid Committee.⁵

The 1970s saw the establishment of community legal centres, Aboriginal legal services and, in 1973, the Commonwealth Australian Legal Aid Office (ALAO). The establishment of the ALAO met with some resistance in Victoria with the Law Institute

¹ See, Giddings, J (ed), *Legal Aid in Victoria: At the Crossroads Again*, Fitzroy Legal Service, Melbourne, 1998; Cooper, D, *Review of the Delivery of Legal Aid Services in Victoria*, Melbourne, 1994; Chesterman J, *Poverty Law and Social Change*, Melbourne University Press, 1996.

² Giddings, J (ed), *Legal Aid in Victoria: At the Crossroads Again*, 1998, p. 22.

³ *ibid* p 23. This book reports that between 1928 and 1942 the office received 11,060 applications for assistance in civil matrimonial cases and approved only 921 which is a 92% refusal rate. In criminal cases the refusal rate was between 50 and 71% each year.

⁴ *ibid* p. 24.

⁵ *ibid* p. 24.

resolving to commence a High Court challenge to its establishment.⁶ The profession felt that the employment of lawyers as public servants undermined the independence of the legal profession. Beginning in 1976 the establishment of Legal Aid Commissions as independent statutory bodies in each State overcame many of the concerns about the independence of Legal Aid solicitors. In Victoria the *Legal Aid Commission Act (1978)* established the Legal Aid Commission of Victoria (LACV). When the Commission opened in 1981 it took over the functions of the three existing legal aid bodies, the Legal Aid Committee, the Public Solicitors Office and ALAO.

The LACV was replaced in 1995 by the current provider Victoria Legal Aid (VLA). The philosophy of Victoria Legal Aid under Managing Director Tony Parsons, who commenced his appointment on 26 June 2000, was expressed to the Committee as follows:

In my view legal aid is an essential government responsibility and an essential government service. In terms of social merit it occupies the same terrain as health, education and housing. It is a very important social asset. In fact, legal aid defines the boundaries of our system of justice. The extent to which we can provide the disadvantaged in our community with access to the mechanisms of justice defines the strength of our system of justice. Justice is after all, just another word for fairness, and if we cannot provide Victoria's disadvantaged with access to the community's mechanisms of ensuring fairness, ensuring justice, we can hardly claim to have a strong system of justice.⁷

This statement shows how far attitudes and government policy have come, from the original charity-based concepts of legal aid prevalent during the first half of the 1900s to a gradual acceptance of government responsibility throughout the 1970s and 80s. The extent of this responsibility remains a contentious issue and most often appears to have been determined by the government funding provided rather than vice versa.

⁶ ibid p 27. The mover of the motion at the Law Institute meeting is reported as drawing a contrast between 'the future of an independent and decent legal profession versus Marxist socialist type state control of our profession'. A second motion, as quoted in J. Chesterman, *Poverty Law and Social Change*, Melbourne, p. 84, called for the Council of the Institute to 'resist Governmental nationalisation of the profession at all costs, being destructive of an independent profession and as being likely to cause the profession to become no less than an arm of government.'

⁷ T Parsons, Victoria Legal Aid, *Minutes of Evidence*, 10 November 2000, p. 1103.

Funding

The funding of legal aid in Victoria is also documented elsewhere⁸ and is here presented in overview only. The funding for LACV from State sources during the 1980s came predominantly from the Solicitors Guarantee Fund (SGF) with the State Government making no direct financial contribution at all in 1985/86 and 1986/87.⁹ However, in the early 1990s the contribution from the SGF fell dramatically from \$17.73 million in 1991/92 to \$1.611 million in 1993/94.¹⁰ This necessitated the State Government increasing its direct funding to LACV as the SGF contribution decreased. Under the terms of the Commonwealth–State agreement of 1988 the State was committed to contributing 45 per cent of funding for LACV to the Commonwealth’s 55 per cent. This agreement ended in 1997.

In response to funding constraints, in 1992 the LACV reduced the number of grants it made¹¹ and reduced the fees payable to private lawyers doing criminal work by 10 per cent.¹²

Another event with major funding implications for the LACV was the High Court decision in *Dietrich v R*.¹³ In this case the court found that it had a duty to ensure a fair trial and that this could extend to the adjournment or permanent stay of proceedings. In a serious criminal trial where a defendant has no legal representation, the court found that this discretion should usually be exercised. At the time of this decision the LACV had guidelines to determine whether grants of aid would be made in expensive cases. When a stay was granted in the County Court in a large case using *Dietrich* principles and the LACV declined to grant aid to the defendants on the basis of its guidelines, the State

⁸ See, Giddings, J (ed), *Legal Aid in Victoria: At the Crossroads Again*, Fitzroy Legal Service, 1998; Cooper, D, *Review of the Delivery of Legal Aid Services in Victoria*, 1994; Chesterman J, *Poverty Law and Social Change*, Melbourne, 1996; National Legal Aid Advisery Committee, *Legal Aid for the Australian Community*, Canberra, 1990.

⁹ In 1985/86 and 1986/87 the State Government made no direct financial contribution to LACV. From 1986/87 to 1989/90 the SGF provided more than 30 per cent of the LACV’s revenue. Giddings, J (ed), *Legal Aid in Victoria: At the Crossroads Again*, 1998, p. 36

¹⁰ Giddings, J (ed), *Legal Aid in Victoria: At the Crossroads Again*, 1998, p. 36. This may have been due to a number of factors including the effect of the economic recession. Other factors also reduced the LACV funds, including a decline both in their ability to generate their own income with investments and to recover contributions from clients.

¹¹ *ibid*, p 37. Grants for 1991/92 were reduced from 36,000 to 30,000 a reduction of 16 per cent.

¹² *ibid*. The author notes that this later move ‘generated considerable antagonism for the private profession.’

¹³ *Dietrich v R* (1992) 109 ALR 385.

Attorney-General sponsored legislation that allowed Supreme and County Court judges to order LACV to provide assistance in certain cases.

The funding of such cases can prove onerous for State legal aid bodies and the Commonwealth Attorney-General announced in December 1999 that a fund for expensive Commonwealth criminal cases would be established. The fund is to receive \$9 million over four-and-a-half years including an initial \$5 million handed back to the Commonwealth by VLA in unspent money for Commonwealth matters during the 1999/2000 financial year.

The funding for VLA for the last five financial years is shown in the table below.

Financial Year	State		Commonwealth		Total
1996/1997	\$24.2mil	41.4%	\$34.3mil	58.6%	\$58.5mil
1997/1998	\$24.4mil	43.2%	\$32.1mil	56.8%	\$56.5mil
1998/1999	\$24.2mil	46.5%	\$27.8mil	53.5%	\$52.0mil
1999/2000	\$28.1mil	50.3%	\$27.8mil	49.7%	\$55.9mil
2000/2001	\$28.0mil	50.2%	\$27.8mil	49.8%	\$55.8mil

Table 1

Source: Figures provided by Victoria Legal Aid

As can be seen from the table, Commonwealth funding was reduced for the 1997/98 and 1998/99 financial years and has remained constant for the last three years. Most recently the Commonwealth Government has introduced a funding formula which it has used to determine legal aid funding to each State for the 2000/2001 financial year and beyond. While leading to an overall increase in Australia-wide legal aid funding¹⁴, the formula will reduce the share of legal aid funding received by Victoria relative to other States. Victoria will not receive any funding increases over the period of the Commonwealth increases. The basis of the formula has been questioned by the Victorian Government, but the Commonwealth has declined to alter its funding decision.

¹⁴ This increase needs to be seen against reductions in legal aid spending over a number of years. Press releases from the Commonwealth Attorney-General of 23 December 1999 state that over the next four years, Queensland will receive an additional \$19 million; New South Wales, \$27.5 million, Western Australia, \$7.454 million, South Australia \$4.5 million and the Northern Territory \$1.075 million.

For the 2000/2001 financial year the States received:

NSW	\$33.719mil	WA	\$8.995mil
VIC	\$27.750mil	TAS	3.773mil
QLD	\$19.903mil	ACT	3.039mil
SA	\$9.450mil	NT	2.119mil

Table 2 Source: Media Release, Federal Attorney-General, 22 December 1999

Structure and Management

Victoria Legal Aid is an independent statutory authority established by the *Legal Aid Act 1978*. The Attorney-General is the responsible minister.

The objectives of VLA are set out in section 4 of the Act as follows:

- to provide legal aid in the most effective, economic and efficient manner;
- to manage its resources to make legal aid available at a reasonable cost to the community and on an equitable basis throughout the State;
- to provide to the community improved access to justice and legal remedies; and
- to pursue innovative means of providing legal aid directed at minimising the need for individual legal services in the community.

The second of these objectives specifically requires that legal aid be made available on an equitable basis throughout the State.

VLA provides legal aid services in matters arising under State law and, pursuant to an agreement entered into on 22 January 1999 with the Commonwealth Government, also for matters arising under Commonwealth law.

In addition to its primary function of the provision of legal aid, the Act also gives VLA the power under section 6 to undertake a number of other activities including the following:

- in co-operation with a government department or body concerned with social service or social welfare, arrange measures and take steps that may be conducive to meeting the need for legal aid in the community;
- enter into arrangements from time to time with a body or person with respect to any investigation, study or research that, in the opinion of the VLA, is necessary or desirable for the purposes of this Act;
- make recommendations to or through the Attorney-General with respect to any reforms of the law the desirability for which has come to its attention in the course of performing its functions;
- initiate and carry out educational programs designed to promote an understanding by the public, and by sections of the public who have special needs in this respect, of their rights, powers, privileges and duties under the laws in force in the State;
- undertake research into all aspects of legal aid including new methods of financing and providing legal aid.

VLA has a Board of Directors consisting of a Chairperson, Managing Director, and three directors, all nominated by the Attorney-General. Of the three directors, at least one must have experience in financial management and at least one must have experience in either business or government operation. The Chairperson and other directors are nominated by the Attorney-General and appointed by the Governor in Council.

The Board is responsible for the management of the affairs of VLA and ensuring that it achieves its objectives (section 12(1)¹⁵). It is the role of the Board (section 12(2)¹⁶):

- to determine the policies, priorities and strategies of VLA; and
- to deal with any matters in accordance with guidelines issued by the board under sub-section (3); and
- to ensure that VLA performs its functions and exercises its powers in an effective, efficient and economical manner.

¹⁵ *Legal Aid Act 1978*

¹⁶ *ibid*

The role of the Managing Director is set out in section 12A. She or he:

- has control of the day to day administration of the affairs of VLA in accordance with the policies, priorities and strategies determined by the Board and any directions given to the Managing Director by the board;
- may exercise any power delegated to him or her by the Board;

There is also a Community Consultative Committee whose function it is to make recommendations to the Board about any matter referred to it by the Board. The Committee must include one member who is a nominee of the Federation of Community Legal Centres and one nominated by staff of VLA as their representative.

The Attorney-General may also give the VLA Board written directions¹⁷ about the performance of the functions or exercise of the powers of VLA, or the policies, priorities or guidelines of VLA including funding priorities, but not in relation to a grant of assistance to any specific person.

Locations and Services

VLA has ten offices and one branch office. These are located at Melbourne, Broadmeadows, Sunshine, Preston, Ringwood, Dandenong, Frankston, Bendigo, Geelong and Morwell with a branch office at Bairnsdale.

Four offices are located in regional Victoria, these being Geelong, Bendigo, Morwell and Bairnsdale. The Frankston Office also provides some services to the Mornington Peninsula. The Geelong Office services only the City of Greater Geelong.

VLA stated both in their written submission and oral evidence that there are gaps in service delivery in rural and regional Victoria and that an expansion of VLA offices would assist in addressing access issues.

An audit of legal aid services, conducted by VLA using its own statistical data base, shows that the Grampians (Western Victoria) and Hume (North-Eastern Victoria) are most under-served in all areas of service delivery, including those services provided by private practitioners and CLCs...

An expansion of the legal aid network would be a very desirable outcome. A legal aid regional office could be located in each Victorian regional centre with smaller branch-type offices in towns

¹⁷ *ibid*, section 12M. A written direction must be tabled in both houses of Parliament.

that are not necessarily regional centres but have a substantial population base. Solicitors from the offices would provide outreach to the smaller communities.

Victoria Legal Aid has previously made submissions to the Victorian State government for additional funding to enable more legal aid services to be provided in rural and remote areas. There has not been additional funding provided to this organisation that would enable expansion of the regional network of services since 1988.¹⁸

After referring to the present location of VLA regional offices Mr Michael Wighton, General Manager of Regional Offices VLA commented:

There are significant gaps in the rest of regional Victoria, particularly in those areas where there are no community legal centres and no regional offices... The largest service provision gaps are probably in the critical areas of free advice, community legal education and duty lawyer services.¹⁹

VLA believes that opening an office in Shepparton will contribute significantly to filling these gaps.

Opening of an office in Shepparton is one of VLA's highest priorities, as that town and the surrounding region is the only Victorian rural centre without either a community legal centre or a VLA office.

Funding for this office has been sought as part of VLA's 2001/2002 financial year budget submission.²⁰

The services offered by Victoria Legal Aid are:

- Legal assistance
- Duty lawyer services
- Advice and information
- Community legal education
- Administration of the Community Legal Centre Funding Program.

Figure 7 uses figures provided by VLA to show the comparative usage of VLA services for different rural regions. It also compares the non-metropolitan and the metropolitan regions as a whole.

¹⁸ Victoria Legal Aid, Submission no. 8, p. 5.

¹⁹ M Wighton, *Minutes of Evidence*, 15 May 2000, p.68.

²⁰ Victoria Legal Aid, Submission no. 87, p3-4.

Service delivery expressed as a rate per 100,000 of population²¹ would be equitable if each region had a similar rate and the need for services was also similar across regions. The availability of other services will also be a factor. Chapter 2 discusses demographics for regional Victoria and highlights the fact that some regions are more disadvantaged than others. The chapter also highlights the problems of using Department of Human Services regions for the analysis of legal service delivery. The boundaries are not utilised broadly by other service providers and have no real relevance to legal need. However as these regions have been used in the data provided by VLA, much of the following discussion has of necessity used the regional data.

An index of relative socio-economic disadvantage²² developed by VLA from 1996 census data²³ shows that of the eight local government areas²⁴ which have the highest concentration of disadvantaged people, at least one of these is located in each DHS region. In very general terms it appears that of the five rural Department of Human Services regions the most disadvantaged are Loddon Mallee and Gippsland.

As can be seen from Figure 7 Gippsland is comparatively well serviced by VLA in all categories except phone sessions. Phone sessions, however, compares well with other non-metropolitan regions. The Loddon Mallee region is also comparatively well serviced with figures in most categories of service delivery similar to those in the metropolitan region.

²² The index includes 20 variables given weightings to reflect importance.

²³ This demographic analysis report was taken from the VLA website at www.legalaid.vic.gov.au, but has since been removed.

²⁴ Swan Hill, Greater Shepparton, Mildura, East Gippsland, Greater Geelong, La Trobe, Central Goldfields and Bass Coast.

VLA Services by Region
1/7/1999 to 31/3/2000

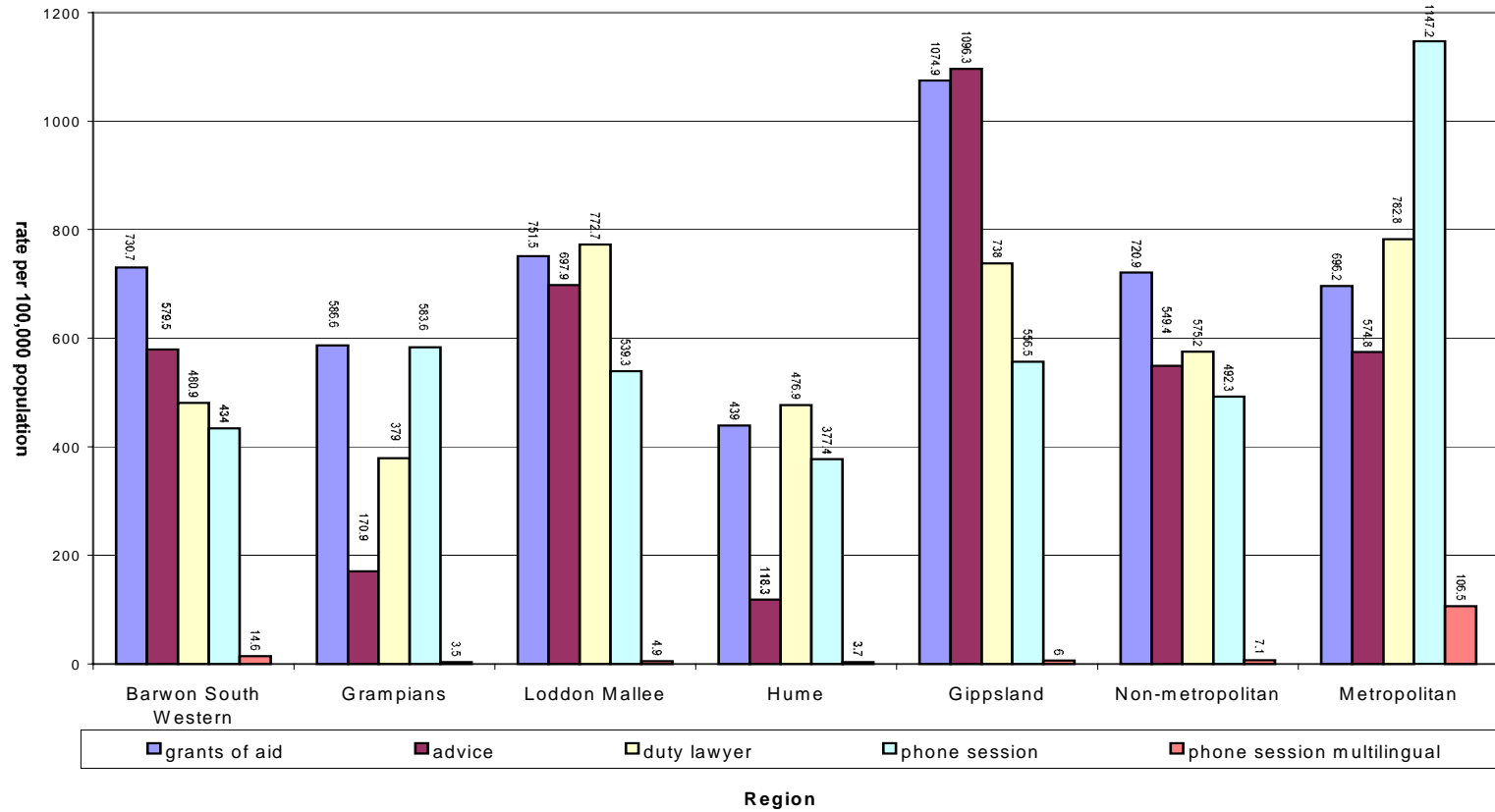


Figure 7

Source: Figures supplied by VLA

Figure 7 shows that there are considerable differences, both among rural regions and between metropolitan and non-metropolitan areas. The Hume region shows very low rates of usage across all service areas but particularly for grants of aid and advice sessions. This region has no regional VLA office and is the region already targeted by VLA as the highest priority for any expansion of regional offices. As noted above the preferred location is Shepparton. The VLA demographic report describes Shepparton as having

...a high percentage of families with children, one parent families, and persons of Aboriginal and/or Torres Strait Islander background and persons with no or inadequate English. The percentage of its population with low income dipped below the average for the State.¹

The Committee notes that a community legal centre has been established in Albury Wodonga and this may be accessible to some people in the Shepparton region.

VLA gave evidence to the Committee that the presence of a VLA office is one of the best indicators of level of service usage, even for grants of aid which can be made to either private practitioners or in-house solicitors. As the same criteria are used to assess eligibility regardless of which type of solicitor is used, the presence of a VLA office should theoretically have very little effect on their numbers. The available data, however, supports the view expressed by VLA that the presence of an office is a significant factor in increasing the number of grants made.

The submission made by the Law Institute of Victoria opposed the establishment and maintenance of VLA regional offices and suggested that they caused a significant degree of unnecessary competition with the private profession.² However, these VLA figures suggest there may be an overall increase in the number of grants of aid in an area where a VLA office was established. Figure 7 shows that for the Hume region, grants to private practitioners are made at a rate of 400 per 100,000 population. This should be compared to the Gippsland region which has an office at Morwell and a branch office at Bairnsdale, where grants to the private profession are made at a rate of 798 per 100,000 people, or almost twice as often. Similar arguments could be mounted for the Grampians region (537/100,000) which also has no VLA office. By contrast the Barwon South Western region (626/100,000) and the Loddon Mallee region (590/100,000), both of which have

¹¹ www.legalaid.vic.gov.au, Review of Community Legal Centre Funding Program.

² David Faram, Law Institute of Victoria, Submission no. 4, p. 4.

one VLA office, have rates closer to the overall average for non-metropolitan regions (593/100,000).

The Committee agrees that a priority for expansion of legal services in rural and regional areas is for additional legal services to be located in Shepparton. Currently the town, which is a large regional centre of over 30,000 people, has neither a VLA office nor a community legal centre.

Chapter 5, Community Legal Centres, provides a detailed description of the potential for the constructive utilisation of technology, in particular video conferencing, combined with improved outreach techniques, for service delivery. Shepparton could be developed as a base where, through video conferencing, residents have access to Victoria Legal Aid and specialist legal services.

Recommendation 15

The Committee recommends that either a Victoria Legal Aid regional office or a Community Legal Centre be established in Shepparton. If a Community Legal Centre is established it should be developed using a model of extended outreach services and video conference access to Victoria Legal Aid and specialist community legal centres.

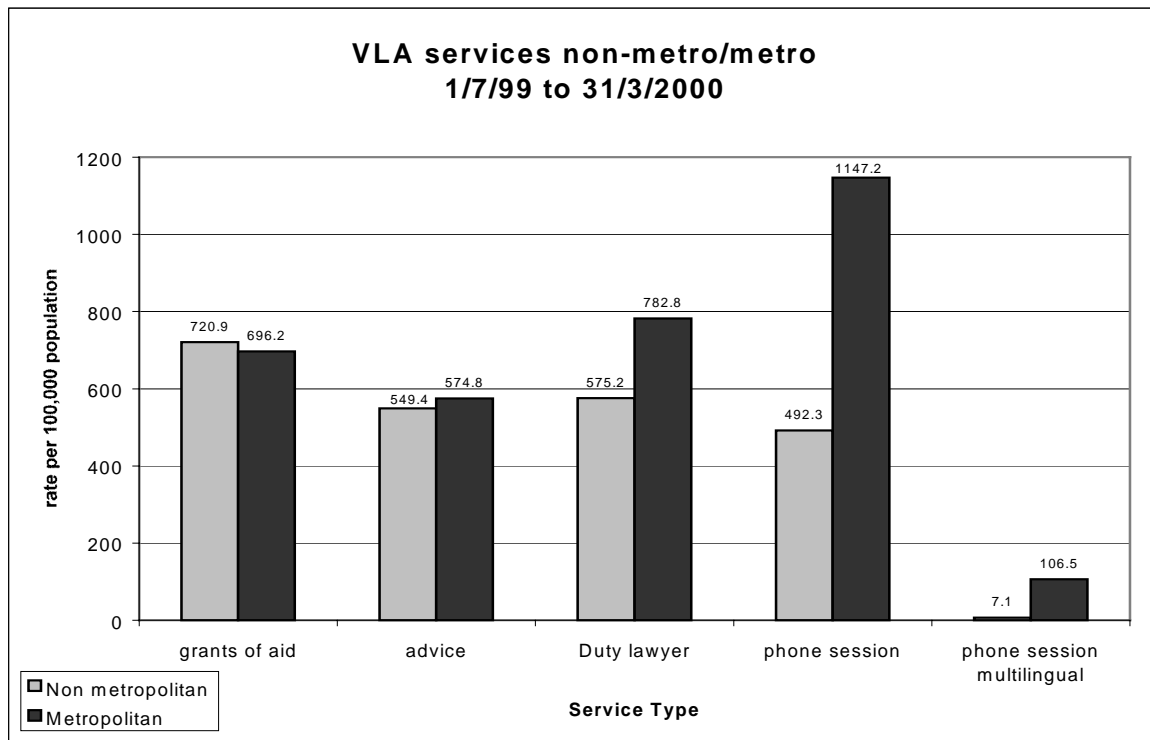


Figure 8

Source: Figures provided by Victoria Legal Aid

Figure 8 compares the service delivery as a rate per 100,000 between metropolitan and non-metropolitan regions. The most significant inequities are in duty lawyer services and phone sessions (which include both information and advice). Both are discussed below.

Legal Assistance

Legal casework is provided to clients by employed solicitors or private practitioners. The same guidelines are applied regardless of who represents a client, and the guidelines are nationally applied.³

A means⁴ and a merit test are applied to an application for legal aid. In addition the legal matter must fall within the types of matters for which legal aid is available.

³ VLA has recently proposed a change to the way in which legal aid applications are assessed. In an article in *The Age* of 27 April 2001, p. 3, it was reported that VLA is considering allowing private practitioners to assess applications using a set of prescribed rules, and providing VLA with a signed checklist showing that a client does meet the VLA guidelines. The proposal is designed to reduce the amount spent by VLA on administration and divert this instead to grants of aid.

⁴ With the exception of Commonwealth war veterans matters, see *Legal Aid Guidelines*, 12th edition, p. 20.

The means test incorporates income and assets elements. A detailed explanation of the test is available in the Legal Aid Handbook. In general, the test restricts access to Legal Aid with very few applicants in paid employment qualifying. Most grants go to clients who are in receipt of a government pension or benefit.

For State matters the merit test is part of a broader reasonableness test which requires an assessment of not only the likelihood of a favourable outcome of the proceedings, but also an assessment of the likely benefit to the client or the public which a grant would provide, or conversely the likely detriment which may be suffered if the grant is refused.

For indictable criminal offences, the issue of whether it is desirable in the interests of justice will also be considered.

For Commonwealth matters, the merit test consists of three considerations, namely:

- Reasonable prospects of success, which is interpreted as being more likely than not to succeed;
- Prudent self-funding litigant test which assesses whether a self-funding litigant would risk their funds in similar proceedings; and
- Appropriateness of spending limited public legal aid funds test which focusses on the likely benefit to the applicant or community.

The relevant guidelines for State and Commonwealth matters in relation to the type of matters which will be funded are contained in the VLA Legal Aid Handbook. In general terms, criminal matters in which a term of imprisonment is a likely outcome and family law, make up the bulk of legal aid grants.

VLA grants of aid go predominantly to men (65%). This is due to the emphasis on the provision of aid for criminal matters. Criminal law grants made up 63.25 per cent of all grants and of these 81.18 per cent went to men. Although the overall representation of women (35%) is significantly lower than for men, most grants which women do receive are in the areas of family law (48% of total grants to women) and civil law (18%).

VLA received 39,711 new applications for legal aid in 1999/2000 of which 33,444 were approved (84.1%). Remarkably and in contrast to common perceptions, 68.9 per cent of these cases were handled by private practitioners. Financial statements for 1999/2000 show that of a total of \$61,004,000 spent, \$35,823,000 (59%) was paid to private

practitioners, while \$15,920,000 (26%) went to salaries and related costs. \$2,146,000 (3.5%) went to community legal centres and \$7,062,000 (11.5%) went to administration.⁵

Figure 9

Source: Figures provided by Victoria Legal Aid

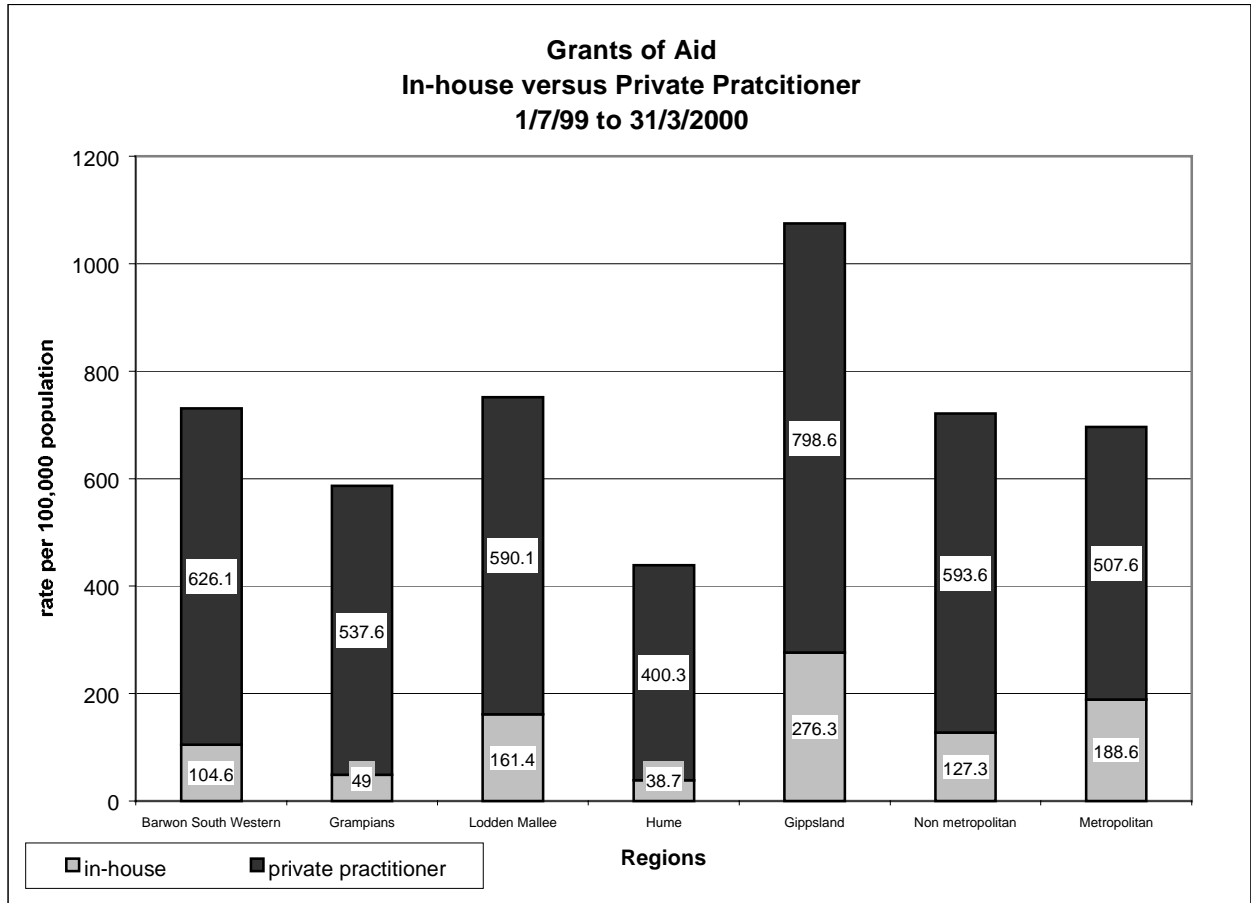


Figure 9 shows the rates per 100,000 population of grants for casework both in-house and to private practitioners by Department of Human Services region. These figures suggest that the percentage of grants going to private practitioners is greater in non-metropolitan areas than in metropolitan areas (83% compared to 76%)⁶. This would be expected given the small number of legal aid offices in rural areas.

The significantly lower rates of grants of aid for the Hume and to a lesser extent the Grampians region has been noted above.

⁵ Victoria Legal Aid, *Annual Report*, Melbourne, 2000, p. 57.

⁶ These figures are higher than overall percentage of grants to private practitioners recorded for the full 1999/2000 financial year. This figure is 68.9%.

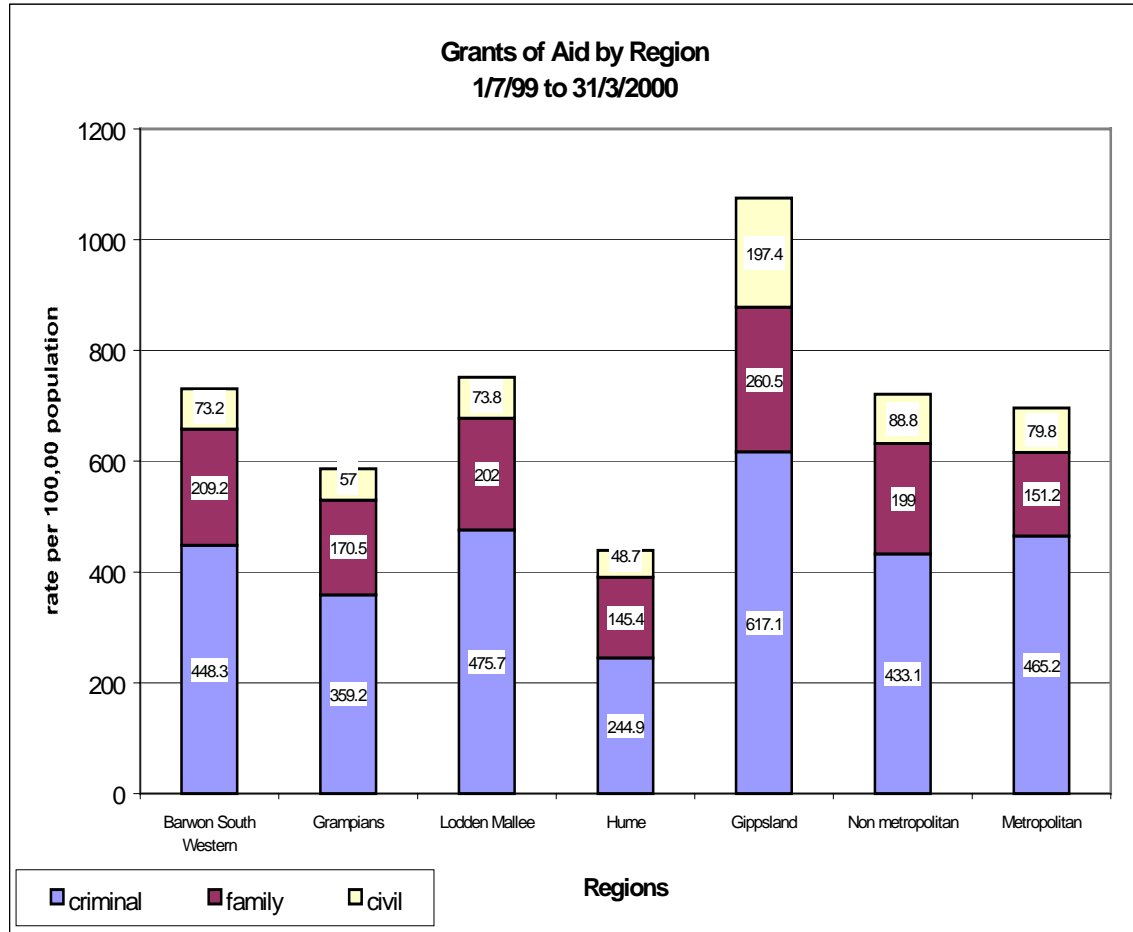


Figure 10

Source: Figures provided by VLA

Figure 10 shows the comparison between regions of the different types of grants. While each reflects the predominance of criminal law grants there is some significant variation in the types of aid granted between regions. Overall for rural areas there is a significantly higher rate of grants for family law matters, 199/100,000 of population compared to 151.2/100,000 for metropolitan areas. Civil grants are also made at a slightly higher rate in rural areas (88.8/100,000 compared to 79.8/100,000). For criminal matters the rates in rural areas is lower (433.1/100,000 compared to 465.2/100,000).

As noted previously the Hume region has a significantly lower rate of grants of legal aid and this occurs across all legal types. Family law shows the most consistent coverage across all regions with civil law showing the greatest variation. In Gippsland civil law grants (197.4/100,000) were made at a rate of more than double that in the metropolitan area (79.8/100,000) and more than four times the rate in the Hume region (48.7/100,000).

Family Law

While specialist family law solicitors are located only in the metropolitan offices of Melbourne, Broadmeadows and Dandenong, in-house solicitors from all offices represent clients in family law work.

The Child Support Service operates out of the Melbourne office, providing legal assistance to parents who have legal problems in relation to obtaining or paying child support (including assistance with parentage testing, and changes of assessment). The staff attend VLA regional offices regularly and run clinics in Melbourne and major regional centres. Over the six months from July to December 2000 the Service will make six visits to Ballarat; five to Bendigo and Morwell; two to Shepparton, Wodonga Bairnsdale, Sale and Wangaratta and one visit each to Warrnambool and Mildura.

VLA also acts for the Commonwealth Attorney-General in overseas maintenance matters.

A costs limitation is placed on family law matters which limits assistance to \$10,000 for each party's professional costs and \$15,000 for a child representative's costs. These figures include counsel fees, expert reports and disbursements. Importantly for rural and regional clients the calculation of the costs does not include travel and accommodation costs. Interpreter costs and translator fees are also excluded.

Grants of aid for family law show significant variation between regions, with Gippsland having the highest rate (260.5/100,000) and Hume having the lowest (145.4/100,000).

Youth and Children's Legal Services

The VLA Youth Legal Service operates out of the Melbourne office, and represents children and young people appearing in the Melbourne Children's Court where the majority of cases are listed. All VLA solicitors representing children must complete a comprehensive in-house training program. This training is also provided for solicitors in regional VLA offices.

The VLA guidelines state that a grant of aid will be made to a child appearing in the Criminal Division of the Children's Court with the exception of minor matters such as public fare evasion.⁷

VLA solicitors also attend conferences with clients as part of the juvenile justice group conferencing program.

The Youth Legal Service solicitors also act as child representatives in the Family Court. Of 544 requests by the Family Court to appoint a child representative, VLA solicitors handled 149 cases with private practitioners being appointed in 395 cases.

The Law Institute of Victoria raised the issue of first offenders not receiving representation:

VLA's failure to grant aid to first offenders was considered to be totally inappropriate as early intervention by appropriately qualified practitioners was seen as an important contribution to the prospects of rehabilitation. First offenders require assistance more than most.⁸

The Committee notes this concern particularly as it relates to young people. In rural and regional areas, Children's Court matters are heard by local magistrates rather than the specialist magistrates who sit in Melbourne. The need for representation may be even greater in these circumstances. Early intervention which leads to a reduction in re-offending is a benefit to both the individual offender and the community as a whole.

The Committee believes that some recognition needs to be given to the disadvantaged position of young people in rural and regional Victoria, in comparison to young people in Melbourne who have access to all the services provided at the Children's Court and the benefit of being heard by specialist children's magistrates. The Committee suggests that one way of addressing this might be to give consideration to a minimum position of extending grants of aid to young people in rural and regional areas who are first offenders.

Recommendation 16

That Victoria Legal Aid provides grants of aid to young people who are first offenders.

⁷ Victoria Legal Aid, *Legal Aid Guidelines*, 12th edition, page 29.

⁸ David Faram, Law Institute of Victoria, Submission no. 4, p. 9.

The significant issues for rural and regional young people in terms of their access to specialist children's court services are discussed in Chapter 11, Children and Young People.

Criminal Law

The bulk of VLA grants are for criminal matters in Magistrates' Courts, and all VLA offices provide this service. Indictable criminal matters are mostly dealt with by the Criminal Law Division in the Melbourne Office. A 24-hour telephone advice service for people being questioned about a major criminal offence is provided from the Melbourne office.

The practice of retaining serious indictable offences in-house was criticised by some private practitioners. It was seen as taking work away from practitioners in rural areas and also as preventing them from developing skills in this area. The Law Institute of Victoria made the following comment.

The decrease in the number of legally assisted higher quality County Court and Supreme Court trial work resulted in an identifiable reduction in private practitioner expertise.

The real consequence of these developments at a community level is that people charged with crime in rural areas are less likely to have immediate access to appropriately qualified and/or experienced criminal lawyers.⁹

VLA stated in its evidence that slightly over half of the County Court trials for which grants of aid were made were assigned to private practitioners.¹⁰ In addition it was noted that the total number of grants for County Court matters was very small (about 650 per year) compared to the approximately 18,000 grants made for summary criminal matters. VLA also made an important point in relation to its use of resources:

[W]e have a statutory duty to use what resources we have efficiently and economically. So if we have the capacity to act for someone, as a matter of priority we should be using our resources rather than paying outsourcers to do it.¹¹

The Committee notes that there is a fundamental tension between the need for an effective and financially viable legal aid body on the one hand and the legitimate

⁹ David Faram, Law Institute of Victoria, Submission no. 4, p. 9.

¹⁰ T.Parsons, *Minutes of Evidence*, 10 November 2000, p. 1109

¹¹ *ibid.*

demands of the private profession that its work not be unfairly reduced by competition from a government funded agency, on the other. These matters were raised by VLA in its evidence when discussing the mixed model of service delivery which VLA currently adopts.¹² The issues raised are broader than the scope of this reference, but do impact on the accessibility of legal services in rural and regional Victoria.

How Should Legal Aid be Delivered?

As well as the issues of the use of in-house practitioners, the level of grants of aid was an issue raised on many occasions during the Committee's public hearings. The Committee heard that some private practitioners were no longer taking on legal aid cases because they considered the amount paid by VLA to be too low.¹³ From an historical perspective, most of the clients now receiving grants of aid would have previously (before the expansion of legal aid in the early 1970s) been unrepresented or represented on a pro bono basis. This view was put by VLA:

[Y]ou can go right back to the Henderson inquiry in the early years of the Whitlam government which identified that disadvantaged people's legal needs were different from those of the middle classes. That was really the start of the salaried lawyers and community legal centres. There was a group of people that had legal needs but those needs were not able to be met by the private profession. That has changed a lot, and we now almost have a specialisation within the private profession where some firms do the type of work that 20 or 30 years ago they would not have done... There is an identifiable market which to a very large extent had not been recognised by the private profession.¹⁴

While grants of legal aid may not pay an amount equivalent to a private client, perhaps they should be seen as partially pro bono and partially a payment not otherwise available to the legal profession. An equivalent practice can be seen with the medical profession who receive a percentage of the scheduled fee (which may be lower than their actual fee) for clients who are bulk billed, usually those with Health Care Cards, and pensioners.

VLA provided thoughtful and persuasive argument in support of the current legal aid delivery model described as the mixed model.

When you look internationally, there are studies from Ontario in Canada and some of the American states which are identifying exactly that — that a mixed model provides the best coverage... I understand England has conducted a big review of its civil justice system as part of

¹² *ibid.*

¹³ See Law Institute of Victoria, Submission no.4.; S Bubb, *Minutes of Evidence*, 25 July 2000, p. 679.

¹⁴ K Robertson, *Minutes of Evidence*, 10 November 2000, p. 1110.

its legal aid provision, which has been fairly contentious. It is my understanding that they are also moving to a mixed system of delivery.

Those who criticise the model, generally private practitioners who claim that too much is spent on administration and inefficient bureaucracy, do not have an alternative. You will have heard of our telephone advice service, which receives an extensive number of calls. Who will provide that? It has to be provided by a deliverer of legal aid; it cannot simply sit there in isolation. Who will assess whether people are eligible? Will that sit as a separate department somewhere? It has to be provided in the context of delivery of legal services because otherwise it will become isolated and not know what it is doing. Who makes the assessment of whether practitioners should get work? ... There are multiple roles which truly belong with the supplier of legal services outside what the private profession would identify as being legal aid work.

There are mental health cases. We regularly act for people no-one else wants to act for... I will identify core business that would not be provided naturally by any private practitioners beyond ad hoc pro bono work: telephone advice, publications, prison advice, general advice and duty lawyer schemes. There were ad hoc duty lawyer schemes, but the coordination role that Victoria Legal Aid provides would otherwise not occur... There is core activity which requires the existence of a legal aid body. It is then a question of how far we extend it.

For quality of service and whether it is measurable, you need the body that is handing over the money to be involved in the provision of service as well to make a proper judgment as to the qualitative aspects.¹⁵

The Committee agrees that there are a number of important services offered by VLA that would not otherwise be provided. The Committee recognises that the debate as to the number and type of grants that should go to in-house solicitors and to private practitioners will be a continuing one and that its resolution is not within the terms of reference of this report. The Committee notes the competing views and some of the background to the debate.

Services to Prisoners

VLA's services to prisoners is covered in detail in Chapter 10, Prisoners.

Duty Lawyer Services

VLA duty lawyer services are provided at almost all Magistrates' Courts. The duty lawyer's role is to assist people with criminal matters attending the court without legal representation. No fee is charged for the service, however where demand is high duty

¹⁵ *ibid.*

lawyers may need to prioritise the clients they can assist. In particular VLA guidelines give priority to defendants held in custody in the police cells at the court house.

People who attend court may speak to the duty lawyer about their case and receive advice about their options including how they intend to plead and whether they need an adjournment to obtain ongoing legal representation. In some cases the duty lawyer may represent defendants in pleas in mitigation but this will depend on the seriousness of the likely sentencing outcome and to some extent on the time available to the solicitor.

Duty lawyer services at Magistrates' Courts are provided by both private practitioners and VLA solicitors. Private practitioners who are accredited to participate in VLA duty lawyer schemes are paid a fee of \$110/hour to a maximum of five hours for the day. There are 43 Magistrates' Courts outside metropolitan Melbourne of which 38 sit as mention courts.

Despite the importance of the role of the duty lawyer at Magistrates' Courts some rural and regional courts still do not have access to the service.

1. In the Ballarat region the Horsham Magistrates' Court has extensive courts services including weekly mention days with persons in custody, children's court once a month and committal mentions. Yet there are no duty lawyer services to cater for this busy court. VLA has identified this court as its highest priority for extending duty lawyer services.¹⁶
2. Also in the Ballarat region there are courts without duty lawyer services at: Ararat, which sits once a week; Stawell, which sits fortnightly; Hopetoun, which sits every 8 weeks; Nhill, which sits every four weeks; and St Arnaud, which sits fortnightly. Nhill, St Arnaud and Hopetoun courts are not considered by VLA to be high priorities because they deal mainly with contested hearings and civil matters, and are small registries with infrequent court dates. Ararat and Stawell are under active consideration by VLA for the provision of duty lawyer services.¹⁷
3. Two courts in the Bendigo region do not have accredited duty lawyer services. These courts are at Robinvale, which sits fortnightly, and Swan Hill, which sits two days a fortnight. Robinvale has a significant Aboriginal population and the Victorian

¹⁶ Victoria Legal Aid, Submission no. 8, Part IV p.2.

¹⁷ *ibid.*

Aboriginal Legal Service operates a duty lawyer scheme for its clients there, which VLA recognises as being appropriate and effective in that location. Swan Hill is a court at which VLA is planning to have a duty lawyer service operating in the near future. The Committee heard evidence in Mildura that the Community Legal Centre is currently providing duty lawyer services at both these locations.¹⁸

4. In the Shepparton region the court at Seymour, which sits weekly, and the Cobram Court, which sits twice per month, are also priority locations for VLA to commence duty lawyer services. Corryong Court, which sits once every three months, is not considered to be a priority.

The Committee heard evidence in a number of rural areas of informal schemes, where the Magistrate or Registrar will ask a local practitioner to help a client they feel is in need of assistance.¹⁹ This type of work makes up a large part of the pro bono services provided by the private legal profession in rural areas and is discussed at more length in Chapter 14, Pro Bono Services.

While the Committee commends those private practitioners who assist in this way, it notes that pressure is placed on the goodwill of those private practitioners, who usually felt obliged to respond when called upon by the court to assist.

Figure 8 shows that the rate of the provision of duty lawyer services is significantly higher in the metropolitan region (782.8/100,000) than in the non-metropolitan regions (575.2/100,000). Two non-metropolitan regions have rates of duty lawyer usage which are only slightly less than the rates in the metropolitan regions, these being Gippsland (738/100,000) and Loddon Mallee (772.7/100,000). All other non-metropolitan areas have rates significantly less than the metropolitan figure, with the Grampians region being the least well serviced with a rate of 379/100,000. This low figure can be explained by the considerable number of courts identified in this region that do not have a duty lawyer service, most notably Horsham, Ararat and Stawell.

Figures for duty lawyer services delivered at Magistrates' Courts will be affected by the spread of courts in the particular region and so comparisons should be treated with some caution.

¹⁸ G Tellefson, *Minutes of Evidence*, 18 July 2000, p. 553.

¹⁹ S Bubb, *Minutes of Evidence*, 25 July 2000, p 684; N Gration, *Minutes of Evidence*, 11 September 2000, p. 787.

As mentioned above, VLA proposes extending duty lawyer schemes to Horsham, Ararat, Stawell, Swan Hill, Seymour and Cobram. The provision of duty lawyer services improves the efficiency of Magistrates' Courts by ensuring clients are represented and matters are heard rather than adjourned. The lack of duty lawyer services impacts deleteriously on the courts, their staff, the legal profession and the public, and therefore the Committee commends VLA for identifying gaps in services and its proposals to implement schemes where practicable. In particular the Committee is pleased to learn that Swan Hill and Horsham will be provided with duty lawyer services in the near future.

Legal Advice and Information

Legal advice and information is provided by telephone, by appointment and at advice clinics. As well as VLA offices, advice is provided at outreach locations such as prisons, hospitals and community centres. Apart from prison visits²⁰ outreach is provided by the Bendigo Office to Maryborough on a fortnightly basis and to Echuca weekly. The Morwell Office visits the Traralgon Hospital on a weekly basis and attends both the local Mental Health Review Board hearings and the Psychiatric Services Clinic on a fortnightly basis.

All VLA offices provide advice either by appointment or as a drop-in clinic. These advice sessions are free and are not means tested. Clients who would not qualify for a grant of legal aid and hence will not be entitled to any further assistance with their legal matter may be assisted to resolve their legal problems in one advice session, and given advice on representing themselves or advised to engage a private practitioner, as appropriate.

Figure 7 above shows that legal advice sessions have the greatest disparity between regions of any type of legal service offered by VLA. As most such sessions are provided from VLA offices it is not surprising that those regions with regional offices have much higher rates of access. Again, Gippsland which has two VLA offices shows a rate (1096 per 100,000) that is much higher than any other rural regions and which is almost twice the rate of the metropolitan regions (575 per 100,000).

²⁰ Prison visits are detailed in Chapter 10, Prisoners.

In 1998/99, 25 per cent of advice services were provided in regional areas. VLA sees this as an area where work needs to be done to make their distribution of advice services more equitable.²¹

While the expansion of regional offices would be one way of increasing access to advice sessions in rural and regional locations, the Committee is aware that this is a matter which is dependent on large funding increases and is unlikely to be achieved in the near future. Other ways in which an increase in advice services may be provided would be through increased outreach clinics and through the innovative use of information technology such as video-conferencing links. With the expansion of duty lawyer services to more locations it may be possible to incorporate advice sessions into some visits to these locations. For example, a solicitor travelling to a regional court may find that the duty lawyer work is always completed by lunchtime. Arrangement could therefore be made to hold an advice clinic at the offices of a local community agency in the afternoon.

Free legal advice is also provided by community legal centres. While ideally both types of services would be available, as this is not currently possible, the priority locations for VLA to concentrate its resources would be those regions which currently have no alternative free legal services.

Recommendation 17

That Victoria Legal Aid continues with its work to improve access to advice services in rural and regional locations, particularly in locations that currently have neither a Victoria Legal Aid office or Community Legal Centre.

The Committee believes that telephone advice is a very important component of providing services in rural and regional areas. VLA operates a telephone information service which is widely used particularly in metropolitan Melbourne. The Committee believes its use in metropolitan areas shows that people want this type of service as an alternative to face-to-face appointments even where the latter are available. Access to phone information is even more important when face-to-face advice is unavailable or accessing it is difficult.

The existing service provides information in English and a number of community languages. The Multilingual Telephone Information Service (MTIS) is available Monday

²¹ VLA, 'Scoping Study for the Implementation of Telelegal Service Delivery to Regional Victoria', April 2000, page 11.

to Friday 9.00am to 4.45pm, including a 1800 number for country callers. Advice is available by telephone in eleven community languages on specific days each week.²² 1800 callers could access the community language operators provided they ring on the specified days and times.²³ The service can provide basic non-case specific legal information. No files are opened or cases followed up and no legal direction is offered to clients.²⁴ Operators make referrals where appropriate to legal and non-legal agencies.

No other legal aid service in Australia has a service that provides information directly in so many community languages. Other services would make use of interpreter services.

During 1999/2000 MTIS received 63,018 information calls which were made up of approximately 43 per cent family, 40 per cent civil and 17 per cent criminal.²⁵

Figure 8 shows that the rates for both phone sessions and multilingual phone sessions²⁶ are much higher in the metropolitan area (1147.2 per 100,000 and 106.5 per 100,000 respectively) than in non-metro regions (492.3 per 100,000 and 7.1 per 100,000). This is surprising and contrary to what may have been expected if we assume that people without services locally will use the telephone to access a metropolitan service. However, this does not appear to be the case. A recent study undertaken for the Commonwealth Attorney-General's Department²⁷ suggested that telephone usage relates to the distance the client lives from the legal service provider, with those in closer proximity making more use of the service. Figure 8 would generally support this view with the Hume region again recording the lowest usage rates.

The Grampians region does not fit this model, however, as it does not have a VLA office yet has the highest rate of telephone usage of any rural region. While a number of factors may explain the apparent under-usage of the telephone advice services by non-metropolitan users, knowledge of the service is probably a significant factor. Those

²² Arabic, Cantonese, Croatian, Greek, Italian, Mandarin, Polish, Serbian, Spanish, Turkish, and Vietnamese.

²³ The 1800 number is not advertised as a multi-lingual service and access by rural and regional callers to the multilingual services would be largely a matter of chance if a caller rang at the appropriate time. This matter is the subject of a recommendation in Chapter 3.

²⁴ Victoria Legal Aid, Submission no. 87, Supplement p.1.

²⁵ *ibid*, page 11.

²⁶ The total number of users in non-metropolitan regions was 92 and numbers in individual regions were as low as 7. Because of the small numbers, it is not considered useful to make comparisons between region except on the metro/non-metro level.

²⁷ Attorney-General's Department (Commonwealth), *Scoping Study: The Scope of Delivery of Legal Services to Regional, Rural and Remote Australia via Telecommunications Channels*, Canberra, 1999.

regions without VLA offices or a community legal centre are likely to be least aware of the VLA service. This may explain the relatively good result in the Grampians region, which, unlike the Hume region, does have a community legal centre.

Recommendation 18

That Victoria Legal Aid does more to promote its telephone information services and telephone number particularly in those regions which have no Victoria Legal Aid office or community legal centre.

While telephone information is useful the Committee is concerned that VLA offers only limited telephone advice, and that this service is not well publicised. VLA will provide phone legal advice were it appears to an MTIS operator that the matter can be dealt with by a single phone consultation. The advice is provided by an in-house solicitor, who is on duty for that day to take such calls. If the matter requires follow-up the caller will be referred to an advice clinic. In a situation where the client does not have ready access to a VLA office, an additional phone call may be made to the client with further advice. The availability of telephone advice is not advertised by VLA.

The Committee believes that many simple legal issues could be resolved quickly and effectively by phone. The Committee notes the comments made by Legal Aid Queensland that its introduction of telephone advice sessions, currently being trialed in two regional locations, has reduced demand for face-to-face advice sessions at those offices by half. As the information is provided by phone, LAQ can call on any of its solicitors in any office, regardless of where the call originated. In addition it was found that telephone advice sessions are on average shorter than face-to-face interviews (16 minutes compared to 26 minutes) and that client satisfaction is higher for phone sessions.²⁸

LAQ also noted that the rates for women callers and for family law matters were higher with phone advice.²⁹ This finding would accord with the evidence heard by the Committee that women, and particularly women in rural communities, often wanted the anonymity provided by phone advice, especially in family law matters.

In rural communities engaging a solicitor or even going and asking for advice can be noted by people in the community. That makes it very hard for women to go out and seek stuff like pre-

²⁸ Notes of Meeting with LAQ, 20 September 2000.

²⁹ *ibid*

separation advice or to find out their legal options in, say, domestic violence situations, where confidentiality is an issue.³⁰

LAQ has a call centre which receives all calls coming into LAQ from whatever location. This system facilitates the redirection of calls to the appropriate LAQ service provider. While the Committee acknowledges that call centres have some problems it sees merit in the simplicity of one phone number and the ease with which a single number can be widely promoted.

The Committee recommends that VLA establishes a phone advice service as a trial which is widely publicised in two rural locations. Access must be through a 1800 or 1300 number.

Recommendation 19

That the State Government funds Victoria Legal Aid to establish a phone advice service as a trial which is widely publicised in two rural locations. Access must be through a freecall or local call rate number.

Community Legal Education

VLA is an extensive provider of CLE publications as outlined in Chapter 3, Public Access to Legal Information.

Use of Technology

VLA uses video-conferencing links to Port Phillip Prison, the Metropolitan Women's Prison and Fulham Correctional Centre, to improve its service to prisoners. The use of video-conferencing reduces travel time for solicitors and associated costs. VLA will expand this service as other prisons obtain the video-conferencing equipment. In the 12 months to the end of October 2000, 846 video-conference client sessions were conducted by the Criminal Law Division.

The Committee heard evidence that there are advantages and disadvantages for prisoners in the use of this technology and these issues are discussed at length in Chapter 10, Prisoners.

³⁰ A Foster, *Minutes of Evidence*, 11 September 2000, p.799.

VLA has not yet taken up the use of video-conferencing facilities for accessing rural areas in the way that, for instance, Queensland has with the Women's Justice Network (WJN). The WJN, referred to in a number of sections of this report, is a co-operative undertaking by Legal Aid Queensland, community legal services and Indigenous legal services to provide legal advice to clients living in rural and remote locations in a large area of southern Queensland. In addition to circuits undertaken by solicitors to small rural towns, the WJN makes extensive use of video-conferencing to provide on-going advice to clients. The project was partly funded by the Networking the Nation project.

VLA applied unsuccessfully for funding from Networking the Nation (NTN) for a project aimed at delivering services to regional communities in Victoria via video-conferencing and internet facilities. However, an initial scoping study was funded by NTN and provided some useful information for future planning of delivery of video-conferencing and internet services should VLA decide to proceed. In a summary of the scoping study's findings it is noted that:

The most impressive finding was the overwhelming, enthusiastic response to the idea of delivering advice and education services via VC and internet facilities. The idea of being able to communicate directly with a specialist in a specific area of law, such as mental health or financial services, was deemed very important in the rural areas.³¹

VLA noted in its submission that despite the failure of its submission for funds to Networking the Nation, it is using the scoping study to consider ways to use the existing facilities and established external networks to provide tele-legal services to more remote areas of Victoria.

The Committee is of the view that VLA could extend its presence in rural and regional Victoria in a cost-effective way through a funded expansion of video-conferencing facilities. The Committee sees this as an adjunct to the expansion of services already recommended in this chapter and believes that video-conferencing links should be pursued in a co-ordinated way with regional CLCs and specialist CLCs in Melbourne. Such links could provide an extended range of services previously only available in Melbourne.

The Committee recommends that a pilot program is run that establishes one site in each of the five regions. The location of each site should be determined by a consultative

³¹ *ibid* p. 9.

process involving VLA, CLCs and other key stakeholders. However, the Committee makes the following suggestions:

1. Loddon Mallee region: In Chapter 6, Indigenous Victorians, it is recommended that a video-conference link be established with the Victorian Aboriginal Legal Service, through a site possibly located at the Aboriginal Co-operative in Robinvale. The Committee believes that this site should be open to all potential clients and that the link should be used for contact with VLA, specialist community legal centres, and the regional Community Legal Centre in Mildura. A decision as to the location of the site would need to take these matters into account.
2. Grampians: In this region the Committee considers the location of the site should be either at the Community Legal Centre in Ballarat, Horsham or following consultations in such other location as appropriate. The Central Highlands CLC is keen to provide outreach services and a co-operative venture with VLA to establish an expansion of its services in Ballarat could be an appropriate forerunner to an extension of outreach services in the region. The Committee believes video-conferencing sites are best located within existing services so that there is benefit gained from the existing infrastructure of an office and staff. Alternatively the facility could be located in Horsham which is more central to the region and lacks existing services. The concern would be that it would need to be located in a community facility rather than a legal centre and that the referral and filtering process which could be undertaken by CLC staff could not be undertaken in Horsham. Nor would clients have the support of other services offered by CLCs.

In Chapter 5, Community Legal Centres, the Committee recommends that a regional CLC be funded to undertake a one-year pilot project to offer outreach to two locations in its region by way of video-conferencing link supported by regular circuit visits by a legal practitioner. If the Grampians region were chosen, Horsham would be an obvious choice as recipient of outreach services provided through the Central Highlands CLC.

3. Barwon South West: The site could be located in the CLC in Warrnambool.
4. Gippsland: The site could be located at the CLC in Morwell.
5. Hume: The Committee has already recommended that either a CLC or a VLA office be established in Shepparton. The siting of the video-conferencing facility would

need to take into account how this recommendation is dealt with. However, the Committee suggests that the CLC in Wodonga would be a suitable place for the facility.

The Committee believes that a video-conferencing network based in CLCs and VLA offices should also be available for clients to seek advice from private practitioners, in particular where advice is required from Melbourne based solicitors or barristers. Where a fee-paying client (as opposed to a pro bono client) wishes to use the facility, a fee could be charged. To facilitate such access the Committee suggests that the professional organisations for solicitors and barristers establish a video-conferencing link which could be used in Melbourne to link with clients in regional areas.

Recommendation 20

That the State Government funds Victoria Legal Aid to establish a pilot video-conferencing facility in each of the five Department of Human Services regions. The facility would be available for use by Victoria Legal Aid, Community Legal Centres (including specialist centres) and for a fee to private legal practitioners.

CHAPTER 5 - COMMUNITY LEGAL CENTRES

History and Overview

Although there is some debate about the origins of Community Legal Centres (CLCs) in Victoria it is generally accepted that the Fitzroy Legal Service was the first independent service established in Victoria, opening in December 1972. In February 1973, the Springvale Legal Service began operation¹, followed in the same year by centres at Broadmeadows and St Kilda. The Victorian Aboriginal Legal Service (VALS) also opened in February 1973.²

While Fitzroy received its first government funding with an emergency grant of \$2,000 from the Commonwealth Attorney-General in May 1973³, it was not until 1979 that Commonwealth funding for CLCs began in other than an ad hoc manner. State funding was first made available in Victoria in 1981.⁴

By 1982 there were sixteen centres operating in Victoria and centres in all other States and Territories except the Northern Territory. A decade later in 1992 there were 110 centres throughout Australia.⁵

Victoria currently has 42 community legal centres which are members of the Federation of Community Legal Centres (FCLC). Of these, 31 centres receive Commonwealth and/or State funding as part of the Community Legal Centres Funding Program. The FCLC is also funded through this program.

¹ Prior to this there had been some attempts to provide free legal referral by law students at Melbourne and Monash Universities (see Chesterman, J. *Poverty Law and Social Change — The Story of the Fitzroy Legal Service*, Melbourne University Press, p. 4.

² This chapter does not deal with VALS, which is covered separately in Chapter 6. It should be noted, however, that VALS is part of the Federation of Community Legal Centres.

³ Chesterman, J. *Poverty Law and Social Change — The Story of the Fitzroy Legal Service*, Melbourne University Press, p.79.

⁴ van Moorst et al, *Community Law Online — Enhancing and Extending Access to Community Law*, p. 2.

⁵ Chesterman, J. *Poverty Law and Social Change — The Story of the Fitzroy Legal Service*, Melbourne, p4.

There are seven CLCs located in regional and rural areas of Victoria, at Wodonga, Ballarat, Mildura, Warrnambool, Geelong, Frankston and the most recent addition at Morwell, which opened in August 2000. Each of these centres is a generalist centre. There are also a number of specialist CLCs all of which provide some level of coverage to rural and regional areas.

Of considerable importance to the future of CLCs is the review of the Community Legal Centre Funding Program which is currently being undertaken in Victoria. This review may substantially alter the existing arrangements under which CLCs are funded and may even alter locations and numbers of CLCs.

Review of the Victorian Community Legal Centre Funding Program

In 1997 the Commonwealth Attorney-General initiated a review of the Victorian CLC funding program with the support of the State Attorney-General at the time, Hon. Jan Wade. This followed on from reviews carried out in Queensland and South Australia. Reviews of other State programs are currently under way or planned in New South Wales and Western Australia.⁶

The stated objective of the review was:

To provide a future direction for community legal services in Victoria by making recommendations which will enhance the functioning and development of such services and provide a better framework for the planning and delivery of legal services...not...constrained by the status quo.⁷

A report was commissioned and a final report was released in January 1999.⁸ Two terms of reference for the Review Report are of particular relevance to the Committee's reference:

- Describe and analyse the current structure, distribution and functions of geographic and specialist CLCs in order to recommend the optimum models for delivering services; and

⁶ Implementation Advisery Group, *Implementation Advisery Group Review of Community Legal Centres: Draft Report*, 2001, p. 16, at www.legalaid.vic.gov.au

⁷ Impact Consulting Group, *Review of Victorian Community Legal Centre Funding Program: Final Report*, Melbourne, 1998, Volume 1, p.40

⁸ *ibid.*

- Examine existing information...on levels of need for community legal services across Victoria, with consideration to current patterns of need and emerging trends in order to identify service delivery gaps or possible overlaps.

Following the release of the Review Report the State and Commonwealth Attorneys-General set up an Implementation Advisory Group (IAG) which included representatives of both Attorneys-General Departments, Victoria Legal Aid, CLCs and an independent Chair. CLCs initially considered that the terms of their participation were too restrictive. The FCLC was concerned about its inability to freely choose its participants and the requirement that participants be nominees rather than representatives. Confidentiality requirements were also imposed on the participants. After some negotiation, members of CLCs were accepted onto the Group but not all the places originally allocated to CLCs were filled as a number of people put forward by the Federation were not found to be acceptable by the Attorneys-General. The group began meeting in May 1999 without finalising the CLC representation. The Group currently includes four CLC employees.

The terms of reference of the IAG at the time it began meeting were to make recommendations which would achieve the following outcomes:

- Consistent and equitable distribution of CLC service resources throughout Victoria;
- Ensuring CLC services are accessible to persons most in need;
- Identification of core CLC services and eligibility criteria;
- Efficient and effective management and service delivery; and
- Enhancement and support of the role and contribution of volunteers at CLCs.⁹

The first of these outcomes is of most relevance to the current inquiry and is also potentially the most contentious. The review is being undertaken on the basis of budget neutrality and, depending on the method of determining equitable distribution, an outcome which achieves such a distribution of services and resources may involve the closure of some centres.

Following a period in 1999/2000 during which the new State Government negotiated with the Federal Government about the outcome of the review process, an additional term

⁹ Victoria Legal Aid, *Fourth Statutory Annual Report 1998/99*, Melbourne, p. 31.

was added which required that while recommendations and strategies are to be cost neutral, they should have regard to both the current government policy settings and the recognition of the importance of community involvement in, and volunteer commitment to, CLC services.

In addition the terms of reference provide that

...the IAG may make recommendations as to where future CLC development funding could have most impact, should such funding become available, having regard to the broad outcomes identified above.¹⁰

CLCs have consistently held the view that existing centres provide much-needed services to large numbers of highly disadvantaged people. While supporting the extension of services in rural areas, the CLCs believe this should be done with additional funding rather than by removing services from needy metropolitan areas.

We [the Federation] believe that a well-funded, properly resourced sector with a staged development will support better community legal services in rural and regional areas. The Federation is...concerned that over the past few years it has been politically popular to fund new centres in new areas. We push very strongly our opinion that all existing centres should be adequately funded and that that approach should be linked with a staged development of new services across the board.¹¹

The IAG released a draft report dated 16 February 2001. The draft and a number of responses from CLCs are posted on the VLA website. Submissions responding to the draft were called for and the closing date was 4 May 2001.

The Review Report — Findings

The Review Report¹² used Department of Human Services regional boundaries to assess servicing of clients in these areas compared to the proportion of Health Care Card holders. Community Legal Centres do not currently means test their clients and so the use of Health Care Card holders as an approximation to CLC clients is unlikely to be entirely accurate. In addition, it has been argued that the selection of Department of Human

¹⁰ Implementation Advisery Group, *Implementation Advisery Group Review of Community Legal Centres: Draft Report*, 2001, at www.legalaid.vic.gov.au

¹¹ G Wilks, *Minutes of Evidence*, 15 May 2000, p. 82.

¹² Impact Consulting Group, *Review of Victorian Community Legal Centre Funding Program: Final Report*, Melbourne, 1998.

Services regions as the basic comparison areas is not one which necessarily fits well with current CLC service delivery.

The Committee heard evidence from the Manager of Community Connections in Warrnambool that the use of such large areas for administrative purposes had adversely affected service delivery in many areas including the services delivered by the Department of Human Services.¹³ He argued that in order for real community development to take place, the regions needed to be smaller as they had been before the existing nine super-regions were formed. In the absence of other data, however, figures from the Review Report are used as a general overview of CLC coverage.

In non-metropolitan areas results were as follows:¹⁴

Table 3

Region	Percentage of CLC clients in this region	Percentage of Health Care Card holders	Number of Generalist CLCs	Percentage of CLC funding program devoted to generalist centres in this area
Barwon South Western	7.59	8.18	2	10.77
Gippsland	0.28	6.16	0	0
Grampians	2.45	6.16	1	4.07
Hume	0.14	5.89	0	0
Loddon Mallee	0.98	6.16	1	4.07

The Review Report recommended that regional community legal centres be established as a priority in the Gippsland and Hume regions, and that these centres be established before any additional resources are allocated to existing services¹⁵. The Review Report acknowledged that these centres could not be established without additional resources being allocated to the CLC funding program.

Subsequent to the Review Report's release, centres were funded in Albury Wodonga in the Hume region and in Gippsland, the two areas identified by the report as priorities.

¹³ B du Vergier, *Minutes of Evidence*, 10 November 2000, p. 1125.

¹⁴ Impact Consulting Group, *Review of Victorian Community Legal Centre Funding Program: Final Report*, Melbourne, July 1998, Volume 1:131-134.

¹⁵ *ibid*, p.154.

Additional funds were made available for these centres by the Commonwealth Government.

The Review Report also recommended that regional CLCs be established in the Barwon South Western, Grampians and Loddon/Mallee regions. These regions have existing CLCs and in the case of Barwon South Western the Report recommends an amalgamation of the two existing centres.

In common to the Review Report's findings in all regional areas is the observation that the existing centres and those proposed new centres will not be able to cover the entire region. Instead the Report recommends that certain sub-regions be emphasised and that limited coverage be provided to other areas. In addition the Report recommended that specialist services be provided to regional CLCs via an agreement with specialist centres.¹⁶

The Review Report summarises each region as follows:

1. Barwon/South West Region

This region already has two CLCs located at Geelong and Warrnambool. The Review Report recommends the amalgamation of these two services into one regional service which has offices in the existing locations. The report suggests that emphasis be placed on the sub-regions of the Greater City of Geelong, Borough of Queenscliffe and Surfcoast Shire in Barwon, and the City of Warrnambool and the Shire of Moyne in the South West.

¹⁶ *ibid.* Recommendation 31, p. 155.

2. Gippsland Region

The Review Report notes that there are no CLCs in this region and recommends that a CLC be established in Traralgon (one has since been established in Morwell). The Report recommends that service delivery be concentrated in the sub-regions of La Trobe Council and Baw Baw Shire.

3. Hume Region

The Review Report notes that there are no CLCs in this region and recommends that a centre be established at Shepparton or Wangaratta (one has since been established in Albury Wodonga). Sub-regions which should be concentrated on were identified as either the Goulburn Valley sub-region of Greater Shepparton, Moira Shire Council and Strathbogie Shire Council, or the Ovens Valley sub-region, comprising the Alpine Shire Council, Indigo Shire Council and the Rural City of Wangaratta. These choices reflect the suggested placement of the CLC.

4. Loddon Mallee Region

There is one CLC in this region at Mildura. The Report recommends emphasis on the sub-regions of the Rural Cities of Mildura and Swan Hill.

5. Grampians Region

There is one CLC in this region located at Ballarat. The Report recommends emphasis on the sub-regions of Ballarat City Council, Golden Plains Shire Council, Hepburn Shire Council, Moorabool Shire Council and Pyrenees Shire Council.

Existing CLCs already offer outreach services in their regions, and resource and support issues would make stand-alone services in very small regional centres unviable. With regard to the recommendations of the Review Report, it is the Committee's belief that the appropriateness of the Department of Human Services model is not sufficiently justified in the report to warrant the amalgamation of the two existing services at Warrnambool and Geelong. Both centres gave evidence to the Committee and appeared to be operating effectively, with local community support and significant volunteer participation.

The IAG Draft Report

The Draft Report prepared by the IAG contains a number of departures from the approach and conclusions of the Review Report. The IAG used the Review Report as one of a number of sources of information. It should be noted that the Draft Report is for discussion purposes only and may not reflect the final paper. In addition, the second part of the Report, which will address the options for service delivery, was not available at the time of writing.

The Draft Report outlines the policy directions of both the Commonwealth and State governments. While the Commonwealth Government's policy directions are very similar to the terms of reference of the IAG, the outline of the State Government's policy includes a commitment, first made while in opposition, that no CLC will be forced to close as a result of the current review and that CLCs will retain their independence.¹⁷

The Draft Report notes that services are not available in rural areas in a number of regions including the Bendigo District, North Central Victoria and the Goulburn Valley, while areas of high socio-economic disadvantage are found in pockets of concentrated population in the La Trobe Valley, Ballarat and Geelong¹⁸. The Draft Report notes that while existing services are in areas of need, CLCs have not been established or effectively resourced in many rural areas.¹⁹

The Committee notes that the Terms of Reference allow the IAG to make recommendations about the allocation of future CLC development funding. In view of this the Committee has been careful in making recommendations of its own concerning the expansion of CLCs in rural and regional areas, making only one recommendation, contained in Chapter 4, Victoria Legal Aid, that in Shepparton, either a CLC or a VLA office should be established.

The Committee is aware that the methodology used by the IAG to determine legal need, and hence some indicators of equitable distribution, has been criticised by the Federation of CLCs.²⁰ The Federation submission notes that the two reports produced as part of the review process reach conflicting conclusions on areas of greatest need because they use

¹⁷ Implementation Advisery Group, *Implementation Advisery Group Review of Community Legal Centres: Draft Report*, 2001, p. 6, at www.legalaid.vic.gov.au

¹⁸ *ibid*, p. 7, 9.

¹⁹ *ibid*, p. 10.

²⁰ Federation of Community Legal Centres, 'IAG Draft Options Paper: A Critique and Some Alternatives', March 2001, at www.legalaid.vic.gov.au.

different indicators. The Federation considers both methodologies to be flawed. The Committee recognises the difficulty in establishing legal need and the inadequacies of the available indicators.

Community Legal Centres — Services Offered

The services offered by community legal centres vary considerably between centres. This is due to the fact that they developed largely independently of each other and in response to local community needs. Each generalist centre, with the exception of two rural centres, is a separately incorporated and autonomous body. This autonomy, and their responsiveness to local needs, remain important features of CLCs.

Community legal centres believe that what sets them apart from other legal aid service providers is the range of services we deliver and the way we deliver them to our communities. We provide case work which can range from information and referral through to advice, negotiations and representation at advocacy. We are active in community legal education work, in law reform, and in policy and community development. We believe that the combination of activities is what sets community legal centres apart, along with our independence from government... We estimate that over 50,000 clients were assisted by community legal centres in the past year. The majority of people who use the centres have low incomes although we are increasingly identifying the fact that our clients are creeping down to people who are not eligible for community services but who can no longer afford to pay for private legal assistance.²¹

The services offered by generalist centres can be broadly described as:

- community legal education
- information and referral
- advice
- case work /advocacy
 - assistance to individuals to run their own matters
 - some limited representation work
- law reform activities

²¹ G Wilks, *Minutes of Evidence*, 15 May 2000, p. 82–83.

The specialist centres and a short description of the services offered are as follows:

Consumer Credit Legal Service	Consumer credit matters.
Consumer Law Centre	This is a policy and research service only, which refers casework to other appropriate agencies.
Disability Discrimination Law Advocacy Service	Legal advice and assistance under the <i>Disability Discrimination Act</i> and community education.
Domestic Violence and Incest Resource Centre	A referral support service, for doctors and legal representation. Other services include providing professional education and training; running support groups; and producing printed resources.
Environment Defenders Office	Public interest environmental and planning law, community legal education and law reform activities.
HIV AIDS Legal Centre	Legal advice and referral to people affected and infected by HIV/AIDS.
Job Watch	Focuses on employment law providing casework practice, community legal education and publications.
Mental Health Legal Centre	Provides advice and representation for people who have a legal matter related to their illness. Also a mental health related referral service and provider of legal education.
Public Interest Law	PILCH assesses requests for assistance from disadvantaged

Clearing House	individuals and public interest organisations, and refers appropriate cases of public interest to participating barristers and law firms who act for the client free of charge or for a reduced fee.
Refugee and Immigration Legal Centre	Provides immigration legal advice and representation including representation before the Tribunal; assistance to asylum seekers; and community education and training.
Tenants' Union of Victoria	Provides advice, information and legal advocacy to public and private tenants, rooming house and caravan park residents. Also undertakes community education, law reform and research work.
Villamanta Legal Service	Provides individual legal advocacy for people with a disability (particularly intellectual disability) about legal problems related to the disability. Also provides information about disability issues, community education, law reform, training and workshops.
Welfare Rights Unit	State-wide telephone advice service for social security law, policy and practice. Also provides information leaflets and undertakes community education, law reform and training.
Women's Legal Service Victoria	Provides advice, referral, representation and casework in family law, victims assistance, intervention orders and equal opportunity. Also provides legal education and training, law reform and policy work and publications.

CLC Funding

The CLC Funding Program is administered by Victoria Legal Aid (VLA) which receives the combined Commonwealth and State grants. Each CLC must sign an annual service agreement before its funds are released and no funding is guaranteed beyond each 12-month funding period. The agreements include the requirement for quarterly financial reports and other accountability and reporting regimes.²² The grants are paid in quarterly instalments. The agreements also include the workplan for the coming year and performance indicators.

The proportion of State and Commonwealth funding received by individual CLCs differs greatly, based mainly on historical factors but also on the services offered. In particular, specialist centres that work in an area of law that is purely a Commonwealth responsibility, are completely Commonwealth funded.²³

The total budget for the Community Legal Centres Funding Program in Victoria for the 2000/2001 financial year is \$6,209,360. Of this \$2,079,145 (33.48%) will be provided by the State Government and \$4,130,215 (66.52%) will be provided by the Commonwealth Government.²⁴ These figures include the two cross-border services at Mildura and Albury/Wodonga.

Rural Centres

The centres in rural and regional areas tend to be newer centres and also to receive the bulk of their funding from the Commonwealth. Figures provided by the Commonwealth Attorney-General's Department show that the Commonwealth provided 91.47 per cent of funding to Victorian rural and regional generalist CLCs in the 1999/2000 financial year²⁵. The same paper suggests that while 40 per cent of Victorians live in country areas²⁶ only 25 per cent of funding for generalist services is directed to rural areas. However, account

²² Mandatory performance indicators, which must be provided on a quarterly basis, show figures for the numbers of clients seen, information given and referrals made, community legal education activities undertaken etc. A quarterly report must also be provided which indicates whether workplan objectives are being met, or are on target to be met during the funding period.

²³ For example the Welfare Rights Unit is completely Commonwealth funded and deals only with Centrelink issues.

²⁴ Figures supplied by Victoria Legal Aid

²⁵ Attorney-General's Department (Commonwealth), Submission by Family Law and Legal Assistance Division, July 2000, p 3.

²⁶ *ibid*, no source for this figure is provided in the submission.

needs to be taken of the opening of a sixth rural CLC in Gippsland which would change this figure (and increase the percentage of Commonwealth funding) to approximately 28 per cent.²⁷

However, the Committee received evidence and submissions that provided very different figures on the percentage of rural Victorians. For example, the Equal Opportunity Commission Victoria stated that 28 per cent of Victorians reside in rural and regional Victoria, while the Legal Ombudsman quoted 32.4 per cent, both based on 1996 census data. The Victorian Government's website provides a figure of 73 per cent of the Victorian population living in the Melbourne metropolitan area, hence putting the rural and regional figure at 27 per cent. The regional areas suggested by the CLC Review Report would place 27.75 per cent of the population outside the four metropolitan regions. From the 1996 census Local Statistical Areas (LGAs) the figure would be 28 per cent.

If an approximate figure for the rural and regional population of 30 per cent is used, this places the level of funding to rural generalist centres at just 2 per cent below the percentage of the overall population living in rural and regional areas. If figures taken from the Review Report are used, there appears to be no discrepancy between funding levels.

In the 2000/2001 financial year the Central Highland CLC will receive 94.23 per cent of its funding from the Commonwealth.²⁸ Commonwealth funding will make up 92.89 per cent of the funds received by the Legal Centre at Community Connections in Warrnambool. The three newest centres namely, the Murray Mallee CLC in Mildura, the Albury/Wodonga CLC, and Gippsland CLC will be 100 per cent Commonwealth funded. Both the Mildura and Wodonga centres are cross-border centres, servicing areas within Victoria and NSW.

The Geelong Community Legal Service, which has been in operation since 1986, will receive 79.98 per cent of its funding from the Commonwealth. The FCLC also categorises the Peninsula Community Legal Service as a regional service. However for the purposes of this discussion it will be included as a metropolitan centre, as this fits

²⁷ This figure includes the Geelong CLC but does not include Peninsula CLC.

²⁸ Figures supplied by Victoria Legal Aid

more accurately with other definitions of metropolitan which will be used for comparison.²⁹

A further issue which was raised with the Committee is that older centres are funded at a much lower rate than newer centres. Albury/Wodonga, Mildura and Gippsland are all funded at over \$200,000 per annum. The older centres in Ballarat and Warrnambool will receive \$155,00 and \$166,000 respectively in the current financial year.

The Central Highlands CLC in Ballarat commented:

We receive \$153,000 funding for the year. We are one of the lowest-funded legal centres in the state. There is no rural loading for legal centres in Victoria as there is in other states. In other states — New South Wales, for example — the rural legal centres receive a loading of, I think, \$3000 per worker. We certainly have problems in servicing the whole region. We tend to focus our services in Ballarat. We do not advertise ourselves outside Ballarat, not wanting to build up expectations that basically we cannot deliver.³⁰

And in Warrnambool, Community Connections commented:

[O]ur organisation was originally funded at about \$100,000 to provide a community legal centre practice for 24,000 square kilometres, which is frankly absurd. It makes it incredibly difficult for us to provide direct services for that sort of territory in the way you are familiar with. However, the Commonwealth has been funding new community legal centres in outer rural regions...at \$210,000... There are some equity issues in relation to citizens of south-western Victoria having equal access as the citizens of Gippsland will have in the future and the people of the Upper Murray and Mallee regions have. Our experience is one of struggle in relation to providing the community legal centre practice to 24,000 square kilometres.³¹

In relation to the level of funding for individual centres the Federation of Community Legal Centres (FCLC) has adopted a standard funding formula for CLCs which maintains that all existing centres be upgraded to a minimum of three effective full-time (EFT) workers in order to make them viable. The formula provides for funding of \$215,466 for metropolitan centres with 3EFT workers and \$235,232 for rural and regional centres.³² This would require substantial additional funds across the whole program. The FCLC calculates that an additional \$440,154 would be needed to bring all existing rural and

²⁹ It should be noted however that how centres are categorised will have a significant impact on figures quoted which compare rural and regional spending.

³⁰ M Camilleri, *Minutes of Evidence*, 27 April 2000, p. 35.

³¹ B du Vergier, *Minutes of Evidence*, 21 June 2000, p. 385.

³² Funding Maintenance and Development Proposal for Victorian Community Legal Centres 2000–2001, Stage I, April 2000, Federation of Community Legal Centres.

regional CLCs (including the Peninsula CLC) up to the formula amount.³³ A similar funding proposal put forward by the National Association of Community Legal Centres at the Commonwealth level has not been successful.

The Commonwealth Attorney-General's Department funding level for new rural services at around \$200,000 is also based on each centre having 3EFT workers.

In the *Implementation Advisery Group Review of Community Legal Centres: Draft Report*, it is suggested that 5 EFT staff should be the minimum staffing level for CLCs. The Federation of Community Legal Centres has argued against this model in its response to the draft report.³⁴ It notes that additional funds are unlikely to be made available to meet this recommendation and that the reduction in the number of centres, which would be the funding alternative, would cause significant disadvantage. The FCLC lists the greater inconvenience to clients in travelling to centres, the increase in conflict of interest cases, the potential loss of local government support, and the potential loss of volunteer contributions, as reasons not to support this proposal.

The Committee notes that all but one rural and regional area have only one CLC and staffing does not exceed 3 EFT in any of these centres.

The Committee notes the views expressed by the Warrnambool Legal Centre that the wide disparity in funding between centres is an access and equity issue. Again funding levels seem to be historically based rather than reflecting need or demographic factors.

The Committee believes that as all regional and rural CLCs cover very large geographical areas, the basic level of funding of three EFT workers per CLC, as proposed by both the State and Federal CLC representative bodies, and used by the Commonwealth, is an acceptable *minimum* level of staffing, and that the level of funding provided by the Commonwealth to new rural and regional centres is also an acceptable minimum level.

³³ Victorian Community Legal Centre Funding Maintenance and Development Proposal 2001–2002, p 6.

³⁴ Federation of Community Legal Centres, *IAG Draft Options Paper: A Critique and Some Alternatives*, March 2001, p. 4–5, at www.legalaid.vic.gov.au.

Recommendation 21

That all regional Community Legal Centres be funded at a level which allows for a minimum of 3 full-time staff and an operational level equivalent to that provided to new centres at Mildura, Albury/Wodonga and Morwell.

Recommendation 22

That funding for rural and regional community legal centres includes a rural loading which acknowledges the additional costs involved in service delivery in rural areas.

The Committee notes that the FCLC has made a submission in its 2001/2002 funding proposal, which is directed to both the State and Federal governments, that one additional rural CLC be funded.

The Federation of Community Legal Centres recommends that priority be given to the establishment of at least one new rural community legal centre as identified by further research... [T]he Federation sees this recommendation as the first step to the gradual implementation of a staged development of rural/regional legal services network to ensure the enhancement of rural legal services.³⁵

While no location is identified for a possible new service, and the Committee agrees that such a decision would need to be based on further research, the Committee notes that Shepparton is identified by Victoria Legal Aid as a large regional centre without a CLC or VLA office. The Committee has made a recommendation in Chapter 4, Victoria Legal Aid, that either a CLC or a VLA office be set up in Shepparton.

Specialist Centres

Another important issue is the funding to specialist community legal centres, which are all located in the metropolitan area apart from Villamanta Legal Service which is located in Geelong. The Review Report attempted to assess the coverage of rural and regional areas by specialist centres. The Report notes a number of inadequacies in their data collection³⁶. However, using what is available the Report provides figures for coverage of regional and rural areas by specialist centres. Of the 7 centres receiving funding under the

³⁵ Op cit p. 8.

³⁶ 21% of clients could not be sourced to a geographical region, and three centres were not able to record the postcode for over 50% of their clients.

CLC program, only 4 had collected postcode details from a majority of their clients. The figures for these centres are as follows:

Table 4

Specialist CLC	% Metropolitan clients	% Rural and Regional clients
Environmental Defenders Office	77.57	22.43
Mental Health Legal Centre	84.94	15.06
Tenants Union Victoria	97.17	2.83
Women's Legal Resource Group	75.19	24.81

The Report noted:

It is asserted that the regional spread of clients for specialist centres is not a firm basis upon which (to) assess the representative nature of the client base. Some specialist centres may need to concentrate upon particular areas as a result of State Government decisions to concentrate clients, eg the Mental Health Legal Centre.³⁷

The Tenants Union's figures are also not an accurate reflection of the rural and regional coverage, as a network of tenancy advice services exists around the State which are not community legal centres but which offer a similar service to the Tenants Union, although falling short of offering legal advice and representation. The Committee heard evidence that these services sought advice and assistance from the Tenants Union as required.³⁸

With these matters in mind, the Committee has found it difficult to reach conclusions on the adequacy of regional and rural coverage by specialist CLCs. Indeed, in the case of three centres, the lack of available postcode data reported in the Review Report makes it impossible for them to properly assess their rural and regional coverage.

The Committee is of the view, however, that available data suggests an under-representation of rural and regional clients for specialist centres. This view is supported by anecdotal evidence received by the Committee.

³⁷ Impact Consulting Group, *Review of Victorian Community Legal Centre Funding Program: Final Report*, July 1998, Volume 1, p.134.

³⁸ For example, at the Wodonga hearings, 13 June 2000. In response to a question from the Committee, the Consumer and Tenancy Advice Service spokesperson said, 'the Tenants Union of Victoria is our peak body. There are times when issues can be complicated and on a few occasions we have contacted the Tenants Union's solicitors'.

Recommendation 23

That the Government ensures that sufficient data collection is undertaken by specialist centres so that usage levels can be accurately recorded by region.

Recommendation 24

That specialist centres (that have not already done so) focus on developing policies that facilitate access to their services by rural and regional clients.

Conclusion

In summary the question of whether CLC services to rural and regional areas are being funded at similar levels to metropolitan areas depends to a large extent on the figures used to compare funding. The relative need of some areas would also need to be taken into account and these demographic issues are addressed in Chapter 2, Context. In the following sections detailing some of the findings of the Review of Community legal Centres there is also some discussion of relative need as between regional areas.

It is the stated view of the Commonwealth that the State Government is providing a disproportionately low level of funding to community legal centres to its rural and regional communities.³⁹ The Committee commends the Commonwealth's recent initiatives which have funded the establishment of 3 new rural CLCs over the last four years. The Committee believes that these new services have done much to redress the imbalance between services available in metropolitan and rural areas.

³⁹ Attorney-General's Department (Commonwealth), Submission by Family Law and Legal Assistance Division, July 2000, p 4.

For the 2000/20001 financial year, State funding is listed in the table below.

Table 5

	State Government funding	Total funding – State and Commonwealth
NSW	40.99%	7,663,672
Queensland	34.70%	4,512,746
Victoria	33.26%	6,310,474
South Australia	22.78%	3,302,748
Western Australia	1.06%	2,927,122
Tasmania	0.00%	946,510

The Committee notes that perhaps the most significant point raised by the Review Report is that in no region, metropolitan or rural, can the existing centres provide services to the whole of that region.⁴⁰

Community Legal Centres' Structures and Management

Most Community Legal Centres (CLCs) are independently incorporated organisations. However, more recently a number of centres have opened in Victoria, all in rural and regional centres, which offer a service from within a larger community organisation. This has come about largely because of the Commonwealth Government's method of funding new centres: the tendering model favours existing organisations that can add a legal service to their range of services.

This move by the Commonwealth is not welcomed by the established CLCs who see it as a move away from true community control. Recently established centres in Mildura and Wodonga have been set up in this way under the auspices of existing local community groups. The newest service at Morwell is auspiced by Anglicare which is controlled and managed through the head office in Melbourne. This particular issue is central to the current debate (taking place in the context of the current review of legal centres), about what is and what is not a community legal centre.

⁴⁰ Impact Consulting Group, *Review of the Victorian Community Legal Centre Funding Program, Final Report*, July 1998, Volume 1, pp144–153.

Victorian CLCs have traditionally been established on demand by community groups which identify a need and often set up and run voluntary services for a number of years before obtaining government funding. The centres are run by elected management committees whose membership is drawn predominantly from the local community. The Central Highlands CLC is an example of this type of development, being initially established in 1989 and operating on an entirely voluntary basis until funding was received in 1991. After funding is received the centres usually continue to operate with extensive voluntary participation from private practitioners and local community members, thereby offering a service which provides excellent value for money in terms of the actual government funding received.

The newer centres have been established following recognition by the Commonwealth Government that CLCs are both a good value funding proposition and also inequitably distributed, particularly in rural areas. Hence recent decisions to place centres in rural areas have been made based on demographic considerations. Volunteers traditionally drawn from CLCs' community base, may not be as readily available to centres established in this way who may have to work at gaining community confidence first. The issue of feeling comfortable with a service before it will be used, was raised by the Geelong CLC.

The provision of advice and assistance to disadvantaged members of the community often falls to the community legal sector to deal with. Workers in that sector believe that country people in particular need to trust the information and advice sources and the service providers before they feel comfortable using them. Community legal centres have clearly become trusted by their communities over time.⁴¹

The newer arrangements, however, have also had advantages for some centres. The Murray Mallee Community Legal Service told the Committee:

It needs to be understood that we are a little unique in that the successful bidder in Mildura was an existing organisation. You would be aware that 95 per cent of legal centres throughout the country stand alone and are managed by local management committees... The board of management to which the legal service owes allegiance is the board of Mallee Family Care. A reference group that is drawn from traditional sources forms a management committee. We simply look to the reference group for guidance and to provide some community input on what the legal service should be doing. However, management is controlled by Mallee Family Care. Although it is looked at askance by the traditional legal centre people in terms of arguments about independence and whatever, if that is seen as a drawback then so be it. Our ability to operate is very much enhanced by the fact that we form almost a department of Mallee Family Care. In terms of the availability of simple resources such as motor cars, administrative input, computers, whatever, we are not required to stand alone...

⁴¹ E van Moorst, *Minutes of Evidence*, 29 June 2000, p. 467.

I do not think it would be possible, given what we do and how we have been doing it, to run the legal service at anywhere near the same level if we were to stand alone. I really do not know how it could be done. I do not think we could even afford a motor car. It would be impossible in such an area.⁴²

It may be that in smaller rural communities where resources are limited, the advantages of the placement of community legal services within existing community organisations in terms of resource sharing outweigh any disadvantages that may accrue from lack of independence. While the resource advantages are already apparent, issues related to independence are likely to take longer to appear. The Committee heard no evidence of problems in this area during its public hearings.

The Committee notes the need for high levels of integrity and management capacity for CLC management committees. The Committee was impressed with the enthusiasm and skill shown by people currently sitting on management committees. In the *Implementation Advisery Group Review of Community Legal Centres: Draft Report*,⁴³ it is noted that 48 per cent of committee of management members are either lawyers or community workers. The Committee believes that there are significant advantages to be gained from having a broad, community-based management committee. This could include representatives of local government, service clubs and local traders' associations as well as the more traditional members such as lawyers and community workers who already figure prominently. Financial and accounting skills are also invaluable on management committees. The Committee encourages CLCs to make every endeavour to ensure that their management committees reflect the range of skills available in the local community and includes members most likely to enhance the CLC's development.

Recommendation 25

That Community Legal Centres ensure that the membership of their management committees reflects the range of skills available in the community to enhance each Centre's development.

⁴² G Tellefson, *Minutes of Evidence*, 18 July 2000, p. 548.

⁴³ Implementation Advisery Group, *Implementation Advisery Group Review of Community Legal Centres: Draft Report*, 2001, at www.legalaid.vic.gov.au

Issues of Particular Importance

Staffing Issues

Recruitment of staff was raised on a number of occasions as a significant issue for CLCs, particularly in relation to the recruitment of solicitors.⁴⁴ In common with other providers of professional legal services in rural areas, there is a difficulty in attracting solicitors to rural locations as few wish to leave the metropolitan area for lifestyle reasons.

For CLCs there is the additional problem of the very low salaries which are offered, usually in accordance with the rates of pay under the Social and Community Services Award, Community Development Worker Grade 2B. This award reaches a maximum annual salary of approximately \$42,000 after 6 years of experience. Salary packaging arrangements can make this basic salary slightly more attractive, but for experienced solicitors it remains uncompetitive. Although not compelled by funding bodies to use this award, the overall budgets of CLCs would rarely allow payment in excess of this amount.

Recommendation 26

That there be greater recognition by funding bodies of the additional costs involved in operating Community Legal Centres in rural and regional areas and, in particular, recognition of the difficulty of attracting and retaining qualified staff and the consequent need to offer appropriate financial incentives to assist in recruitment.

The Committee was concerned by the lack of experience of some solicitors in rural CLCs who were often working alone in legal centres where assistance from more experienced solicitors and mentoring arrangements were not available. The Committee suggests that some of these issues could be overcome by establishing formal links with larger metropolitan centres that involve skills sharing and professional support. The Committee is aware that a number of such arrangements currently exist in an informal way between CLCs, but believes that these may be less likely to exist for rural CLCs where personal contact and networks are harder to establish due to distance. A solicitor is more likely to feel comfortable to seek assistance from a friend or acquaintance. In the absence of these resources a formal arrangement is likely to overcome any hesitation felt.

⁴⁴ J. Williams, *Minutes of Evidence*, 21 June 2000, p. 390; see also Implementation Advisory Group, *Implementation Advisory Group Review of Community Legal Centres: Draft Report*, p. 19, at www.legalaid.vic.gov.au

Recommendation 27

That the Federation of Community Legal Centres establishes a formal program of professional support for solicitors in rural and regional Community Legal Centres through links with larger metropolitan centres.

Conflict of Interest

Conflict of interest issues were raised as a particularly acute problem in rural locations where the choice of solicitors is limited. As the number of rural CLCs is small and the distances between them are considerable, there is currently very little scope for referrals between CLCs in rural areas when conflicts arise. However, the issue of conflicts has been raised by CLCs as an argument against the amalgamation of existing services as larger services would lead to more conflict issues. In rural areas this would be relevant to the proposed amalgamation of the Geelong and Warrnambool services.

The Committee has already stated its opposition to such an amalgamation. The issue of conflict is not confined to CLCs and is one which will remain an issue wherever the number of legal service providers is limited. Forming networks with Victoria Legal Aid and local private practitioners, as no doubt already happens, is probably the only response possible.

Outreach and Use of Technology

The CLCs located in rural and regional areas already undertake some outreach work which is limited, however, by lack of resources. The Committee heard evidence of the solicitor from Murray Mallee Community Legal Centre located in Mildura travelling to Swan Hill and Robinvale⁴⁵, and the Warrnambool Legal Centre travelling to Casterton, and Portland.⁴⁶

Improved access to technology such as video-conferencing could be very useful in assisting small rural legal centres to reach a wider audience.

Use of technology in CLCs is severely limited by the very poor state of capital equipment available to them. Funding levels to CLCs make any significant advances in the use of

⁴⁵ G. Teffelson, *Minutes Of Evidence*,

⁴⁶ J. Williams, *Minutes of Evidence*, 21 June 2000, p. 379.

technology impossible. An attempt to redress this situation was made by way of a detailed submission by Victorian CLCs to the Networking the Nation (NTN) program funded by the Commonwealth Government.⁴⁷ Unfortunately the submission was not successful.

A discussion about the Queensland Women's Justice Network, which is a co-operative venture by Legal Aid Queensland, CLCs and Indigenous legal aid providers, can be found in the Chapter 4, Victoria Legal Aid. The Committee believes that the model could be successfully adopted for Victorian circumstances and would like to see a pilot undertaken from an existing CLC in a rural location. The pilot should include at least two outreach locations where video-conferencing facilities would be set up in local community facilities.

Recommendation 28

That the State Government provides funds to an existing community legal centre in a rural location, to undertake a one-year pilot project to provide outreach legal services to at least two locations by the use of video-conferencing link in conjunction with regular circuits allowing face-to-face contact.

In addition the Committee felt that the volunteer resources available to larger metropolitan centres may be able to be accessed by rural centres by a video-conferencing link. In many regional and rural locations it is difficult to establish large volunteer rosters because of the small number of local private legal practitioners. A video-conferencing link to a metropolitan centre could deal with many routine legal matters. As with the system already used by many CLCs, where a matter needs ongoing assistance it can then be taken over by a staff solicitor at the local CLC.

The Committee is aware that many metropolitan CLCs already struggle to recruit enough volunteer solicitors to meet their own needs. The suggestion is that the larger services such as Fitzroy and Springvale may be able to take on this role. Another approach may be for the FCLC to co-ordinate a separate pool of legal volunteers who could provide services exclusively to rural and regional CLCs. This service could operate out of the FCLC office which is centrally located in the city and hence very convenient for many solicitors from city law firms and barristers.

⁴⁷ Federation of Community Legal Centres, *Community Law Online*, FCLC, Melbourne, April 2000.

The Committee is aware that these ideas would have funding implications and recommends at this stage that a feasibility study be undertaken to investigate their practicability and the likelihood of the acceptance by potential clients of this type of service delivery.

Recommendation 29

That the State Government funds the Federation of Community Legal Centres to undertake a feasibility study of the provision of legal advice to clients of rural and regional community legal centres by video-conferencing link to solicitors in the metropolitan area.

The Role of Community Legal Centres in the Local Legal Environment

Private Legal Practitioners

Community legal centres in rural and regional areas provide an important service which complements the services provided by local practitioners. Evidence during public hearings indicated that the Centres were not perceived by local private practitioners as being in competition with them. The Committee found that private practitioners generally felt that the CLC assisted their practices by filtering out many enquiries which in fact were not legal problems.

In any given week a lot of time is spent finding out whether or not people who come in have a legal problem. You can spend half an hour with them before you establish that... Since the Legal Centre opened in Warrnambool I have noticed there has been less demand for private practitioners from people coming in off the street with those sorts of queries... [I]t takes a bit of pressure off our business.⁴⁸

Centres themselves noted their awareness of the sensitivity of this issue and their commitment to avoiding any competition.

We do not get involved in matters associated with money, with commercial leases, or when the work clearly should be carried out by private practitioners. We avoid at all costs undertaking work that can be done by private practitioners.⁴⁹

⁴⁸ T Robinson, *Minutes of Evidence*, 21 June 2000, p. 453.

⁴⁹ G Tellefson, *Minutes of Evidence*, 18 July 2000, p. 545.

Centres refer a large amount of work to local private practitioners. Centres also often rely heavily on the voluntary work of local practitioners and need to have good relations with them. The use of volunteers by CLCs is covered in Chapter 14, Pro Bono Services. Private practitioners also serve on management committees for some CLCs. Geelong CLC reported that it had four private practitioners on its management committee.⁵⁰

The Law Institute of Victoria, in its submission also spoke positively of the role of CLCs, describing them as playing ‘a respected and important role...particularly (in) providing assistance for economically and socially disadvantaged members of society’.⁵¹

LIV also noted the important role CLCs played in ‘filtering’ clients and in providing referrals to private practices. However, despite this recognition of the good work done by CLCs, the Institute was opposed to the expansion of CLCs because in its view it would result in a substantial reduction of the availability of funds for grants of assistance to the profession.⁵²

It is the Committee’s view that this argument, based as it is on an analysis of competition for scarce resources, does not adequately take into account the difference in services provided by CLCs and private practitioners and the importance of each. It implies that grants of legal aid are more important than the services provided by CLCs.

The Committee agrees that the initial client contact and referral which is being described here is more appropriately dealt with by CLCs who specifically offer these services, than by a busy private practitioner. In addition CLC workers have a wide range of knowledge of non-legal referrals. A number of private practitioners noted that the demand for pro bono services of this type was sometimes onerous as expressed in the above comment.

The Committee believes that the displacement of this type of work to CLCs should be seen as an appropriate and effective use of resources. As well, there is the potential for providing a broader service to clients who will benefit from the comprehensive range of support services offered by the CLC.

Private legal practitioners may have more time to do targeted pro bono work when the work described above is taken on by CLCs. Selective pro bono work would be a more productive and professionally satisfying way to utilise their pro bono time.

⁵⁰ E van Moorst, *Minutes of Evidence*, 29 June 2000, p. 481.

⁵¹ David Faram, Law Institute of Victoria, Submission no. 4, p. 5.

⁵² *ibid.*

Victoria Legal Aid

There are two regional and rural locations that have both a CLC and a VLA office, namely Geelong and Morwell. In Morwell, the CLC began operation in August 2000 and there has been insufficient time for a working relationship to fully develop.

Evidence from Geelong indicated that there was a good working relationship between VLA and the Geelong Community Legal Service. A VLA lawyer is a member of the CLC Management Committee.⁵³

The Federation view is that CLCs and VLA offer different and complementary services.

We are broadly supportive of legal aid. We understand and want to impress on you that we work in very different ways. Just because there is a legal aid office does not mean there is no need for a community legal centre in a community. But the sorts of services offered by legal aid are, in themselves, unique. They are part of the broad partnership of access to justice in this community in which the profession, legal aid and ourselves are key players.⁵⁴

In his evidence to the Committee the new Director of VLA also referred to the importance of each of the three types of service delivery and noted that he wished to improve the relationship between VLA and CLCs.⁵⁵

⁵³ Op cit.

⁵⁴ S Biondo, *Minutes of Evidence*, 10 November 2000, p. 1129.

⁵⁵ T. Parsons, *Minutes of Evidence*, 10 November 2000, p.1104.

CHAPTER 6 – INDIGENOUS VICTORIANS

The Aboriginal Community

The *Victorian Aboriginal Justice Agreement*¹ provides a brief overview of the Victorian Aboriginal community including the following statistics drawn from the 1996 National Census data:

- The Aboriginal Community makes up about 0.5% of the total Victorian population.
- Fifty per cent of Victorian Aboriginal people live outside the metropolitan area.
- The Aboriginal population is much younger than the overall population with 1996 census data showing that 57% of Victorian Aboriginal people are under the age of 25, compared with 39% of the overall population.
- Only 3% of Victorian Aboriginal people are over the age of 65 compared to 12% of the total population.
- The unemployment rate for Aboriginal people in Victoria is 21.4% with evidence that this rate is significantly higher in rural areas.²
- Young Aboriginal men in Victoria have a life expectancy of 18 years less than the State average.
- Aboriginal people in Victoria are significantly over-represented in prisons. Adults are 11.5 times more likely than non-Aboriginal people to be placed in prison and

¹ Victorian Aboriginal Advisory Committee, *Victorian Aboriginal Justice Agreement*, Department of Justice, Melbourne, 2000, pp. 8–10.

² The Committee heard evidence in Echuca (where youth unemployment was estimated at 80–90%), Bairnsdale, Horsham and Mildura of significantly higher rates. In some cases the only employed Aboriginal people worked for Aboriginal organisations.

juveniles are 14.5 times more likely to be placed in juvenile justice custodial facilities.

- For juveniles this over-representation rate has reduced from a 1991 figure of 38 times more likely.

Stories of Disadvantage

The Committee was struck by the range and degree of disadvantage experienced by Aboriginal people as related in public hearings and meetings in rural and regional areas. The Committee heard about very poor school retention rates with children leaving school in years 8 and 10, and in some cases not even starting secondary school.³ Drug abuse, including use of drugs such as heroin and amphetamines, was reported to be increasing.⁴ Petrol sniffing and ‘chroming’ (sniffing glue, and other substances) was also a significant problem among young people. In Gippsland it was reported:

We have quite a serious problem at the moment with young people chroming. I have also discovered the incidence of drinking of petrol is high at the moment.

Very high unemployment rates were reported in a number of towns and it was often stated that Aboriginal organisations were the only employers of Aboriginal people, with very few exceptions.⁵ Evidence was presented to the Committee that there is no Aboriginal employment in the retail sector or in other town businesses.

Aboriginal people will go for an interview for a job feeling they will not get a job because they are black. It is very much so in country towns. You do not notice it in the cities but you really notice it in the country towns. You do not see Aboriginals behind the counters at McDonalds, Woolworths, Coles, anywhere.⁶

Very high suicide rates particularly among young people was another distressing situation reported in more than one location.⁷ One community worker told the Committee:

I am dealing with a family that has lost three sons to suicide in the past 18 months.⁸

³ D Walsh and P Marwood, *Minutes of Evidence*, 25 July 2000, p. 673.

⁴ *ibid.*

⁵ D Walsh, *Minutes of Evidence*, 25 July 2000, p. 673; R Solomon, *Minutes of Evidence*, 12 September 2000, p. 845.

⁶ S Nakalevu, *Minutes of Evidence*, 18 July 2000, p. 605.

⁷ M Grinter, *Minutes of Evidence*, 18 July 2000, p. 596; D Walsh, *Minutes of Evidence*, 25 July 2000, p. 672.

Dysfunctional family situations which led to child neglect and abuse were also reported, including a very high incidence of child sexual abuse among children engaging in drug taking and other problem behaviour.⁹

Interaction with the legal system, particularly the criminal law, rarely occurs in isolation from the broader socio-economic situation of the individual. While the disturbing stories heard by the Committee cover a range of issues beyond the scope of this reference, they remain relevant as the context in which the delivery of legal services to Aboriginal people is assessed. Community needs must be viewed in the light of this background of obvious social and economic disadvantage.

In the rural locations that the Committee visited which have large Aboriginal populations, such as Swan Hill, Echuca and Robinvale, the Committee gained the impression of a significant sense of separation and alienation felt by the Aboriginal community. This disjunction appeared to exist in the attitudes and opinions of both the Aboriginal and non-Aboriginal communities. In such an environment service delivery needs to be carefully targeted to meet the needs of all community members. One witness commented:

I do not know if this is something that can be forced upon mainstream businesses, but perhaps they could be rewarded or assisted in employing Aboriginal people, or it could be a requirement that they have two Aboriginal staff to also welcome clients. Aboriginal people will not use businesses and services because of the feeling of racism that may not be there but is definitely in their head — they feel it. That could assist in solving the problem where Aboriginal people will only use Aboriginal services and will not walk into mainstream services. More Aboriginal people need to be employed in mainstream services.¹⁰

Although welcomed by the representatives of the Aboriginal communities it spoke with, the Committee acknowledges that as members of the non-Aboriginal community, there are some limitations on its ability to empathise with and understand the specific problems and issues raised, due in large part to lack of shared experiences and a common ‘world-view’. However, the Committee believes that many of the Aboriginal community representatives it spoke with were able to successfully present their community issues in such a way as to minimise this potential for misunderstanding, a skill no doubt developed over many years of dealing with the non-Aboriginal community.

⁸ M Grinter, *Minutes of Evidence*, 18 July 2000, p. 596.

⁹ T McDonald, *Minutes of Evidence*, 13 September 2000, p. 939.

¹⁰ S Nakalevu, *Minutes of Evidence*, 18 July 2000, p. 605.

In addition the impact of the significant demographic differences in the Aboriginal community, particularly the much higher numbers of people living in regional and rural areas and the much younger population, need to be considered.

The Committee notes that there were a number of employment initiatives being undertaken in the Aboriginal communities it visited including Community Development Employment Programs (CDEP) at Bairnsdale¹¹, Horsham¹² and in Robinvale. Community members acknowledged that improvements in the situation of Aboriginal people were most likely to be achieved when the communities themselves participated in or ran the schemes and programs.

I think the community has a responsibility. My Indigenous community would like something to happen with the police relations here, too. As I said, there are two sides.¹³

The Committee considered the question of the relationship between employment opportunities and engagement with the criminal justice system. While noting that this issue has been canvassed in more detail in other reports¹⁴, the Committee would strongly support any initiative of local or State government and the business community that actually strengthened employment opportunities for Aboriginal people and delivered new jobs to them. The Committee felt that such action would directly contribute to reducing their over-representation in the criminal justice system.

Over-representation in the Criminal Justice System

The Committee notes particularly the identification by the *Victorian Aboriginal Justice Agreement* of the need for a whole-of-government strategic framework to address the issues underlying Aboriginal over-representation in the criminal justice system.¹⁵ The *Agreement* identifies the fact that while the Royal Commission into Aboriginal Deaths in Custody made many recommendations relating to underlying issues such as employment, health, education, community services, housing and economic development, no integrated government response to these recommendations has been achieved.

¹¹ R Solomon, *Minutes of Evidence*, 12 September 2000, p. 846.

¹² A Burns, *Minutes of Evidence*, 28 September 2000, p. 1054

¹³ D Walsh, *Minutes of Evidence*, 25 July 2000 p. 670.

¹⁴ See, for example, the *National Report of the Royal Commission into Aboriginal Deaths in Custody*, recommendations 300–320 of which address the issue of increasing economic opportunity for Aboriginal people.

¹⁵ Victorian Aboriginal Advisery Committee, *Victorian Aboriginal Justice Agreement*, Department of Justice, 2000, p. 19.

The evidence heard by the Committee mirrored many of the Royal Commission findings and the Committee is strongly of the view that the proposed strategic framework for the provision of whole-of-government and cross-portfolio services to the Aboriginal community is essential to addressing the issue of Aboriginal over-representation in the criminal justice system.

In a number of towns the participation level of the Aboriginal community in court mention lists was highly disproportionate to its percentage in the township. As noted above evidence was also given of an extraordinarily high rate of early school leavers amongst the Aboriginal community and of very few employment opportunities.

Given these factors the Committee is of the very strong view that the sentencing options available to Magistrates dealing with members of the Aboriginal community must include provision for further education, training, job skilling and job placement. Such sentencing options need to be identified in consultation with the Aboriginal community and their use considered on a case-by-case basis.

The issue of sentencing options available to Magistrates is raised in Chapter 15, Magistrates Courts', and recommendations for an expansion of these options are contained there.

Warrakoo Station

A program which was praised by a number of witnesses before the Committee and which the Committee would like to commend particularly is the Warrakoo Station program, which is an alternative sentencing program for Indigenous offenders.

The station was purchased by the Mildura Aboriginal Corporation in 1994 and is a working farm where young Aboriginal men can learn a variety of farm and life skills. Managed and run by local Aboriginal people, Warrakoo can take up to 12 men at a time either bailed or on a community based order. The men have to undergo psychological and medical examinations and be interviewed to establish their suitability for farm work. The farm is located in New South Wales, 120 kilometres from Mildura, and the men must remain alcohol and drug free during their time there. Drug and alcohol rehabilitation programs are provided.

The men work from 8am to 5pm each day on a range of farm tasks. One week of every month is spent at the Murrumbidgee Agricultural College. The Manager tries to arrange for the men to attend other courses if they have a particular interest.

The Station has received praise from many sources including Justice Geoff Eames of the Supreme Court of Victoria:

From speaking with the Magistrates working in the area, it's clear that Warrakoo is effective — taking youngsters out of environments where they might get into more trouble...

I would really hope that governments see the good investment that places like Warrakoo are. There is a poor return from prisons just on economic grounds. Those who run prisons would not pretend that they have anything but a minimal rehabilitative capacity. If you couple better economics with the social benefits of a place like Warrakoo, it's a tremendous investment for any community.¹⁶

The local police have also praised Warrakoo:

The place is a sensation. Sid [Sid Clarke, the Manager] would have had about 130 boys through there, and there's only been half a dozen breached and about ten who have re-offended. I come across some of the boys afterwards and see the difference. They know they're making a conscious decision if they re-offend — that's what Sid instills in them.¹⁷

As Justice Eames points out, Warrakoo is an excellent example of the type of program described in recommendation 96 of the *National Report* of the Royal Commission into Aboriginal Deaths in Custody, which reads as follows:

Consistent with the object of ensuring that offenders do not re-offend, approval should be given, where appropriate, for offenders to perform community service work by pursuing personal development courses which might provide the offender with skills, knowledge, interests, treatment or counselling likely to reduce the risk of re-offending.¹⁸

Recommendation 30

The Committee commends all those involved in the setting up and running of the Warrakoo Station initiative. The Committee recommends the development of similar innovative projects, designed and managed by the Aboriginal community as alternatives to imprisonment, to be developed in Victoria for both women and men, with the support of the Department of Justice.

¹⁶ *ATSIC News* September 1999.

¹⁷ *ibid*, Police Sergeant Greg Chandler, Aboriginal Liaison Officer.

¹⁸ *ibid*.

Community Justice Panels and Police Aboriginal Liaison Officers

The Aboriginal Community Justice Panel program was established in 1988 and is administered through Victoria Police. The program consists of 17 regional groups of volunteers, who provide on-call services to Aboriginal people who come into contact with the criminal justice system. The volunteers are local Aboriginal people and often elders in their communities.

The Committee heard evidence from a number of locations which indicated that the Community Justice Panels (CJPs) varied considerably in their effectiveness.¹⁹ This seemed to depend to a considerable degree on local factors such as the commitment and skill base of the individual people, and the nature of the relationship with the police, particularly the Police Aboriginal Liaison Officer.

The *Victorian Aboriginal Justice Agreement* notes that the CJP has come under increasing pressure to provide an expanded range of services and suggests that the following factors have impacted on the program's operations:

- The reduction of Commonwealth funding to Aboriginal organisations, and a consequent increase in demand for CJPs to deliver a broad range of emergency and welfare services.
- Increased involvement in confronting and stressful Aboriginal–police encounters, and a lack of counselling, training and support for dealing with these incidents.
- Poor linkages between CJPs and other key Aboriginal and mainstream justice-related services.²⁰

The *Agreement* states that a review will take place of the CJP program, undertaken by Victoria Police and the Aboriginal Justice Working Group²¹, to consider the program's future role in implementing the *Victorian Aboriginal Justice Agreement*. The review will also aim to strengthen the operation of the CJPs.

Victoria Police will place particular emphasis on the continued development of the Community Justice Panel network...

¹⁹ These issues were raised in a number of meetings with Aboriginal Co-operatives. The Committee spoke with Co-operative staff and management at Echuca, Swan Hill, Robinvale, Mildura, Morwell and Bairnsdale.

²⁰ *Victorian Aboriginal Justice Agreement*, Department of Justice, 2000, p. 42.

²¹ The Aboriginal Justice Working Group is an initiative of the *Victorian Aboriginal Justice Agreement* and will act to advance inter-agency coordination of programs and services. For more details see p. 32 of the *Agreement*.

The appropriate selection and training of Aboriginal liaison officers within Victoria Police will also assist in breaking down barriers...

In areas where there are a significant number of Aboriginal people, Victoria Police will develop local protocols with the Aboriginal community. These protocols will cover service delivery and be developed around areas of significant community concern (such as family violence, bail, the needs of young people, public drinking, and the provision of an advisory service on policing issues).²²

The Committee also heard evidence of considerable variation in the effectiveness of the Police Aboriginal Liaison Officers in different regions. Bendigo provided a good example of a committed and effective officer. Sergeant Ray Patterson has been the Aboriginal Liaison Officer for the Bendigo and Swan Hill area for close to eight years. He attended the Committee's public hearing with Ms Sue McKenna, the local Community Justice Panel co-ordinator. Ms McKenna commented:

We have a good working environment with each other... I feel quite confident to go to Ray and speak about any of his staff that I feel may have done something that I didn't like. We can always resolve it. There has not been the problem of us not being able to resolve anything...

There has been a really big change. It has been a big turnaround. The last black death in custody (investigated by the Royal Commission into Aboriginal Deaths in Custody) occurred here; that is what started our Aboriginal CJP. There has not been any real trouble between the police and our people since the Aboriginal CJP has had liaison officers. It has made a big difference for us all — for us and the police.²³

In addition to the good relations with the local community, Sergeant Patterson had also produced a video for the Police Aboriginal familiarisation program, which is shown to new members of the Police force and at regular in-service training sessions at Bendigo. The video, which the Committee viewed, was produced with the local Aboriginal community and had been received positively by the community and by members of the Police.

The importance of individual commitment as shown by the two major contact points between the Aboriginal community and the Police in Bendigo cannot be overemphasised. In other locations the Committee heard of Police Aboriginal Liaison Officers who had very little contact with the Aboriginal community and hence were rarely approached when problems occurred. Likewise evidence was heard of CJP coordinators who often did not respond to calls from the Police or who were very difficult to contact.

²² *ibid.*

²³ S McKenna, *Minutes of Evidence*, 26 July 2000, p. 696.

The Committee believes that CJPs have a very important role to play in addressing issues at the local community level. It is clear that for the CJPs to work effectively the Aboriginal community must be responsible for making an appropriate choice to represent them and there must be a commitment from the Police, in the form of an effective Police Aboriginal Liaison Officer for the CJP program. In addition training and support needs to be provided to both the CJP worker and the Police Aboriginal Liaison Officer.

The Committee notes that the *Victorian Aboriginal Justice Agreement* contains strategic objectives that address many of the issues raised above.²⁴ The Committee supports the *Agreement* strategies, in particular:

Victoria Police together with the Aboriginal Justice Working Group will review the CJP Program and its future role in implementing the *Aboriginal Justice Agreement* to strengthen the operation of CJPs.

All police Aboriginal Liaison officers (ALOs) will where possible, be at rank of sergeant or above...

ALOs are accountable to the regional commander, and provide quarterly reports to the Victoria Police Aboriginal advisory unit.

In addition the Committee makes the following recommendations.

Recommendation 31

That the proposed review of the Aboriginal Community Justice Panel program be undertaken as a matter of priority.

Recommendation 32

That Victoria Police ensures that officers allocated to the position of Police Aboriginal Liaison Officer either have the appropriate cross-cultural training or are provided with such training, and that they have the necessary skills, experience and commitment to undertake the role effectively. Victoria Police should ensure that selection of the officer takes place in consultation with the relevant Aboriginal community.

Recommendation 33

²⁴ Victorian Aboriginal Advisory Committee, *Victorian Aboriginal Justice Agreement*, Department of Justice, 2000, p. 42, 43.

That senior and local police command give priority to an evaluation of the Police Aboriginal Liaison Officer program and to ensuring its future improved effectiveness.

Aboriginal Legal Services

There is currently one service which provide specialist legal services to Aboriginal people, the Victorian Aboriginal Legal Service. The Indigenous Women's Legal Resource Group, which was auspiced by the Women's Legal Service Victoria and provided legal education work and some family law case work, closed at the end of 2000.

Victorian Aboriginal Legal Service (VALS)

VALS opened its first office in February 1973. It offers free legal advice and representation to Aboriginal and Torres Strait Islander people. Clients are not means tested, however, the Committee notes that VALS may introduce means testing at the insistence of funding bodies.²⁵ VALS provided advice and representation in relation to 5089 new matters in 1998/1999, which was a 17 per cent increase in its caseload over the previous twelve-month period.²⁶

VALS Services and Locations

Most of the legal work undertaken by VALS is criminal work, which accounts for 94 per cent of cases. Only 23 per cent of VALS clients are women.²⁷ This gender imbalance is created by a concentration on criminal law. In an attempt to provide more services to Indigenous women VALS has recently established a family law unit and employed a civil solicitor. The family law unit deals with matters coming before the Family Court and also matters heard in the Family Division of the Children's Court. VALS is also currently consulting with VLA to consider ways in which the delivery of specialist family law services to Aboriginal people can be enhanced.²⁸

²⁵ Nigel D'Souza, Victorian Aboriginal Legal Service, Submission no. 11, p.5.

²⁶ Victorian Aboriginal Legal Service Co-operative Limited, *Annual Report 1998–1999*, p. 13.

²⁷ This compares with VLA grants of aid of which 63.25% are for criminal law matters with women making up 35% of clients overall matter types

²⁸ Tony Parsons, Victoria Legal Aid, Submission no. 87, p. 14.

VALS has one office in Melbourne and six offices in country areas. The following list shows the towns covered by each office:²⁹

Bairnsdale	- Sale, Lakes Entrance and Orbost
Shepparton	- Echuca, Wodonga, Wangaratta and Castlemaine and also visits to inmates at Fulham Prison
Mildura	- Robinvale
Heywood	- Portland, Horsham, Ballarat, Geelong, Warrnambool, Ararat, Stawell
Morwell	- Moe, Korumburra
Swanhill	- Swan Hill

Country offices are staffed by one client service officer in each location. At Bairnsdale there is also a solicitor position, which had been vacant for some time due to an inability to recruit a suitable person and which is currently filled on a part-time basis only.

Legal services are provided from the Melbourne office by the equivalent of 11.2 full-time staff solicitors, nine in the criminal section, two part-time in the family section and one in the civil section. Solicitors travel to country areas for criminal matters, attending courts as required. The D 24 system operates throughout Victoria and requires that when an Aboriginal person is taken into custody, Victoria Police notifies VALS. Currently improvements to this system are being planned:

In matters relating to an Indigenous person being charged, those details will be notified electronically to the Victorian Aboriginal Legal Service for its immediate attention. Within 48 hours of the next day of the magistrate sitting, VALS's duty lawyers will be able to access briefs for unrepresented persons and therefore be in a better position to represent the person rather than, as is the case at the moment, rolling up to court on the day and a couple of minutes before the case is called, being handed a brief and trying to familiarise himself or herself with it.³⁰

VALS provides a 24-hour service to respond to police notifications. A client service officer will initially respond to a call and this officer can contact a VALS legal practitioner if necessary, for instance if the matter relates to a serious crime.

²⁹ Nigel D'Souza, Victorian Aboriginal Legal Service, Submission no. 11, p. 9,10.

³⁰ P Hind, *Minutes of Evidence*, 11 September 2000, p. 831.

Services to Rural Areas

VALS gave evidence that although legal representation provided to clients in rural and regional areas accounts for about half of the total cases each year, VALS representation in country areas does not take up a similar percentage of its resources in terms of solicitors' time.³¹ The Committee heard that solicitor time devoted to regional and rural areas was only 25 per cent as opposed to 75 per cent in metropolitan Melbourne.

VALS believed this was due to the fact that they see many more clients at country courts on each day that they attend, than they do at a metropolitan court. Court days in country areas are less frequent and Aboriginal people tend to live in geographically discrete locations. This means VALS can visit a small number of courts perhaps once a week and cover most of the clients in country areas. By contrast in the metropolitan area, solicitors may be attending a number of courts with only one VALS client at each, hence taking up much more time per person than the equivalent number of clients in country areas.

On the question of whether VALS should have more solicitors located in rural and regional areas, VALS stated:

From our point of view it is a lot cheaper to have somebody travel to the country than to have a regional office, because the actual cost of providing a service vis-à-vis the numbers is far more efficient from Melbourne. However, having said that, the Aboriginal people in regional areas very much feel that they want representation by people who are in the localities. There has been strong pressure for setting up regional offices... [B]asically people would like to see a solicitor prior to court, they would like a chance to give instructions.³²

This issue of access to the solicitor before the court date was a recurring theme in the Committee's rural and regional public hearings. The Committee heard on many occasions from rural and regional people that it was unsatisfactory to have access to a visiting solicitor only on the court day.

The situation with solicitors is very difficult for the clients. The solicitor will turn up on the day of the hearing. The clients see the solicitors for a few minutes before they go into court, and I know that creates much anxiety for the families and the people involved in not knowing what will happen or how it will happen.³³

VALS does, however, make attempts to contact clients before their court date:

³¹ Nigel D'Souza, Victorian Aboriginal Legal Service, Submission no. 11, p. 1.

³² T Munro, *Minutes of Evidence*, 15 May 2000, p. 125.

³³ M Grinter, *Minutes of Evidence*, 18 July 2000, p. 592.

Immediately after the notification from Victoria Police a letter is sent to the person urging them to contact VALS if they want to arrange representation for their upcoming matter... Whilst there will be occasions when there is no prior contact with the client this will usually be a result of the client changing address and not receiving the VALS letter or the client not making contact until the last minute. If the solicitor believes there is a need to seek an adjournment they will do so. There is no benefit from VALS' perspective in going ahead ill prepared.³⁴

In another community the Committee heard similar evidence of Aboriginal people feeling that VALS, whilst offering a good service, was nevertheless not adequate.

There is no permanent Aboriginal legal service for the Mallee district at Mildura or at Swan Hill. Both towns have significant Aboriginal populations and are significant users of the court system. We rely on solicitors from the Victorian Aboriginal Legal Service in Melbourne to service the region. They can attend court in Swan Hill only once per month, and quite often that is not adequate... It provides a very good service but it is lacking in that it cannot get solicitors up here often enough...

[T]he only opportunity that Aboriginal persons in custody have to speak with solicitors is over the telephone, and for custodial management issues those conversations cannot be private. They are disadvantaged because they cannot give adequate instructions to their solicitors in a private conversation, and the instructions are given over the phone. As you said, on mention days they rarely get more than 5 or 10 minutes to convey instructions, and often that takes place in the cell breezeway at the police station. The VALS solicitors have a lot of work when they come up on mention days. That could be easily addressed by having a permanent solicitor appointed to the region.³⁵

By way of contrast the Committee heard that in Bairnsdale:

I have been here for 12 years. We got a permanent solicitor about 10 years ago. In that time we have had five. But it is a better way of running VALS because they have the opportunity of seeing the clients outside the court environment. The clients can come to the office, get proper instructions and can be properly prepared on the court day whereas when I worked at Swan Hill or Mildura, for instance, the solicitor turned up from town, walked in the door, took quick instructions, did a quick plea and walked out the door. He or she would never have ownership of the case; there would be no follow-up. It is a better system to have a permanent VALS solicitor on deck, not just for criminal matters because they can help with family law matters, which they do not tend to do in areas like Shepparton or Mildura.³⁶

VALS noted the important role played by client service officers (CSOs) particularly in rural areas. Their role was described as being to assist clients who have legal problems with legal and non-legal referral, liaison with courts, and providing assistance in explaining the law, and legal and court processes.

³⁴ Victorian Aboriginal Legal Service Co-operative Limited, Submission no. 92, p. 1.

³⁵ J Lyons, *Minutes of Evidence*, 19 July 2000, p. 653-4.

³⁶ D West, *Minutes of Evidence*, 12 September 2000, p. 852.

The Committee heard evidence in a number of locations that the CSOs were often difficult to contact.

With VALS, it is very hard to contact the field officer. You seem to be ringing for days on end because of his travelling. The mobile phone might not be on. I know a lot of my clients find it very frustrating to try to contact him to get some results.³⁷

In response to suggestions that client service officers were not always available in rural areas, VALS acknowledged that this may sometimes be the case due in large part to the very many activities undertaken by the CSOs. These may include prison visits, client visits, and court attendance either with a solicitor but also alone at times when seeking adjournments. CSOs also respond to a range of civil, traffic and family law requests.

Recommendation 34

That the Victorian Aboriginal Legal Service reviews the workload, job descriptions and work practices of client service officers, with a view to ensuring they are readily contactable and available to clients within a reasonable time.

While acknowledging the concerns of communities in rural and regional Victoria, VALS noted that there were significant practical difficulties with setting up and maintaining regional offices. VALS' Bairnsdale office was unable to recruit a solicitor with sufficient relevant experience to fill the vacant position for some months. At present a solicitor is working there two days a week, although the position would preferably be filled on a full-time basis. The Committee heard that in the last eight years, on each occasion that the Bairnsdale position has been advertised, there have seldom been more than two applicants. In addition these applicants have tended to be first-year solicitors without experience.³⁸ While such solicitors are often enthusiastic and committed, they are limited by their inexperience in the work that they can take on, and their location in a regional office makes it difficult for more senior staff to monitor their work or offer support and training.

VALS identified further difficulties in servicing regions from one regional town. It was noted that in previous years when the Shepparton office had a solicitor the local population in and immediately around the town felt they were better serviced, but this did not extend to other towns in the region such as Bendigo.

³⁸ Nigel D'Souza, Victorian Aboriginal Legal Service, Submission no. 11, p. 2.

The Shepparton area has the greatest population of Koori people outside the Melbourne area. It would thus seem to be the logical place for an office. In fact the solicitor appointed to that position found that he was in court for three days a week but in the office for the other two. It also became clear that although having an office in Shepparton created greater access for Koori people in that town, it did not necessarily make any real change to towns like Ballarat or Bendigo. Clients in these areas had problems accessing the office for the same reasons they would have travelling to Melbourne.³⁹

It appears however that the solicitor did not undertake outreach from Shepparton and did not travel to surrounding towns except for actual court dates, as is the practice of the solicitors working from the Melbourne office. Hence service provision outside of Shepparton was not significantly enhanced.

VALS' comments above suggest there was insufficient work for the Shepparton solicitor who was fully occupied only on the three court sitting days each week. Regular circuit work undertaken by a solicitor based at Shepparton and travelling through the region could be a more successful arrangement. This may partially resolve both the problem of neighbouring towns being under-serviced and the solicitor being under-utilised. It may be that with the move by VALS towards the provision of family and civil law services, a solicitor placed in Shepparton who visited local towns on a regular basis and could provide more than criminal law advice, would be fully occupied.

The Committee is aware that the very difficult problem of recruitment of a sufficiently experienced solicitor remains. This issue was also raised by private practitioners and community legal centres in rural areas.

Recommendation 35

That the Victorian Aboriginal Legal Service considers re-establishing a solicitor's position at its Shepparton office for three days a week with the remaining two days each week spent undertaking circuit work in other regional towns.

The Committee acknowledges the concerns of Aboriginal people in rural and regional areas about their lack of timely access to a VALS solicitor in relation to court appearances. The Committee notes that VALS solicitor hours for criminal matters are currently used disproportionately for metropolitan clients despite the fact that clients are located approximately equally in rural and metropolitan areas.

Recommendation 36

³⁹ *ibid.*

That the Victorian Aboriginal Legal Service gives urgent consideration to providing enhanced access to solicitors in rural and regional areas, particularly in areas of civil and family law. This may be possible by increasing the time spent by solicitors in country areas (for example, solicitors being available the day before Magistrates' Court mention days), by the use of video-conferencing links where appropriate and available, or by locating more solicitors in regional offices.

Conflict of Interest

In non-criminal cases where both the complainant and the defendant are Aboriginal, VALS can only represent one party. This is often the male defendant because he may have been a client of VALS previously or because he attends the office first. It is of particular concern in domestic violence matters as related to the Committee by the following witness.

I have a problem with the manner in which VALS sometimes responds. Often if the victim and the perpetrator show up at VALS, VALS will represent the perpetrator. I find this hard to accept given the message we are trying to communicate throughout the community about violence... [W]hen [X] was assaulted, ...VALS had informed me it would support [her] when the matter went to court. [X] showed up, but VALS represented the perpetrator. [X's] family was devastated, [X] had no legal representation. If we are trying to change perceptions and views about violence in the community, and given the percentage of Aboriginal people who face the courts on violence-related issues, that issue should be taken up by VALS.⁴⁰

When one organisation is responsible for such a large community, conflicts of interest are inevitable. The same is true in smaller regional towns where there may be only one firm of practitioners. One suggestion the Committee heard was for VALS to introduce a system whereby they could reimburse local solicitors for representing their clients in a similar way to Victoria Legal Aid.⁴¹ The comment was made in the context of a town in which local solicitors have a good relationship with local Aboriginal people and are often engaged by Aboriginal people either with a grant of legal aid or as paying clients.

Such an arrangement would be a significant departure from the current practice of VALS and could undermine some of the philosophical underpinning of the Service's existence. VALS was established because it was considered that an Aboriginal-controlled service would deliver appropriate services to Aboriginal people in a way that mainstream services did not. In addition, the fact that VALS services are not means tested could become a focus of resentment if, for example, private practitioners could not access legal

⁴⁰ R Solomon, *Minutes of Evidence*, 12 September 2000, p. 842.

⁴¹ M Grinter, *Minutes of Evidence*, 18 July 2000, p. 593.

aid for a non-Indigenous person in a particular matter but could access VALS for an Indigenous person with a similar problem.

While the Committee recognises and supports the important role of private legal practitioners in rural and regional areas, given the size of VALS and its limited budget it is probably unrealistic for it to attempt to set up the administrative structures which would be necessary for such a grants system to be implemented. The Committee notes that many Aboriginal people would qualify for legal aid and hence can already access local private practitioners if they wish to, providing the private practitioners are prepared to undertake legal aid work.

It appears that more Aboriginal people are using private legal practitioners. VALS notes the move by some Aboriginal people to increasingly use mainstream services.

When VALS started 20 years ago Aboriginal people were not often represented. The existence of VALS has brought home to the community the importance of legal representation. The fact that people have the confidence to seek out and choose their own lawyers and to make informed choices we believe is a great step forward.⁴²

Indigenous Women's Legal Resource Group

At the date of writing the Indigenous Women's Legal Resource Group (IWLRG) was not operating, as a result of a decision to hand back funds provided by the Commonwealth Government following disagreement over what services the IWLRG should offer.

IWLRG had received \$80,000 annually from the Commonwealth Government through Victoria Legal Aid as part of VLA's community legal centre funding program. IWLRG was auspiced by the Women's Legal Service Victoria and managed by a steering committee of Indigenous women. The funding for an Indigenous women's service is still held by VLA and negotiations are continuing as to its allocation.

IWLRG focused on community legal education including women-and-daughter camps that were organised by Aboriginal co-operatives. Although funding was always limited, IWLRG travelled to rural and regional areas and the Committee heard evidence of camps

⁴² Victorian Aboriginal Legal Service Co-operative Limited, *Annual Report 1998-1999*, Melbourne, p. 14.

attended at Healesville, Cape Conran and Rubicon.⁴³ Community Legal Education was undertaken in Geelong, Mildura and Ballarat during the 1999/2000 financial year.⁴⁴

For the two years to the end of 2000 the IWLRG employed a caseworker who was able to take on some cases mainly in the family law area. It was noted in evidence from the Women's Legal Service Victoria that Indigenous women often prefer to use the IWLRG rather than VALS, as often their partners or family members are using VALS and women may want to keep confidential the fact that they are accessing legal advice.⁴⁵

On such a limited budget IWLRG had limited capacity to take on casework and the need for resources to be directed to the area of greatest need was recognised.

The most important and singular matter which appeared to come up repeatedly was the issue of a number of children who were placed by the Department of Human Services or other agencies with non-Indigenous relatives, fostered out in circumstances where the Aboriginal mothers had not agreed or now wished to apply to have their children returned to them.

I believe after discussions with Indigenous women clients, with the representatives of communities...and my colleagues at WLSV and IWLRG that we should provide specially targeted services in relation to matters relating to children, especially residence matters and also intervention orders.⁴⁶

The Committee heard evidence that there was conflict with IWLRG's funding body as to the type of service delivery the group should be undertaking. This was seen by IWLRG as a failure to recognise the validity of community legal education as a legitimate form of service delivery.

Our position is that statistical outcomes, number crunching and deadlines are probably not the way to work... We have outlined what we think are the three basic planks on which Indigenous service delivery should take place... [T]o deliver services to the Indigenous community you have to build up a relationship of trust: Indigenous women must develop and deliver, where possible, their own model of legal service delivery; and Indigenous control is crucial to the success of the service.

Community legal education must be acknowledged as an integral part of service delivery. It is essential to the process of gaining trust and forming networks, and it is a culturally appropriate way of doing things.⁴⁷

⁴³ A Foster, *Minutes of Evidence*, 11 September 2000. p. 797.

⁴⁴ Women's Legal Service Victoria, *Annual Report 1999/2000*, Melbourne, p. 21.

⁴⁵ G Dallwitz, *Minutes of Evidence*, 11 September 2000, p.798-99.

⁴⁶ S O'Connor-Sraj, Women's Legal Service Victoria, *Annual Report 1999/2000*, Melbourne, p. 20.

⁴⁷ A Foster, *Minutes of Evidence*, 11 September 2000. p. 798

The Committee notes that given the very small grant to this Service, it would not be possible for it to provide a state-wide casework service. Its focus on community legal education did at least allow it to provide services to a significant number of Indigenous women. However, the aim of this work is to increase awareness of the legal system with the likely outcome being an increase in demand for services as women become aware of their rights and move to assert them. It is therefore essential that more advice and casework services are made available to Indigenous women in rural and regional Victoria.

This issue is not adequately addressed by either of the Indigenous-specific legal organisations. While this can largely be explained by limited funding and resources, priorities within the organisations, particularly VALS, are also responsible to a significant extent.

Recommendation 37

That the Victorian Government funds an Indigenous women's legal service.

Recommendation 38

That, in offering a legal service to the Aboriginal community, the Victorian Aboriginal Legal Service gives greater priority to the legal needs of Aboriginal women.

Recommendation 39

That the mainstream service providers, namely Victoria Legal Aid and Community Legal Centres, review their methods of service delivery so that they become more accessible to Indigenous women.

Use of Technology

In response to questions about the possible use of video-conferencing facilities, VALS indicated that it is aware that VLA is considering setting up facilities in Mildura and Shepparton.

Currently the Service is not aware of how Koori people would find video-conferencing and whether it would be preferable to the use of the telephone. The service however believes that it would assist in the taking of instructions in these remote areas.

We further note that the taking of instructions in more serious criminal matters, that is those that go to the County and Supreme Court, is difficult in some remote areas. It is difficult to get clients to Melbourne and barristers tend to travel infrequently to the country. Video-conferencing may have a role here.⁴⁸

As well as enabling the pre-court consultation in criminal matters mentioned above, video-conferencing may also increase access to the VALS family and civil law lawyers who currently do not provide services in rural and regional areas. Such access may need to be in conjunction with some face-to-face consultations, however. A combination of face-to-face contact with follow-up video-conferencing has been shown to work well for the Queensland Women's Justice Network.

This Network should be referred to as a model of how such services could be provided. The Network was set up by Legal Aid Queensland and includes three Indigenous specific legal services, namely, the Aboriginal and Torres Strait Islander Women's Advocacy Service, the Aboriginal and Torres Strait Islander Legal Service and the South East Queensland Aboriginal Legal Service, as well as the Toowoomba Community Legal Centre. It is a good example of co-operative strategies being used by service providers to enhance access in rural areas.

The Committee notes that VALS and VLA have a written Statement of Co-operation which states that the intention of the parties is to:

Enhance, improve and develop legal services for Aboriginal people and undertake on-going consultations to ensure that their services are coordinated.⁴⁹

The Committee commends this level of co-operation and believes it is a good basis for the development of practical strategies to deliver better services to Indigenous people in rural and regional Victoria, for example the shared use of video-conferencing equipment.

The Committee notes the significant over-representation of Aboriginal people in Magistrates' Court mention lists and the difficulties referred to above in accessing timely advice from VALS. The Committee recommends that a pilot project be funded to place a video-conferencing facility of the type which can be used in conjunction with a PC, in a location with a large Aboriginal population. The Committee suggests Robinvale as a suitable location for such a pilot project and suggests that the facilities be located within

⁴⁸ Nigel D'Souza, Victorian Aboriginal Legal Service, Submission no.11, p. 3.

⁴⁹ Statement of Co-operation, Victoria Legal Aid and Victoria Aboriginal Legal service Co-operative Ltd, 1999 p. 1.

the Aboriginal Co-operative. Such a proposal should not however proceed without the support of the Aboriginal community in Robinvale, and initial consultation and planning would need to be undertaken with the community.

Additional hardware required by VALS to undertake this pilot project should be funded from the project.

Recommendation 40

That the Victorian Aboriginal Legal Service makes greater use of existing video-conferencing technology.

Recommendation 41

That, following consultation with the Aboriginal community in Robinvale and with the Victorian Aboriginal Legal Service, a pilot project be funded by the State Government to set up immediately a video-conferencing facility in Robinvale, possibly located at the Aboriginal Co-operative.

Recommendation 42

That, following a successful evaluation of the pilot project, undertaken within six months of its commencement, the Victorian Government financially supports the Victorian Aboriginal Legal Service to establish video-conferencing links to all rural and regional areas where VALS represents Aboriginal communities.

CHAPTER 7 - WOMEN

The Committee attended *Through Our Eyes, A National Conference on the Legal Needs of Women in Regional, Rural and Remote Australia* during the course of this inquiry. The conference was organised by the National Women's Justice Coalition in partnership with the Albury Wodonga Community Legal Service. It was the first of its type in Australia and a very useful background and source of information for the Committee.

Rural women face many similar problems to those experienced by women in urban areas. However, their isolation and reduced access to support services can exacerbate situations that may otherwise have a quicker and more acceptable resolution. The issue which was by far the most commonly raised with the Committee in relation to legal services for women was domestic violence.

In addition there are problems which are specific to rural and regional women such as that of farm inheritance practices; an issue which was also brought to the Committee's attention.¹

Access to legal representation in family law matters was also raised as an issue² as was the effect of delays in the hearing of cases on sexual assault victims, particularly children.³

The Committee spoke with a number of women's organisations in rural areas, which run health and community service programs, as well as a number of women's refuges and sexual assault crisis centres. The Committee also spoke to the Women's Legal Service Victoria in Melbourne which is one of only two specialist legal services for women in Victoria. The other specialist service, the Indigenous Women's Legal Resource Group,

¹ J Williams, *Minutes of Evidence*, 21 June 2000, p. 396

² M Martin, *Minutes of Evidence*, 13 June 2000, p. 250

³ J Muller, *Minutes of Evidence*, 13 June 2000, p. 256. This matter is discussed in Chapter 16, Circuit Courts.

which was auspiced by the Women's Legal Service, is discussed in Chapter 6, Indigenous Victorians.

Women's Legal Service Victoria

The Women's Legal Service Victoria (WLSV) is a specialist community legal centre located in the Melbourne CBD. The Service provides telephone advice, community legal education and casework services.

Telephone Advice and Referral Service

The telephone advice and referral service operates five days a week at the following times:

Monday	10.00am – 1.00pm
Tuesday	6.30pm – 8.30pm
Wednesday	2.00pm – 5.00pm
Thursday	6.30pm – 8.30pm
Friday	10.00am – 1.00pm

Of the services provided by WLSV, it is the phone service which is most used by rural and regional women.

Our long-standing telephone advice and referral service...continues to be a service in high demand. The service, which also has a 1800 number for rural callers, provides ease of access to legal advice for women who lack mobility, live in isolated or rural areas and/or prefer to remain anonymous.⁴

The three daytime advice sessions are staffed by women lawyers employed by the Service. The two evening advice sessions are provided by appropriately qualified volunteers supervised by experienced solicitors. In 1998/99 the service received 3,135 calls.

The service offered by phone is more extensive than many other phone services largely because it offers legal advice rather than restricting itself to providing legal information (as for example the Victoria Legal Aid Multilingual Telephone Information Service does).

⁴ Women's Legal Resource Group, *Annual Report 1998/99*, Melbourne, p. 8.

The staff are skilled in dealing with women who are often highly emotional or in crisis... Their expertise is directed towards getting the client to focus on her legal problems...giving the client advice on a particular circumstance and then going through the available options... It is a comprehensive service. On average the calls take between 20 and 40 minutes with each person, partly because we are largely dealing with family break-ups; 75 per cent of our clients come to us with queries about family law issues.

The other thing we concentrate on is the referral aspect of service delivery. Where possible, we like to be able to recommend other services that women may be able to access that will assist them with legal problems. It is not necessarily only about legal services but also about emotional support and networks within their communities.⁵

Included in the reported 75 per cent of calls that are family law matters is a significant number of calls regarding family violence and Family Violence Orders.⁶

Casework Services

Face-to-face advice and casework services are offered from the Melbourne office and also at the Melbourne Magistrates' Court. In addition, the service provides an outreach service at Djerriwarrh Health Services at Melton, the Sunshine Magistrates' Court and the Dame Phyllis Frost (formerly Metropolitan) Women's Correctional Centre at Deer Park. These locations, although on the metropolitan fringes, do not provide services to women in rural and regional Victoria. Currently, casework outside metropolitan Melbourne is not available.

The 1998/99 Annual Report notes that with limited resources the Service is unable to meet all the needs of its community and, in particular is not able to meet all the needs of women who have reached their legal aid funding cap. WLSV's casework policy is stated as follows:

The Casework Policy has...been devised having regard to the Australian Law Reform Commission's Report on 'Equality Before the Law' and the 'Access to Justice Statement', and the following factors:

- Taking on matters only where there are no alternative agencies with more appropriate and expert services...
- Focusing on areas of law where women are or potentially can be particularly disadvantaged (eg. sexual harassment)

⁵ A Foster, *Minutes of Evidence*, 11 September 2000, p.796

⁶ Women's Legal Resource Group, *Annual Report 1998/99*, Melbourne, p.8

- Focusing on issues where women's access to justice/legal services is more impaired (eg family law...)
- Taking on matters within the constraints of our resources, which includes not trying to meet the shortfall created by Legal Aid guidelines
- Taking on matters where it is perceived that some benefit is likely to be achieved by our assistance.⁷

The Service has the equivalent of three full-time solicitor positions. As noted above this level of resourcing severely limits the amount of casework that can be undertaken.

Community Legal Education

The Women's Legal Service Victoria's community education program is targeted at rural and regional women.

The main arm of our service is community legal education through rural outreach. In the last three years the Women's Legal Service has delivered community and legal education programs with a rural focus. The service is often presented with other services in the local communities. Typically it is delivered to two key audiences – that is, support or community workers and the general public.

Outside the delivery of legal education the community legal education rural outreach program serves as an important promotional function for our service in rural areas. WLSV found that when it conducted community legal education in an area, that activity was reflected in the callers who contacted our advice line. We believe that providing services within communities is a way of building trust which is essential for the linking of statewide service delivery.⁸

The WLSV rural outreach programs travel to country areas, providing workshops and training to community workers and groups of women. Initially a solicitor accompanied the legal education team and ran legal clinics in the rural locations. However this service was discontinued as it was found to be an inefficient use of solicitor time and not of on-going benefit to clients because follow-up was not possible.

WLSV also makes use of written material and publications for its community legal education and radio programs, including rural ABC programs.

⁷ *ibid*, p.26.

⁸ A Foster, *Minutes of Evidence*, 11 September 2000, p. 796

Funding

WLSV received \$590,444 from the State and Commonwealth governments in 1999/2000. This included approximately \$80,000 for the Indigenous Women's Legal Resource Group, which is discussed in Chapter 6, Indigenous Victorians.

Conclusion

The Committee believes that providing legal advice by phone is a useful and important service. However, it does not replace the need for face-to-face consultations and on-going advice and representation, services much needed by women in the country. The Committee considers that WLSV should look at ways of increasing its casework and face-to-face legal advice sessions to include some rural areas. Given the level of funding received, clearly WLSV could not do this alone. The Committee recommends that consideration be given to a joint approach with other agencies. In particular the Committee suggests that the Women's Justice Network (WJN) in Queensland may offer a useful example of what is possible. The Network is discussed in more detail in Chapter 4, Victoria Legal Aid. Briefly, the network combines the services of Legal Aid Queensland, community legal centres and Indigenous legal centres. Video-conferencing is used extensively, using relatively cheap PC video-conferencing technology. Appointments for video-conferencing advice sessions can be booked through an internet site as well as by more traditional methods. Video-conferencing is used in conjunction with on-site circuit visits by solicitors, recognising the need for clients to meet in person with their solicitor on some occasions in order to develop confidence and a rapport with them.

The area covered by the WJN in Southern Queensland is similar in size to Victoria.

Recommendation 43

That the Women's Legal Service extends its casework services to women in rural and regional areas.

Recommendation 44

That consideration be given to a joint approach between the Women's Legal Service and other agencies, to the provision of legal advice and casework services to women in rural and regional areas using a combination of face-to-face and video-conferencing

access. In particular, the Committee recommends that the Queensland Women's Justice Network be taken as a model for what is possible.

Domestic Violence and Intervention Orders

The Committee heard a large amount of evidence about domestic violence and received some useful suggestions in relation to the intervention order legislation and practices.

There is a perception that attitudes to domestic violence in rural communities differ from those in the metropolitan area, remaining more resistant to the changes brought about by the improvement in the status of women generally in Australian society.

Rural communities are commonly viewed as conservative, with a strong emphasis on maintenance of traditional family norms... Rural culture has been identified as being self-reliant, stoic, hard working and masculine.

Women in particular are seen as responsible for ensuring that the well-being of the family is maintained... With such a premium placed on the family, a woman making a disclosure of domestic violence is publicly admitting that the reality of her life has not met community and family expectations... As a result, women who leave their violent partners, thereby breaking up the family unit, may be ostracised or condemned by the wider community.⁹

As well as attitudinal issues, there are practical issues which make domestic violence more difficult to deal with in country areas.

Confidentiality is a very difficult problem in a small community where everyone knows everyone else and people's movements will always be noticed by someone they know. Not only is this embarrassing for a woman seeking assistance, it can also be a safety issue if the fact that she seeks advice becomes the catalyst for continuing violence.

In addition, there is the issue of the perpetrator's place in the community.

To some extent, a lack of community support stems from difficulties with many people knowing and socialising with the perpetrator...as well as the enduring perception that domestic violence is a manifestation of marital problems and should remain a private matter... Fear of the perpetrator was another factor.¹⁰

⁹ Department of Transport and Regional Services (Commonwealth), *Domestic Violence in Regional Australia, A Literature Review*, Canberra, p.15

¹⁰ *ibid.*

Geographical isolation can be a significant feature for women who live on farms and in very small communities. If a woman living on a rural property is denied access to private transport, and access to telephone and internet contact is also denied, the absence of public transport can leave her a virtual prisoner. This can be a dangerous situation.

Research indicates that women experiencing domestic violence residing on stations or farms face increased vulnerability due to the higher prevalence of firearms and the absence of domestic violence responses to these areas.¹¹

When women wish to engage the legal system to protect themselves from domestic violence it is usually by way of an intervention order. This is an order made under the *Crimes (Family Violence) Act 1987* and an application for the order is made in the Magistrates' Court.

In general, a woman will attend the Magistrates' Court herself to make the application for the order and in some cases obtain an interim order to cover the period until the first court date which will usually be within a few weeks.

For those women unable to afford a private solicitor, representation at court is difficult to obtain. In some places intervention order support services are provided at the Magistrates' Court by local community legal centres¹² and duty solicitors may be able to assist in some cases. These services will usually provide initial advice and representation if the matter is not contested. Due to a lack of resources they can rarely take on contested hearings but will advise women that they may be able to obtain legal aid in this situation, and assist them to seek an adjournment to seek legal aid.

A grant of legal aid to a complainant in an intervention order application may be made if the matter is contested, but aid will not be granted for breach proceedings.¹³ In some situations a defendant can apply for legal aid, including in breach matters.¹⁴ The view was expressed to the Committee that there was a lack of awareness of the availability of legal aid for these matters in rural and regional areas.¹⁵

¹¹ *ibid* p. 12

¹² For example, Ballarat.

¹³ K Robertson, *Minutes of Evidence*, 15 May 2000; Victoria Legal Aid, *Legal Aid Handbook*, 12th edition, Melbourne, October 2000, p. 25.

¹⁴ *Legal Aid Handbook*, *ibid*, p. 25.

¹⁵ A Committee member strongly expressed this view from her personal experience in private practice in a regional area.

In addition VLA advised that duty lawyer services may also become more accessible to intervention order applicants through a review of the VLA guidelines.

We run a[n] [intervention order] duty lawyer scheme in Melbourne, which is not run elsewhere, using in-house solicitors at that court... We are reviewing our duty lawyer guidelines...to make it clear that domestic violence matters are also a priority.¹⁶

If a woman succeeds in obtaining an order this is not necessarily the end of the matter. If the subject of the order does not comply with it, the woman must have the co-operation of the police if any action is to be taken.

As domestic violence workers we feel that the intervention orders and application process under the *Crimes (Family Violence) Act* are adequate. However, we feel that in the main they are not acted on when there is a breach. I have had two instances in particular where a police officer has been called to a house where he knows an intervention order is in place and because the woman has said she did not want to take any action the police officer has walked away. When I have told the officer that it is his duty to act on that breach he has said the woman does not want to do anything about it so the police will not be doing anything about it. We feel the *Crimes (Family Violence) Act* is sufficient in the intervention order area but that when breaches occur they are not acted on.¹⁷

The Committee heard evidence of domestic violence in Aboriginal communities and the need for flexible responses which take account of cultural difference. The Bairnsdale Koori Women's Shelter said:

[O]ur service is quite different from the refuge system. We have had to be quite flexible with our response because we have had to take on board all the cultural issues and what their needs are. Although the refuge system provides safe accommodation for some women there is a broad recognition within the community that women need more options in that area...

The Koori community's perception of violence is that the systems in place for Aboriginal people are not adequate. Aboriginal people say they do not want to leave the relationships; they just want the violence to stop... The violence is entrenched and it will take a lot of work to change that. It exists not just in Bairnsdale but in every Aboriginal community.¹⁸

The Committee also heard evidence of the need for more education about domestic violence in Aboriginal communities.

¹⁶ K Robertson, *Minutes of Evidence*, 15 May 2000, p. 72

¹⁷ D Downes, *Minutes of Evidence*, 21 June 2000, p. 422

¹⁸ R Solomon, *Minutes of Evidence*, 12 September 2000, p. 839, 843.

I am concerned — and it is not only in this community but right across other Aboriginal communities — that there needs to be more community legal education about domestic violence.¹⁹

Some non-English speaking communities in rural areas also identified domestic violence as an issue about which awareness is increasing. Speaking about a particular ethnic group, one worker commented:

Domestic violence is coming out more as the education programs are kicking in. Over the past four years there has been an increase in women seeking domestic violence services and that is because of education. They are starting to get out more and learn what is in the community, and they are probably taking a more active part in the community than the menfolk.²⁰

These issues are not confined to rural and regional areas. However, at each stage where legal assistance is needed, services in rural and regional areas are more limited, and hence the person encounters a greater level of disadvantage than their metropolitan counterparts.

One very useful suggestion received by the Committee in its hearings was the suggestion that the Magistrates' Courts uses a generic court stamp in intervention order matters which does not identify the court from which the matter originated. This would assist women in refuges and those who wish to keep their whereabouts confidential.

Refuge workers have for a long time had a hope that a generic court stamp that does not list Ballarat, Sunshine or anywhere else might be used on at least the initial application. If that stamp could be used across the board, a court could later be nominated in Melbourne or wherever is convenient. But at least the woman making the application and the refuge worker accompanying her would not need to go to Melbourne for that first application. That would be an enormous help for us. Such a system would help not only women in country refuges but also women who leave home and go to other towns where they have sisters or a distant aunt if they feel they cannot stay in their own region any longer. There are a lot of those women who, of course, we never see. A generic court stamp system would help those women, and it would help us to avoid at least one trip to Melbourne.²¹

Registrars have also indicated to the Committee that the changes required to give effect to the use of a generic court stamp are minimal. As one rural registrar said:

The complaint document is headed 'in the Magistrates Court of Victoria' at wherever; so if it was simply 'the Magistrates Court of Victoria' full stop, that would not identify the court and if it had just 'the Magistrates Court Sale' on it instead of my signature and dated at Ballarat or wherever it would mean an amendment to the rules to remove those locations. I suppose there is no reason why it could not be dated because when the applicant signs it, it is dated at Ballarat or wherever.

¹⁹ M Nakalevu, *Minutes of Evidence*, 18 July 2000, p. 605, see also M Grinter, *Minutes of Evidence*, 18 July 2000.

²⁰ N Forsberg, *Minutes of Evidence*, 18 July 2000, p. 612

²¹ C Wierenga, *Minutes of evidence*, 27 April 2000, p. 20

That would have to be removed and you would just have, 'Dated this day of' or 'dated at Victoria'. Obviously it has to be returnable at a court somewhere, but it doesn't matter. It can be issued from Ballarat as 'Magistrates Court of Victoria returnable to Melbourne, dated this day of', instead of, 'dated at Ballarat,' and that takes away any identification back to here or wherever. It would need an amendment to the rules but I am sure it could be done.²²

The Committee considered this an issue which deserved prompt attention and wrote to the Attorney-General on 1 November 2000 to raise it with him. The Committee has been advised by the Attorney-General that the matter is being discussed with the Magistrates' Court.

Recommendation 45

That the Magistrates' Court introduces a generic stamp for intervention order applications that does not identify the court at which the application is made.

Another important issue raised with the Committee in relation to domestic violence related to the way in which the lack of migration agents in rural and regional areas compounded the disadvantage for women without permanent residency status.

I am concerned at the lack of migration agents in the area, particularly for women who are suffering domestic violence. Their husbands threaten that they will have them sent back to their countries. They have no access to anybody who can help them fill out the papers properly.²³

The lack of migration agents is discussed in Chapter 9, Non-English Speaking Background Victorians.

One other matter raised was the extent to which intervention orders are being used to attempt to deal with disputes which are not related to domestic violence, such as on-going neighbour disputes. The Committee was concerned that these matters appeared to be adding considerable extra work to Magistrates' already busy lists and that the legislation was not really intended to cover such matters.²⁴ In particular, neighbour disputes may be more appropriately dealt with in another forum. The Committee heard from a police officer in Swan Hill that a section of the *Magistrates' Court Act* had been used in a neighbour dispute.

²² S Merbach, *Minutes of Evidence*, 27 April 2000, p. 33.

²³ J Maxwell, *Minutes of Evidence*, 13 June 2000, p. 281.

²⁴ *The Crimes (Family Violence) Act 1987* initially applied only to persons in prescribed relationships. However in 1997 new provisions under the *Crimes Act* were introduced to cover stalking offences, and intervention orders were made available as a remedy. In these provisions the applicant and defendant do not need to be in any type of relationship and the provisions have come to be used in many neighbour disputes.

We eventually took out an application to have them bound over to keep the peace. Section 126A of the *Magistrates' Court Act* is a very little utilised section. The section is not clear and is under the miscellaneous part of the *Magistrates' Court Act*.

The prosecution argued that it was a criminal proceeding in that if the order was made to have the defendants bound over to keep the peace and they failed to agree to the order, they could be held in custody for up to 12 months until they agreed to the order. It attracted a quasi-criminal sanction in that if they refused they would be subject to imprisonment.

Basically, it was a civil proceeding and we used it as a last resort. There were arguments over whether the police had the right to appear in the application or even to bring the application. I believe if the breach of the peace powers were codified in legislation the police would be in a much stronger position to deal with family violence incidents, and that might also be addressed by amending the *Crimes (Family Violence) Act* to enable the police to remove one party from the premises to resolve a dispute or an incident. Also it would assist to deal with this sort of neighbourhood dispute where police are brought in as a result of sheer desperation by the parties involved or the neighbours affected.²⁵

The Committee is of the view that this suggestion has merit and believes that the operation of the *Crimes (Family Violence) Act* and section 21A of the *Crimes Act* need to be reviewed.

Recommendation 46

That the ambit of the operation of the Crimes (Family Violence) Act and section 21A of the Crimes Act be referred for review to the Victorian Parliament Law Reform Committee, or the Victorian Law Reform Commission.

The ACT Family Violence Intervention Program

The Committee attended a meeting in Canberra with participants in the ACT Family Violence Intervention Program. Committee members were impressed by the inter-agency, coordinated approach underpinning this program. The Chief Justice of the ACT Magistrates' Court, the Australian Federal Police, the Office of the Director of Public Prosecutions, ACT Corrective Services, the Department of Justice and Community Safety, the ACT Legal Aid Office, the Chair of the Domestic Violence Prevention Council and the Domestic Violence Crisis Service have all formally committed their agencies to the program and to the implementation of a number of protocols.²⁶

²⁵ J Lyons, *Minutes of Evidence*, 19 July 2000, p. 658.

²⁶ Department of Justice and Community Safety (ACT), *Evaluation of the Interagency Family Violence Intervention Program: Final Report*, Canberra, February 2000, p.1.

The Program is described as follows:

The ACT Interagency Family Violence Intervention Program (FVIP) is a developmental program for a coordinated community and criminal justice response to family violence. By working together cooperatively and effectively, the key criminal justice and related agencies aim to maximise safety and protection for victims of family violence, and to provide opportunities for offender accountability and rehabilitation.²⁷

This need for greater coordination of agencies and the need to address issues for both the victim and the offender were raised in evidence before the Committee.

I believe there is a lack of adequate coordinated after-hours response in instances of family violence. We need the participation of the police, the courts, corrections, legal practitioners and family violence services in representing both the victim and the perpetrator. Family violence affects every family member.²⁸

While the program appeared to be working well in the ACT much of its success depended on the small size, both in terms of numbers of people and geographical area covered by the jurisdiction. However some aspects of the program would warrant consideration by authorities dealing with domestic violence in Victoria.

The program gives significant emphasis to the need to deal with domestic violence as a criminal offence. The program requires that police pursue a pro-arrest, pro-charge policy and a presumption against bail in family violence incidents. In addition police are required to undertake evidence-gathering activities when called to a domestic violence incident.

These police initiatives are followed up by a 'no-drop' policy at the prosecution stage, which refers to the practice of proceeding with prosecutions even where a victim may wish to withdraw charges. The ACT Magistrates' Court has also issued a practice direction for solicitors which sets out the procedures to be followed in criminal proceedings relating to family violence cases.²⁹

The Committee believes that the ACT Program should be further investigated by the Department of Justice for its potential relevance to Victoria. The program has been the subject of on-going evaluation with a final report produced in February 2000. The

²⁷ Literature provided by the ACT Family Violence Intervention Program.

²⁸ R Solomon, *Minutes of Evidence*, 12 September 2000, p 840.

²⁹ ACT Magistrates' Court, Practice Direction No.2 of 2000, Family Violence Case Management Hearings.

Evaluation Report identifies the main achievements of the program including some positive responses from victims and witnesses about support received resulting in improvements in feelings of safety and in their ability to go through with prosecutions.

The Evaluation Report is a comprehensive document and would warrant a careful reading by agencies involved in the legal response to domestic violence. It provides a timely opportunity to consider a more co-ordinated approach to domestic violence by Victorian authorities.

Recommendation 47

That the Department of Justice investigates and reports to the Attorney-General on the feasibility of an early implementation of a program modelled on the coordinated inter-agency approach of the Australian Capital Territory's Family Violence Intervention Program. If such a program can be introduced on a pilot basis, one of the pilot areas should be in rural Victoria.

Family Law

The lack of family law specialists in rural and regional areas was raised with the Committee.

I think there is a huge lack of Family Court specialists in the [Bairnsdale] area, which relates to the lack of information given to the general community about the changes around the Family Court and its services.³⁰

This witness went on to identify a major issue for women in relation to family law and domestic violence in small rural and regional communities.

In relation to conflict of interest, often perpetrators purposely go to several legal practitioners in the area, hence limiting victims' access to legal representation.³¹

Conflict of interest problems were raised a number of times with the Committee. The solicitor at the community legal centre in Warrnambool commented:

I was also at the conference in Albury last week. I was not pleased and not surprised to hear that the conflict of interest issue is quite common in a lot of legal services in smaller towns Australia-

³⁰ R Solomon, *Minutes of Evidence*, 12 September 2000, p. 840.

³¹ R Solomon, *Minutes of Evidence*, 12 September, p 840.

wide. It has come up again and again. You might have two private law firms in a small town. I have known of family law cases where, for instance, the male party goes to both those solicitors, sometimes with the intention, because they know the rules, of acting as a barrier to the other party — the woman, in most circumstances — seeking legal advice.

If we are visiting that town as an outreach service we can provide that woman with one other option; but often, particularly in contested family law matters, we can provide only one-off advice or appropriate referrals if legal aid is available. Private solicitors would have to be in another town, and that is assuming the woman can afford it and can travel to that other town. There is a range of issues that stem from the conflict of interest.³²

When asked by the Committee if she could identify any solutions to this often repeated problem, the witness responded:

On the one hand, part of the solution involves our service being able to go to that community. Even though it may be a limited resource, for that woman it is one resource. We have to reassess at each point how far we can assist that woman — or man, as the case may be. The reason for the lack of solutions is that it is very difficult to come up with any answer that will have a practical effect and help those people. Where there is a conflict of interest because he has accessed both firms in town, she might not have a vehicle or might have three children at home to look after. She might be on a farm where the other partner is keeping tabs on the odometer of the car. I have known cases where that happens. In those circumstances she is completely isolated. I do not know what the answer is. Perhaps it is more telephone access, but again there are issues if it involves any sort of violent relationship. If that sort of control is present, even ringing up a service can create difficulties for that woman. I think the lack of solutions is due to those sorts of situations being so hard.³³

The Committee has identified above the lack of casework services available for women in rural and regional Victoria, and made recommendations about the expansion of these services. The conflict of interest issue is one part of this larger problem and its impact will hopefully be reduced when additional services become available.

The lack of Family Court circuits and counselling services are discussed in Chapter 16, Circuit Courts.

In addition the Committee heard evidence from women's services representatives of an increase in unrepresented litigants due to the cost of private representation and the reduction of Legal Aid funding.

Another thing that we have been finding distressing with family law is the number of self-represented litigants who are appearing before the Family Court when it sits in Albury–Wodonga. The costs to get solicitors to do protracted family law work are prohibitive and sometimes legal aid funding is not available for ongoing family law matters. People who are unrepresented and

³² J Williams, *Minutes of Evidence*, 21 June 2000, p. 392.

³³ *ibid*, p. 392

stumbling through the procedures of the court must surely take up much of the Family Court's time.³⁴

Legal Aid has become very problematic, in that the criteria for receiving it has severely restricted access to legal representation by the low-income proportion of the community. That has disadvantaged the vast majority of community members who cannot afford private solicitors but do not meet the legal aid requirements. Women leaving relationships are particularly vulnerable, often due to violence and conflict with their partners. Often their assets are tied up and they do not have ready access to them. Legal Aid needs to be more flexible with family violence cases and needs to be more client-focussed.³⁵

These two related issues are part of a broader debate about the accessibility of Legal Aid and the cost of legal services. While it is beyond the brief of this Committee to make recommendations in this regard, the Committee nevertheless records this evidence as raising a significant issue for rural and regional Victorians, as it is for those living in Melbourne.

Family Farm Succession

The issues around family farms first came to the Committee's attention at the 'Through our Eyes' conference in Albury where a session was presented by Juliet Williams of the Legal Centre in Warrnambool. The Committee met with her again in its public hearing in Warrnambool when she outlined their project 'Who Gets the Farm':

[T]he Who Gets the Farm project is in its third year. It is funded by the Victorian Women's Trust to investigate and explore issues around how women fare in terms of succession planning, what level of input they have into planning for the future of the family farm, and what sort of impact major family events have on women's input. Say if there is a major debt and the farm is no longer viable, or if there is a marriage separation, it examines how those things affect a woman's rights under the Family Law Act in terms of a property settlement.

The Victorian Women's Trust initially funded us to produce an awareness-raising poster. We distributed that as far and wide as we could... [I]t sets out the issues that women in focus groups have told us about, and it has our 1800 number for people to access our service. It also has room for people to include their local services... [W]e are now working with the Department of Natural Resources and Environment and also the University of Melbourne to develop a draft workbook that will be piloted with six farm families to work through succession planning issues. I see my main input into that workbook as the inclusion of those gender issues.³⁶

³⁴ M Martin, *Minutes of Evidence*, 18 July 2000, p. 252-3.

³⁵ R Solomon, *Minutes of Evidence*, 12 September 2000, p. 841.

³⁶ J Williams, *Minutes of Evidence*, 21 June 2000, p. 396

The project highlights the problems for women not just in terms of farm inheritance issues but also concerning property settlements in family law matters and generally in relation to their involvement in the financial arrangements for the farm and management and planning issues. The project's main aim was to raise awareness among rural women of their rights in relation to their family farms.

The Committee commends the Rural Women's Program of the Legal Centre and believes that it would be a useful project for other CLCs in rural areas to adopt. The Committee suggests that the information gained in this project should be mainstreamed and made relevant to both women and men. It would be an appropriate subject for a VLA information booklet or fact sheet and could be placed on VLA's website, which also has links to the Government's Legalonline site.

Recommendation 48

That the Rural Women's Program of the Warrnambool Legal Centre be taken as a useful model for other Community Legal Centres in rural and regional areas to adopt.

CHAPTER 8 - PEOPLE WITH DISABILITIES

In general, people with disabilities are likely to experience difficulty in accessing the range of services and information available, and this is so for a variety of reasons. There is the obstruction that the disability itself may cause, or the fact that people may be physically and socially isolated as a result of their disability. For rural and regional Victorians, there is the additional factor of distance, often a greater problem in general for a person with a disability.

Evidence presented to the Committee by the Equal Opportunity Commission Victoria, indicated that problems for people with disabilities also emanate from the general community. The largest area of complaint to the Commission in 1998–99 was disability discrimination.¹ Complaints of discrimination received by the Commission from people with disabilities represent the only category of complaint where rural numbers exceed metropolitan. The Commission is not able to compile complete data on the geographical source of complaints. However, of complaints that can be sourced, the EOCV's latest figures indicate that 36 per cent of disability discrimination complaints come from rural Victoria compared to 23 per cent from metropolitan Melbourne.² This is a striking differential, given that only 28 per cent of the total Victorian population is rural and regional, the remaining 72 per cent being metropolitan. The EOCV provides education and awareness training on discrimination issues through its rural outreach program.³

In its inquiry into legal service and information provision in this area, the Committee received evidence from specialist legal services that assist people with disabilities as well as from (non-legal) disability advocates throughout rural and regional Victoria⁴. The

¹ D Sisely, *Minutes of Evidence*, 15 May 2000, p. 135.

² The remaining 41 per cent of disability discrimination complaints are unsourced. Submission No 10, 15 May 2000, p.5. and personal communication with Julie Paxton, Research Officer, EOCV, 20 March 2001.

³ See Chapter 3 for a discussion of the EOCV's rural outreach program.

⁴ The Mental Health Legal Centre, Villamanta Legal Centre, the Disability Discrimination Law Advocacy Service, Southwest Advocacy Association (Warrnambool), the Council for the Disabled (Swan Hill) as well as the Equal Opportunity Commission Victoria.

Committee heard that courts are often ill-equipped to meet the needs of someone with limited capacity to understand the proceedings taking place around them. In its submission to the Committee, the Disability Discrimination Law Advocacy Service (DDLAS) stated that legal practitioners too are sometimes ill-equipped to understand the needs of a person with a disability⁵

The Committee notes that it is an important role of government to provide equality of access to government services, including legal services, to people with disabilities. Recently the Victorian Government established a Disability Advisory Council, which will provide advice to the Minister for Community Services on disability issues. The Committee recognises that further research on the Victorian situation of legal services, the justice system and people with disabilities needs to be carried out. New South Wales, as a result of its research, has developed an action plan for government services to ensure that people with disabilities are treated equally by the law and have equal access to legal services.⁶ The Victorian Government is presently preparing a State Disability Services Plan, to be launched in the second half of 2001. The Plan will not have any specific section on legal services.⁷

This chapter discusses some of the issues which people with a disability face when coming into contact with, or attempting to access, legal services and the justice system in rural and regional Victoria. The term ‘people with a disability’ covers people who fall within the mandate of the relevant specialist legal and community centres. It will therefore include people with the following disabilities: physical, intellectual, sensory, learning, psychiatric or psychological, and acquired brain injury.⁸

Access to Courts and Tribunals

The Committee received evidence that courts and tribunals did not always cater for people with physical or mobility disabilities. There are a number of courts in rural and regional Victoria which are inaccessible to people with a physical disability. The list of such courts provided to the Committee by the Disability Discrimination Law Advocacy

⁵ Mr Jonathon Goodfellow, Disability Discrimination Law Advocacy Service, Submission no. 73, p. 3.

⁶ Attorney General’s Department (NSW), Disability Strategic Plan 2000–2001, Sydney.

⁷ Notes of Discussion, Department of Human Services, 9 April 2001. Information about the Plan, and draft documents, can be found at <http://hnb.dhs.vic.gov.au/ds/disabilitysite.nsf/pages/plan>

⁸ For example, these are the people who fall within the mandate of the Southwest Advocacy Association, which is an advocacy, information and support service for people with disabilities.

Service included Ararat, Bairnsdale, Castlemaine, Kyneton, Morwell, Portland, Stawell and Wonthaggi.⁹ The Committee recognises heritage and building constraints, but is of the opinion that physical access to courts should not be prohibited to some members of our community. In those courts that do have disabled access, this is often provided in a less favourable way, such as through the rear of the building. Emergency exits in courts can also place people with a disability at undue risk during a fire or other emergency, and amenities for people with a physical disability are often not provided.

The Committee notes the statement of the Disability Discrimination Law Advocacy Service:

We are seeing a lack of will by federal and state governments, and even local government, to ensure that planning laws and processes fully reflect the needs of people with disabilities and provide some minimum level of compliance with standards that are already in place.¹⁰

The Department of Justice made the following comments on the issue.

The Department of Justice has for some time had a strong policy of ensuring that court facilities are accessible to the elderly and people with disabilities. It recruits the services of an independent disability consultant to assist in the planning stages of new courthouse projects. All new court facilities are built with disabled access. At the moment only four courthouses — Bairnsdale, Morwell, Castlemaine and Kyneton — are not technically up to the standard they should be for disabled access, but that is to do with them being on the heritage list, which presents all sorts of problems in itself. We ensure that all new facilities have disabled access.¹¹

The Committee notes, based on its own visits to regional courts and the evidence presented to it in the course of its inquiry, that the Department of Justice has underestimated the number of courts in Victoria without disabled access.¹² The Committee urges the Department of Justice to consider not only issues of access and safety for people with disabilities in the design of new court facilities and complexes, but to ensure that all existing courts are similarly equipped.

⁹ Mr Jonathon Goodfellow, Disability Discrimination Law Advocacy Service, Submission no 73, p. 4.

¹⁰ J. Goodfellow, *Minutes of Evidence*, 11 September 2000, p. 779.

¹¹ F. Hanlon, *Minutes of Evidence*, 22 May 2000, p. 223.

¹² In addition to the courts mentioned by the Department of Justice, the Committee would add the courts at Ararat, Bendigo, Portland and Mildura. Also, see evidence from DDLAS cited above.

Recommendation 49

That the Department of Justice revisits the issue of disabled access and facilities in courts around Victoria and ensures that all existing as well as new courts have appropriate and adequate physical access and safety features.¹³

The issue of intellectual disability and access to the law was one that was highlighted to the Committee by various witnesses around Victoria. The Committee heard that people with an intellectual disability often have significant difficulty in comprehending the legal system and legal proceedings, despite the best intentions of magistrates, lawyers and court staff involved:

Perhaps it is because of the formality of the court; but it is also that they are required to take in so much information, and they are not good at taking in different vocabularies that they are unfamiliar with. It is pretty common to walk out with a client who has not understood a thing.¹⁴

There is little available current research in Victoria on the issue of disability and the justice system. The Committee received information from DDLAS which contained testimony to this effect from the Office of the Public Advocate, the Correctional Services Commission, the Intellectual Disability Review Panel, the Mental Health Legal Centre, Villamanta Legal Service and the School of Legal Studies at La Trobe University.¹⁵ Representatives from all of these organisations highlighted the need for a program of research into the issue of disability in the justice system.

The Committee heard evidence from the Magistrates' Court on the need for such research. In informing the Committee about the development of the programs in operation at the Magistrates' Court, the Court's Disability Coordinator referred to the need for a program of research that takes a whole of justice system approach to the investigation of issues of disability.

[W]e need to have a global look at how the services fit into the structure of the court. In a sense, the court structure has not changed over many years, but the work the court is doing has become much more complex and difficult.

What is happening with the court is that it has become a sort of litmus test for needs that arise. My view is that the court has been very innovative in identifying the problems and trying to solve

¹³ The access provisions should comply with the standards established in the Building Code of Australia for access to buildings for people with disabilities.

¹⁴ P. Grano, *Minutes of Evidence*, 29 June 2000, p. 492.

¹⁵ Jonathon Goodfellow, Letter to the Committee, 6 November 2000.

them. But the result has been that the programs and services have just sort of come on board... That is something that the court and government need to look at. In saying that, I am also very clear ... [that] if the court is going to use the services effectively it needs to have some input into them. I cannot say that often enough.¹⁶

The NSW Law Reform Commission has undertaken research on the issue of disability in relation to the criminal justice system in that State. Its report discussed and made recommendations on such issues as the giving of evidence, training of government officials and the legal profession and the development of materials for judges and magistrates.¹⁷ The Committee recognises the need for similar research to be undertaken in Victoria with a view to developing coordinated policy, including guidelines for court practices and procedures for people with disabilities.

Recommendation 50

That the Victorian Government conducts a public inquiry into all forms of disability and the criminal justice system in Victoria.

Services for People with Disabilities at the Magistrates' Court of Victoria

The Disability Coordinator

The Disability Coordinator at the Magistrates' Court of Victoria is based in Melbourne. The Committee heard evidence from the incumbent of the position, Ms Anne Condon, who has been the Coordinator since the inception of the service in 1997 and who has responsibility for the planning and management of disability services in the Magistrates' Court throughout Victoria.¹⁸ The service is founded on a very broad definition of 'disability', as Ms Condon explained to the Committee, so as to ensure that people with disabilities entering the Criminal Justice system are not excluded from her service.¹⁹ Her primary role is to provide advice and assistance to Magistrates in managing and sentencing people with disabilities who come before the court. This involves providing

¹⁶ A Condon, *Minutes of Evidence*, 12 April 2001, [insert page number when evidence is finalised]

¹⁷ NSW Law Reform Commission, *People with an Intellectual Disability and the Criminal Justice System*, Report No. 80, 1996.

¹⁸ The service was established by Chief Magistrate Michael Adams QC, in response to the greater numbers of people with a disability entering the criminal justice system.

¹⁹ A Condon, *Minutes of Evidence*, 6 February 2001, p. 1145.

the Court with information and advice on the person's social and institutional background, on treatment history and current options, on available programs and services, and on the person's family or support networks. All of this assists the Court in dealing appropriately and immediately with the person before it, and in maintaining flexibility in its dealings with people with a disability.

The Disability Coordinator's services are not only accessed by Magistrates; in 1999–2000, Ms Condon had 438 cases referred to her from sources including Magistrates, court registrars, police, government departments, non-government organisations and legal practitioners. Legal practitioners seek information and advice from the Disability Coordinator on behalf of their clients on services and contacts the client has access to.

The number of referrals the Disability Coordinator receives from these disparate sources increases each year, and the problems presented to her are increasing in complexity, both factors demonstrating a clear need for the service.²⁰ Ms Condon stressed to the Committee the need for extra resources. Although the current coverage of the service is State-wide, this is so only 'in theory'; in practice the metropolitan area is served more effectively due to limited resources. Currently, Ms Condon visits only Bendigo court on a regular basis. She argued that in order to achieve more equitable coverage of the service there should be

...a dedicated position linked with the major rural courts, available to those Courts on mention days, and with the ability for the worker to intensively network the relevant country areas to identify and negotiate linkages with the appropriate services.²¹

Such comprehensive networking of services and agencies in the areas not only assists in providing integrated and effective services to people with disabilities, but also helps in building bridges between all those services and the court.

Having a central Melbourne origin for the service and an integrated State-wide management system mitigates the effects of isolation. According to Ms Condon:

[S]ome of the services in the country seem to develop a life of their own — I think because they are fairly well removed from their seat of management — and in my view they sometimes do not operate as well as they should.²²

²⁰ A Condon, Magistrates' Court of Victoria, Submission No. 91, p. 2.

²¹ *ibid*, p. 7

²² A Condon, *Minutes of Evidence*, 6 February 2001, p. 1147.

The Committee recommends that additional resources be provided to ensure that the services of a disability coordinator, or an appropriate alternative, are available in rural and regional locations.

Recommendation 51

That the State Government provides adequate resources to ensure that at every court in Victoria, Magistrates have the opportunity to refer people with a disability to appropriate support services such as those provided by the Disability Coordinator at Melbourne Magistrates' Court, with an extension of that service through a regular visiting program.

There are two further aspects of the role of the Disability Coordinator — education and policy development. The educative function extends from instituting specific training for Magistrates and court registrars to advising legal practitioners on the particular needs of their clients. The policy function involves developing strategies for the expansion and improvement of the service across the range of its functions and for the ongoing networking of all disability agencies and services with the Court. This would include, for example, continuing to develop strategies for keeping people with disabilities out of the criminal justice system where possible by working in concert with the Diversion Program.²³ Ms Condon told the Committee that both aspects of her role are under-developed.

These functions — the disability advice, the educative function, the policy development — are currently all performed by one person. Ms Condon's submission argues for the establishment of two additional positions to facilitate the roll-out of her services across Victoria and to continue the Melbourne-based work of establishing innovative policy and forming strong linkages with other programs both within and outside the court.²⁴

The Committee believes that there is a need for systemic change in the legal system in its treatment of people with disabilities, particularly people with a mental illness or an intellectual disability. The Committee believes that appropriate systemic change will occur only if it is informed by the research and recommendations of specialists in the field.

²³ See Chapter 15 for the operations of the diversion program.

²⁴ A Condon, Magistrates' Court of Victoria, Submission No. 91, p. 6

The policy functions of the key Victorian legal service providers to people with a disability or mental illness are under-funded. The Committee believes that the policy function of the Disability Coordinator is one avenue for the development of best practice policies regarding people with a mental illness or disability in the justice system. The Committee therefore recommends the funding of an extra position in the office of the Disability Coordinator to enable further development of policy initiatives.

Recommendation 52

That the State Government funds a position in the office of the Disability Coordinator at the Magistrates' Court, to enable the development of the policy, reform and educative functions of the Disability Service.

The Community Forensic Mental Health Court Liaison Service

This is another in the parallel programs established at the Magistrates' Court of Victoria.²⁵ The service aims to assist in matters where a person with a mental illness is appearing before the court, or where people appearing in court display behaviour of concern to the court or where such behaviour is associated with an offence committed by a person appearing before the court. The service provides assessment of these people and advice to the Court, identifies appropriate diversion mechanisms and facilitates links with other appropriate services. It also has a role in community education.

One of the purposes of this service is the early detection of people with a mental illness in the criminal justice system, in an attempt to meet the needs of these people and to prevent offenders being remanded in custody for psychiatric assessment. It aims to prevent recidivism by facilitating access and diversion to appropriate psychiatric treatment services.

There is one psychiatric nurse based at Melbourne Magistrates' Court, one at Broadmeadows and one at Bendigo. Evidence given to the Committee was that this service is to be extended to the large regional courts at Shepparton, Geelong, and Moe.²⁶

²⁵ See Chapter 15 for an explanation of the parallel programs of the Court.

²⁶ A Condon, *Minutes of Evidence*, 12 April 2001, p. 1169–1170.

Ancillary Support Services

The two major ancillary support services available at Magistrates' Courts for people with a disability are the Salvation Army and Court Network.²⁷ The submission to the Committee from Villamanta Legal Service commented that it had found Court Network very helpful in assisting their client group in rural and regional courts in finding lawyers, in assisting them with court procedures, and in generally making them feel at ease.²⁸

Legal Services

As noted above, specialist disability legal centres in Victoria are few and are constrained in terms of resources to provide services across the State. Villamanta Legal Centre, based in Geelong, is a state-wide community legal centre that specialises in disability-related legal issues, with a particular, but not sole, emphasis on legal issues relating to intellectual disability. Its services are limited to dealing with disability-specific issues: guardianship and administration, services under the *Intellectually Disabled Person's Act*, restraint and seclusion, abuse in institutions, and discrimination issues.²⁹ Villamanta will act in cases which are not disability related if the client, who has a disability, has no other option.³⁰ Doing so, however, is not a decision taken lightly as it taxes Villamanta's resources 'enormously'.³¹

Although this service provides advice and representation when it can, it necessarily relies significantly on referrals to a range of other providers, in particular non-specialist community legal centres, legal practitioners or other organisations that may be able to offer assistance. However, the coordinator of Villamanta remarked on several difficulties in its referral process. Firstly, it is difficult to find people who will take referrals on civil law matters.

The main reason that the legal profession is inaccessible is the cost. Legal representation is just too expensive. We cannot use legal practitioners because our clients cannot afford them, it is as simple as that. The help that CLCs can give is often limited, because their resources are stretched, and our client group tends to be very labour intensive and requires a lot of individual time.³²

²⁷ See Chapter 15 for more information on both services.

²⁸ Philip Grano, Villamanta Legal Service, Submission no. 42, p. 3.

²⁹ P Grano, *Minutes of Evidence*, 29 June 2000, p. 494.

³⁰ Philip Grano, Villamanta Legal Service, Submission no. 42, p. 7.

³¹ P Grano, *Minutes of Evidence*, 29 June 2000, p.494.

³² P Grano, *Minutes of Evidence*, 29 June 2000, p. 492.

The service therefore relies to some extent on lawyers and law firms who are willing to undertake pro bono work. The difficulty that arises here for some law firms is conflict of interest. As many of the complaints handled by Villamanta are against government instrumentalities, many firms will not deal with these because they may act for these same instrumentalities in other circumstances.³³ Although people with disabilities are very likely to be eligible for aid for serious criminal matters, it is also difficult to find representation for people in minor criminal matters, and access to a duty lawyer is not always available in rural and regional Victoria.³⁴

Villamanta is federally funded by the Department of Family and Community Services. The Committee noted that at the time it heard evidence from Villamanta, the Legal Centre received no State funding. Following the hearing, Villamanta received a small, one-off grant from the Department of Human Services to upgrade its phone and computer system. Villamanta currently has an application with the Department of Human Services (DHS) to fund a position. If this funding application is unsuccessful, Villamanta will have to reduce its current casework allocation from 1.6 EFT workers to one only. If the application is successful, Villamanta will be able to increase resources devoted to casework and increase its community education program.³⁵ In evidence, the Committee heard that the community education program, which Villamanta has cut back due to funding constraints, is vital to the effective functioning of the service:

Through legal education, based on the community development model, we learn a lot of the legal issues facing our constituents. CLE is the main way we assess unmet legal need.³⁶

The Committee believes that additional community education of the kind that Villamanta is able to offer, is an important factor in improving the access of people with disabilities to justice and also in educating the broader community so that discrimination issues may arise less often. Clearly, people with disabilities in rural and regional areas are affected by these issues. The Committee therefore supports additional community education programs in rural and regional Victoria, and believes that Villamanta, based in Geelong, is well positioned to fulfil this role.

Recommendation 53

³³ P Grano, *Minutes of Evidence*, 29 June 2000, p.496.

³⁴ P Grano, *Minutes of Evidence*, 29 June 2000, p. 492.

³⁵ Notes of Discussion, Philip Grano, Villamanta Legal Service, 23 March 2001.

³⁶ Philip Grano, Villamanta Legal Service, Submission no. 42, p. 10.

That the Department of Human Services provides recurrent funding to Villamanta to enable it to increase its casework and expand its community education program.

Villamanta has identified several areas of unmet need for its constituents, particularly regarding issues of accommodation; employment; taxi services; discrimination; verbal and physical abuse. As litigation in these areas would often be prohibitively expensive for Villamanta's clients, an alternative forum for hearing such complaints was suggested. In its submission to the Committee, Villamanta suggested that the Department of Human Services could establish a Human Services List at VCAT. A complaint could be made by the client, the Department or the service provider, and parties could use mediation to resolve matters and, where there is no resolution, resort to the Tribunal for a decision.³⁷ The Committee sees merit in this suggestion and believes it should be investigated. The Disability Advisory Council should consider this matter.

The Disability Discrimination Law Advocacy Service (DDLAS), based in Melbourne, is a legal service that specialises in disability discrimination law, but also provides basic information and referral to people who access the service. DDLAS provides community legal education, casework advice and support, and undertakes policy and law reform activities relating to the *Disability Discrimination Act (Cwlth) 1992* and the *Equal Opportunity Act (Vic) 1997*. DDLAS's community education program to rural and regional areas includes one-off or ongoing support and advice to legal practitioners and advocates, and professional development services for legal practitioners and other professionals.³⁸

Like Villamanta, DDLAS is federally funded, receiving approximately \$147,000 annually from the Federal Government and no State funding. Like Villamanta, DDLAS does a substantial amount of work in State matters as well as Federal. Due to constrained resources, DDLAS

...is often in a situation where it is forced to provide a less than equitable service to its rural and regional constituents, regularly needing to make difficult decisions about prioritising service provision, based on funding constraints.³⁹

Despite this, casework assistance to people in rural areas comprised 34% of DDLAS's total caseload in 1999–2000. The Service noted that due to lower levels of community

³⁷ Philip Grano, Villamanta Legal Service, Submission no. 42, p. 11.

³⁸ Jonathon Goodfellow, Disability Discrimination Law Advocacy Service, Submission no. 73, p. 2.

³⁹ *ibid.*

education in rural areas, there is less awareness among people with disabilities of their rights under the law. Although DDLAS strives to provide community education in Victoria, its outreach to rural and regional areas is necessarily limited by funding. The Committee notes that awareness of rights is a key prerequisite to their enforcement, and that people with disabilities in rural and regional Victoria are more disadvantaged in this area than those in metropolitan areas. The Committee believes that the State Government shares with the Federal Government a responsibility for funding disability legal services that assist clients in both State and Federal legal matters.

Recommendation 54

That the Victorian Government provides funding to the Disability Discrimination Law Advocacy Service to support its community education programs on disability discrimination.

Disability Advocates

Non-legal advocates have traditionally assisted people with disabilities in rural and regional Victoria through disability councils. The Commonwealth *Disability Services Act 1986* refers to types of advocacy services as follows:

- a) self-advocacy services, namely, services to assist persons with disabilities to develop or maintain the personal skills and self-confidence necessary to enable them to represent their own interests in the community;
- b) citizen advocacy services, namely, services to facilitate persons in the community to assist:
 - i) persons with disabilities; or
 - ii) the families of, and other persons who provide care for or assistance to persons with disabilities to represent their interest in the community;or
- c) group advocacy services, namely, services to facilitate community organisations to represent the interests of groups of persons with disabilities.⁴⁰

⁴⁰ Department of Family and Community Services, *National Disability Advocacy Program: Review Report*, FACS, Canberra, 1999. p. 16.

Under the Commonwealth/State Disability Agreement of May 1998, the Commonwealth and the States and Territories share responsibility for advocacy and information services. Nationally, the Commonwealth funds 76 advocacy services under its National Disability Advocacy Program. Eight Commonwealth-funded organisations in Victoria are state-wide services and 14 cover local or regional areas. Many of the organisations are concentrated around the metropolitan Melbourne area. Other services are located at Geelong West, Colac and Morwell, with regional services based at Wodonga, Shepparton, Ararat, Warrnambool and Moe.

In 1996–97, the Commonwealth funded 23 advocacy services in Victoria at a cost of approximately \$2.7 million, and the State Government contributed a further \$1.02 million. Since 1996–97, the number of State-funded advocacy services in Victoria has been reduced considerably.⁴¹ While Commonwealth funding has remained the same in dollar-terms over the period, being \$2,782,213 in 2000–2001⁴², the level of funding contributed by the Victorian Government has reduced markedly. DHS funding for disability advocacy services has declined from \$1,172,083 in 1998–1999 to \$837,603 in 1999–2000 to \$711,646 for 2000–2001.⁴³

The role of disability advocates is to negotiate on behalf of people with disabilities, provide support and assistance with issues concerning the legal system and courts and tribunals, and assist with understanding legal advice. Disability advocates assist specialist legal services, often providing necessary face-to-face contact with the client group. The Committee heard several reports of the effects of State funding cuts:

[T]here is a distinct lack of adequate general disability advocacy services for people with disabilities in regional and rural areas... In general these advocates would address local issues of concern, and assist specialist services...by, for example, providing face to face assistance to clients in understanding the advice provided to them.⁴⁴

Much work on behalf of people with disabilities relies on advocates who are not lawyers. These people assist our constituents to negotiate improved services and other legal matters. We often assisted these advocates to understand the law in these matters. Advocacy services have been substantially de-funded. A lot of work previously done by advocates is not done at all.⁴⁵

⁴¹ *ibid*, p. 13.

⁴² Figure supplied to the Committee by Department of Family and Community Services.

⁴³ Figures supplied to the Committee by Department of Human Services.

⁴⁴ Johnathon Goodfellow, Disability Discrimination Law Advocacy Service, Submission no. 73, p. 3.

⁴⁵ Philip Grano, Villamanta Legal Service, Submission no. 42, p. 3.

The Committee heard that the funding cuts have had a particularly negative impact on rural and regional areas, given the scarcity of such services and their necessarily wide geographic reach. It is of concern that while specialist legal services are currently so financially constrained, there are no longer sufficient advocacy services to provide necessary support, referral and advice to people with disabilities. The Committee recommends a reversal of this trend and government recognition of the important role advocacy services play in supporting people with disabilities in navigating the legal system.

Recommendation 55

That the State Government provides adequate financial support to disability advocacy services, particularly those in rural and regional Victoria.

Mental Health

Mental illness, wherever the sufferer lives, is surrounded by misunderstanding, misinformation and fear. Mental illness carries with it a stigma: sufferers are often marginalised by society, and in small communities where there is little anonymity this can be even more of a problem. Historically, institutions for people with a mental illness have been developed in rural areas. Many have now been de-institutionalised, but there are still a significant number of people with mental illness living in rural and regional Victoria. The discrimination they face is manifest in many aspects of their lives.

Obtaining legal advice and representation for people with mental illness can often be difficult. Having a mentally ill client is time-consuming and can be emotionally draining for the lawyer involved. As most lawyers can choose the work they wish to do, representing a client with a mental illness is not always a priority.

Rural lawyers and legal services seem reluctant to represent this group of people perhaps because of concern about ascertaining their clients' needs, fear they will not be able to obtain instructions, lack of understanding about consumers' status within the legal system, lack of understanding about how to access appropriate files and reports and how to get supporting evidence for clients' defence. General inexperience, fear and stigma about how to help people with mental illness has been observed.⁴⁶

⁴⁶ Expression of Interest for Vic Health Rural Partnerships Program Grant from the Mental Health Legal Centre Inc. p. 2.

Mental illness is the leading cause of disability in Victoria, and evidence suggests that this is an escalating problem. The Department of Human Services estimates the increase in demand for mental health services at 2.1 per cent in the year to June 2001.⁴⁷ The Committee heard evidence from legal specialists in mental health that unmet demand is significant at the present time. One of the most significant issues is the unmet need for (legal and non-legal) representation.⁴⁸

Specific issues of concern to the Committee include involuntary detention and representation before the Mental Health Review Board. Involuntary detention itself can produce a wide variety of legal issues which need addressing in the patient's outside life, for example, family and property law. Such issues are often not addressed as little, if any, legal advice or representation is available to detainees. Further, representation before the Mental Health Review Board is rare. In the year to July 1999, only 8.1 per cent of people appearing before the board had a legal representative at their hearing.⁴⁹ The Mental Health Review Board did not have figures on rates of representation according to rural or metropolitan location, but evidence to the Committee suggests that the figure for hearings in rural Victoria would be lower. The major providers of legal services in this field all expressed concern to the Committee about the situation of people with a disability outside the metropolitan area who require legal representation.⁵⁰

The Mental Health Review Board is concerned that so few people appearing before it have adequate representation. There is a significantly higher rate of representation for appeals that come before the Board, as opposed to reviews. There are complex reasons for this. Representation may be more likely to be offered to people bringing appeals, as someone who has brought the action themselves is seen to have more chance of success than someone who is an involuntary patient or who is simply before the Board for an annual review. Information provided to the Committee by the Mental Health Review Board indicates that representation is a key factor in discharges, and that the appeal is more likely to be successful when representation is offered to the appellant. Whilst the

⁴⁷ Department of Human Services, *Divisional Plan 2000–2001: Aged, Community and Mental Health Division*, Department of Human Services, DHS, Melbourne, 2000, p. 16. (www.dhs.vic.gov.au/acmh/division/plan/index.htm)

⁴⁸ This issue was highlighted by the Mental Health Review Board (Notes of Discussion, 27 March 2001), by DDLAS (Submission No. 73, p. 3), Villamanta Legal Service (Submission No. 42) and the Mental Health Legal Centre (Submission No. 16).

⁴⁹ Mental Health Review Board Annual Report for the year ending 30 June 1999, p. 21.

⁵⁰ Mental Health Legal Centre, (Submission no. 16), DDLAS (Submission No. 73) and Villamanta Legal Service (Submission No. 42).

appeal may have been more likely to be successful in the first place, representation is nevertheless a component that assists people to gain proper outcomes.⁵¹

The Office of the Public Advocate (OPA) stated to the Committee:

An OPA staff member in our Community Visitor program has identified the issue of access to legal advice and advocacy for people appearing before the Mental Health Review Board. It is noted that in some regions an 'arrangement' may be in place where Victoria Legal Aid will assist for this purpose. While it is acknowledged that the Mental Health Review Board is not a court, there is, nevertheless, a general need, where requested or necessary, for appropriate advice and support to be available in order for those appearing before the Board to best articulate their case.⁵²

The Mental Health Legal Centre is a specialist community legal centre which provides advice, representation, advocacy and referral to people with a psychiatric disability. It is located in Melbourne but has responsibility for the whole of the State. With a core staff of one full-time solicitor and 5 part-time staff (two of whom are solicitors), and funding of approximately \$250,000, its resources are stretched.⁵³ Although it provides some representation before Mental Health Review Board hearings, it is unable to fulfill the need for representation across the State. Rural and regional areas are usually beyond the scope of the legal centre, due to limited resources.

Victoria Legal Aid also provides some advice and representation for involuntary patients at Mental Health Review Board Hearings. In 1999-2000, the VLA staff duty lawyer service provided representation in 295 cases before the Mental Health Review Board.⁵⁴ Representation before the Board may also be funded by a grant of legal aid.

Of the 8.1 per cent of cases before the Board where the patient was represented, 68 per cent of representation provided was by VLA, 22 per cent by the Mental Health Legal Centre, 9 per cent by private lawyers and 1 per cent by the Office of the Public Advocate.⁵⁵

⁵¹ Notes of Discussion, Mental Health Review Board, 27 March 2001.

⁵² Louise Glanville, Office of the Public Advocate, Submission no. 75, p. 1.

⁵³ Mental Health Legal Centre, *Annual Report 1998-1999*, Mental Health Legal Centre Inc, Melbourne, 1999, p. 4.

⁵⁴ Victoria Legal Aid, *Annual Report*, Melbourne, 2000, p. 21.

⁵⁵ Mental Health Review Board, *Annual Report 1999*, Melbourne, 1999, at 5.9.

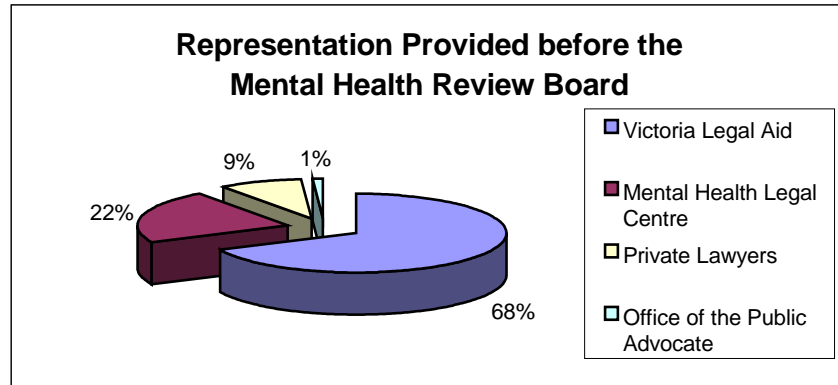


Figure 11

Source: Mental Health Review Board, *Annual Report 1999*

The Committee is concerned about the low level of representation before the Board, given that individual liberty is at stake, and is also more generally concerned that people with a mental illness do not always have adequate access to legal advice and representation. Victoria Legal Aid has been investigating ways of providing representation before the Mental Health Review Board. VLA currently has a budget submission before the State Government to fund a half-time position of coordinator who would oversee a duty lawyer service at country hospitals. This service would operate as the duty lawyer service at city hospitals currently does, with solicitors visiting involuntary patients the day before a hearing to assess the evidence available. VLA wants to expand the service through their regional offices and private country legal practitioners. This would be managed through the Central Office by the part-time coordinator. This service would give rural and regional clients the opportunity to see a solicitor to obtain legal advice and, where appropriate, legal representation before the Mental Health Review Board.

Recommendation 56

That the Victorian Government funds Victoria Legal Aid to employ a part-time coordinator to manage VLA's outreach casework services for people with a mental illness.

The Mental Health Legal Centre has researched ways of increasing the number of legal practitioners willing and able to undertake this work in rural and regional Victoria and has produced a commendable model. The model involves a solicitor from the Centre working in partnership with local solicitors to support and mentor them in representing people at Board hearings and in relation to other legal matters. Local solicitors need more than merely information on the issue; they require actual support in running such cases.

The Centre proposes running a mentoring service around Victoria for two years. It is envisaged that after that period, rural solicitors would be in a position to continue the work with only minimal support from the Centre. The model presently lacks funding, however, the Committee feels it is a worthwhile project which could make a significant difference to access to legal services for people with a mental illness in rural and regional Victoria and urges that the State Government considers funding the project.

Recommendation 57

That the Victorian Government funds the project proposed by the Mental Health Legal Centre which would train rural and regional legal practitioners in advising and representing people with a mental illness.

Since the Mental Health Legal Centre gave evidence to the Committee, it has applied for funding to the Mental Health Branch of the Department of Human Services. The MHLC wishes to commence provision of casework services to clients in Ballarat, as it has identified this regional centre as having a pressing need for mental health legal services.⁵⁶ As DHS has set out in its Divisional Plan, the Department aims to strengthen the provision of mental health services to rural and regional clients, particularly in the context of the increasing divergence in the socio-economic status of residents in rural and metropolitan areas.⁵⁷

Recommendation 58

That the Department of Human Services funds the Mental Health Legal Centre to provide outreach casework services to Ballarat.

There is increasing understanding that the complexity of problems associated with mental illness may not be addressed adequately by existing frameworks for service provision to the general community. Research has been done by various groups, including the Department of Human Services, and a coordinated approach between DHS and the Department of Justice would result in the tailoring of appropriate legal services for people with a mental disability.

Recommendation 59

⁵⁶ Notes of Discussion, Mental Health Legal Service, 27 March 2001.

⁵⁷ Department of Human Services, *Divisional Plan 2000–2001: Aged, Community and Mental Health Division*, DHS, Melbourne, 2000, p. 16.

That the Department of Human Services and the Department of Justice lead a research project, involving all relevant agencies, into the existing delivery of legal services to people with a mental illness, with a view to developing a more appropriate, holistic and outcome-focussed approach.

Technology

Information technology is insufficient if you do not have the skills to make use of the technology.⁵⁸

The Human Rights and Equal Opportunity Commission has provided a report to the Commonwealth Attorney-General on the implications for people with a disability of new technologies in electronic commerce and in the provision of services. The report outlines these people's needs in accessing services via these technologies. HREOC has identified a number of significant barriers to access faced by people with disabilities in the use of new technologies, including:

- Cost of access to computers and internet connection;
- Limited public access facilities for people who cannot afford their own equipment ;
- Inaccessibility of many web pages to people with vision impairments, slower connections and older equipment.⁵⁹

The report states:

Work for this reference has confirmed to the Commission that physical barriers, affordability and equipment access barriers, and attitudinal and awareness barriers are preventing some Australians with a disability ... from having equally effective access to e-commerce and other services using new technologies.⁶⁰

⁵⁸ Philip Grano, Villamanta Legal Centre, Submission no. 42, p. 5.

⁵⁹ Human Rights and Equal Opportunity Commission, *Accessibility of Electronic Commerce and New Service and Information Technologies for Older Australians and People with a Disability: Report of the Human Rights and Equal Opportunity Commission on a Reference from the Attorney-General*, HREOC, Sydney, 2000, p. 8, at http://www.hreoc.gov.au/disability_rights/inquiries/ecom/ecomrep.htm.

⁶⁰ id.

This view was reconfirmed by submissions to the Committee.⁶¹ While strongly supporting the use of new technologies in the provision of legal services, the Committee believes that there should be consideration of issues such as equitable access for all members of the community in implementing technological advances. In its report, HREOC emphasised the importance of maintaining adequate services while the barriers to accessing new technologies still exist:

The Commission emphasises the importance of service providers ensuring as far as possible that automated services are used to complement and enhance availability of direct human service rather than completely substituting for it.⁶²

The Committee refers to its recommendation in relation to access to the internet. People with disabilities and service providers should be involved in the design of such community access points, to ensure that they are fully accessible to people of all abilities. Ideally, training in information technology would be available to people with a disability in rural and regional areas. The Department of Human Services should develop an appropriate model.⁶³

The Committee believes that in designing community access points full advantage should be taken of the assistive technologies⁶⁴ developed to facilitate access to electronic communications for people with a disability. Software has been developed to assist people with vision impairments, including screen magnification software or system software enabling a high-contrast setting so that images and text appear clearer. Word prediction software would assist people where their disability prevents them from using a keyboard very well. This software enables selection of a word from an on-screen list generated from the first one or two letters typed.

Consideration should also be given to providing access to the range of keyboards that have been designed to assist people where their disability obstructs them in using a standard keyboard. These include membrane keyboards, which have flat surfaces with keys defined visually or physically by a keyguard. Touching the 'skin' or membrane acts as a keystroke does on a standard keyboard. Keyboards are also produced in much larger

⁶¹ See for example, Submissions nos 42 and 73.

⁶² HREOC, *ibid*, p. 8.

⁶³ Consultation Paper No. 4 of the State Disability Services Plan refers to information services at p.7. Located at http://hnb.dhs.vic.gov.au/ds/disabilitysite.nsf/pages/plan_papers#conspapers.

⁶⁴ Assistive technologies are technological tools used to adapt computers and communication devices for use by people with disabilities. See www.ataccess.org/ATResourceLibrary/ for a resource library of assistive technologies.

and much smaller than normal sizes, and they are also available with braille lettering on the keys. Voice-activation software, such as that introduced onto VLA's website in April 2001, would eliminate the need for a keyboard for most functions.⁶⁵

Recommendation 60

That, in the design of community access points for information services, access for people with disabilities is a priority, including physical access to the building and provision of specialised technology appropriate for use by people with disabilities.

⁶⁵ Media release, Office of the Attorney-General, 24 April 2001. VLA's website can be found at www.legalaid.vic.gov.au

CHAPTER 9 – NON-ENGLISH SPEAKING BACKGROUND COMMUNITIES

In terms of protecting the rights of the individual, in particular the right to equality of treatment, the legal system is critical. In societies comprised of people from different cultural and linguistic backgrounds like Australia, we must take steps to ensure that the fundamental principle of our legal system, equality before the law, is realised.¹

Language as well as cultural differences can be barriers that affect the enjoyment of legal rights and access to legal services. The Committee found that such problems are exacerbated in rural and regional Victoria due to factors such as distance from services, and cultural, as well as geographic, isolation.

The Committee received evidence of a lack of awareness of the needs of people from a non-English speaking background (NESB) in relation to legal service provision in rural and regional Victoria. It is further apparent that interpreting and translating services in rural and regional Victoria are inadequate, and this affects the ability of NESB persons to access appropriate legal information, advice and representation. This section will address these issues as well as the provision of legal information for NESB Victorians.

Context

Figures regarding the extent and range of language and cultural diversity in Victoria are striking. Over the last 50 years, 1.5 million migrants have settled in Victoria. According to the 1996 census, Victorians originate from 208 countries and speak 151 languages. Seventeen per cent of Victorians were born in countries where English is not the first language. In total, twenty-four per cent of Victorians were born overseas. Twenty per cent of the population speaks a language other than English at home.

¹ Lionel Bowen, the National Agenda for a Multicultural Australia, as quoted in *Access to Interpreters in the Australian Legal System*, Commonwealth Attorney-General's Department, April 1991, p.1.

The top five languages other than English spoken in Victoria are Italian, Greek, Vietnamese, Cantonese and Arabic. This differs considerably in regional Victoria where the top five languages are Italian, German, Greek, Croatian and Dutch.

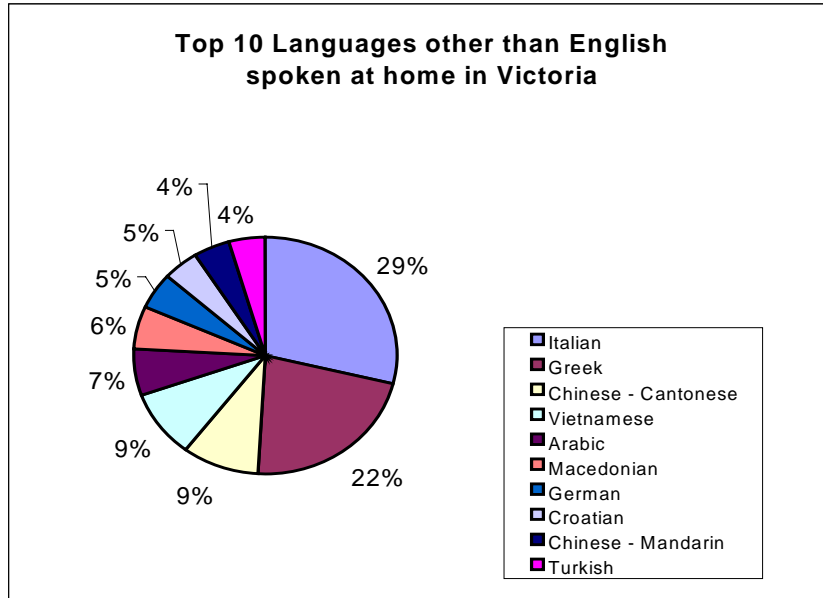


Figure 12

Source: ABS Census 1996

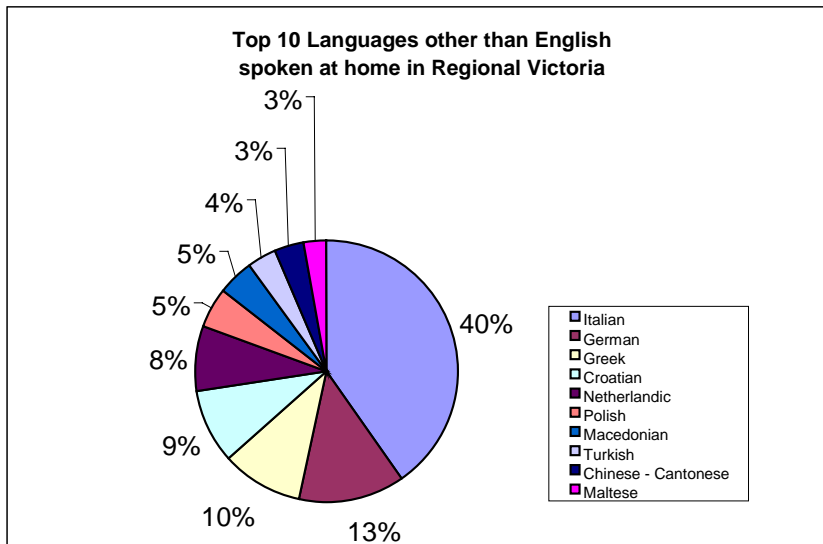


Figure 13

Source: ABS Census 1996

New communities of immigrants are forming in different parts of Victoria, often reflecting the focus of the humanitarian intake program for refugees. In Victoria today,

these include Bosnian, Iraqi, Afghani, Somali and Eritrean communities.² This is not, however, the only indicator for assessing interpreter needs and predicting which languages will next become high-demand languages. It has been shown that the English skills of NESB persons who have lived in Australia for more than thirty years decrease significantly after retirement. For example, the demand for Hungarian and Dutch interpreters has markedly risen in the past five years as a consequence of ageing communities.³

It is ... often incorrectly assumed that because of the length of residency of the migrants in this area that they will have sufficient English skills and access to information, whereas they can lose their English skills as a result of ... dementia and social isolation.⁴

The Committee received evidence that ethnic communities do not form a large proportion of the population of rural Victoria, and that there is substantial regional diversity in the make-up of ethnic populations. This means that providing cost-effective solutions to the problems faced by ethnic communities is a policy challenge. Where there are very small numbers of people of each ethnic origin, as there are in rural and regional Victoria, providing ethno-specific services as they are required by each specific community is difficult, given the economies of scale involved.

For example, the Committee heard from Senior Sergeant Renton at Portland, who said that the numbers of NESB people he dealt with was generally 'insignificant', consisting mainly of people arriving by sea and jumping ship in Portland. There is, however, a very specific issue in Portland, with a substantial illegal abalone trade in the area. Almost every person apprehended on suspicion of involvement in this trade would require an interpreter.⁵

Cross-Cultural Awareness

As a result of the smaller numbers of NESB people living in rural and regional Victoria than in metropolitan Melbourne, there are fewer services and associations for NESB people in the country. NESB communities have a low profile in certain areas, and this can often lead to a lack of understanding of their needs and therefore a lack of appropriate

² Multicultural Affairs Unit website www.mau.vic.gov.au

³ C Hajdu, *The Provision of Interpreters in the Victorian Legal System*, Parliamentary Internship, 1996.

⁴ L Sinha, *Minutes of Evidence*, 13 September 2000, p. 921.

⁵ C Renton, *Minutes of Evidence*, 20 June 2000, p. 347.

services. The Committee received evidence from legal service providers that the small numbers of NESB people in rural and regional Victoria had few difficulties with English, and that the needs of NESB communities in rural and regional Victoria were not a significant issue. Such evidence was in contrast to the evidence received from migrant resource centres and ethnic community councils, which indicated both unmet need and a regional diversity in the types of need.

There is ... a lack of awareness by agencies of the existence of community groups within the community and what their particular needs are. That lack of awareness means they might not market well to those groups... [H]igher numbers means that there is a better awareness of the needs of people from [non-English speaking backgrounds] in metropolitan areas.⁶

The Committee is aware that many agencies and government departments strive to ensure that their staff receive adequate training in cross-cultural issues. For example, Victoria Police has appointed officers whose duties and responsibilities include ensuring that Police Services are culturally sensitive and appropriate to local needs. Cross-cultural awareness training is routine in many government departments such as the Department of Human Services, and members of the judiciary receive training in this area. While such efforts are praiseworthy, the Committee is of the opinion that in relation to legal service provision, more still needs to be done. It cautions agencies that the appointment of officers to ensure cultural sensitivity is a first step only. Cross-cultural awareness needs to be mainstreamed in all aspects of the work undertaken for the community, and each agency employee must feel responsible for this issue.

The Committee notes the need for court staff to receive training in areas such as cross-cultural communication and working effectively with interpreters. Court staff in rural and regional Victoria should also market their services and roles and functions to ethnic communities and individuals within the region. This could be done through ethnic radio shows, translated court information in community languages and use of ethnic print media. For example, in June 2000, the Senior Magistrates at the Broadmeadows Magistrates' Court and the local Migrant Resource Centre arranged an 'open day' at the Court targeting NESB communities where information about the law and the court processes was given in a series of talks. The Magistrates spoke about their role, a representative of the Migrant Resource Centre described its work, Victoria Police spoke about its role and its ethnic advisory committee, local solicitors described the family and

⁶ L Sinha, *Minutes of Evidence*, 13 September 2000, p. 921.

criminal law processes and information was provided about Legal Aid.⁷ The open day provided useful information about the court and its processes as well as informing NESB people in the region about the role of various legal service providers. The Committee recommends that this initiative be used as a best practice model and imitated in rural and regional courts around the State.

Recommendation 61

That Magistrates and court staff receive training in cross-cultural awareness and working with interpreters as a priority.

Recommendation 62

That 'open days' for migrant communities at Magistrates' courts throughout Victoria be arranged on a regular basis.

Translating and Interpreting Services in Victoria

A person who cannot communicate with those providing a service does not have access to that service equal to that of a person who can. Ensuring equality of access in a multicultural society requires that clients who are unable to communicate in English are provided with the means to communicate in a language that they can speak and understand.⁸

The Victorian Government has a policy of providing appropriately qualified/ accredited interpreters to assist NESB Victorians in dealing with government departments and funded agencies. It has released a guide on working with interpreters for its staff.⁹

Although no interpreting and translating services are specifically funded by the State Government, various government departments pay for the use of these services among agencies. For example, in 1999–2000, the Department of Justice paid \$525,240 for the use of interpreters in Victorian courts. Of that figure, \$492,807 was used in the Magistrates' Court.¹⁰ No information was available to the Committee regarding the breakdown of this figure by region. Some non-profit or community organisations can

⁷ The Committee commends Senior Magistrate Kumar for this initiative, which was reported to be popular with members of migrant communities in the area.

⁸ Australian Law Reform Commission, *Multiculturalism and the Law*, Report No. 57, 1992.

⁹ Multicultural Affairs Unit (Victoria), *Working with Interpreters: A Guide for Victorian Government Departments and Funded Agencies*, October 1995, Multicultural Affairs Unit, Victoria.

¹⁰ P Armstrong, Letter to the Committee, 12 December 2000.

have certain translating and interpreting services fully or partly funded by the Multicultural Affairs Unit of the Victorian Government.

The Federal Department of Immigration and Multicultural Affairs provides the Translating and Interpreting Service (TIS), which comprises a national 24-hour telephone interpreting service, some on-site interpreting and a document translation service. Since 1991, TIS charges agencies and government departments the full or partial cost of providing the service. Individual and non-government users can access the telephone service for the cost of a local call, which is cross-subsidised by the recovery of fees from government users.¹¹ In 1999–2000, TIS provided 192,041 telephone interpreting calls around Australia, of these 53,150 were fee-free and 138,891 were partial cost-recovery activities.¹²

The Victorian Interpreting and Translating Service (VITS) has over 700 qualified interpreters in Victoria covering over eighty languages. Sixty-four interpreters are based in rural and regional Victoria, covering a total of thirty languages. VITS also provides a specialised legal interpreting service. Interpreters in this service are trained in understanding the legal system, legal terminology, court procedures and interpreting techniques in the legal setting. In 1999/2000, the VITS Legal Interpreting Service received a total of 292 calls requesting on-site interpreters from rural and regional Victoria.

Victoria has a number of other private firms supplying interpreting and translating services. However the very cost of such services means that they are not accessible to many people in the community. Due to distances and travel, the cost of such services in rural and regional Victoria is even more prohibitive.

Unmet Need for Interpreting and Translating Services

The Committee heard evidence on the unmet need for translating services in rural Victoria. The Committee heard that, generally speaking, translated material in local languages is not readily available. Sunraysia Community Health Services told the Committee:

¹¹ For a list of TIS charges, see www.immi.gov.au/settlement/tis_charges.pdf

¹² Department of Immigration and Multicultural Affairs, *Annual Report 1999–2000*, p. 67

My experience has been that translations are often done for the majority groups based in Melbourne, without considering what is happening in regional and rural areas.¹³

NESBlinks cited the Central Highlands Community Legal Centre in Ballarat as a service that does translate documents, but the Service is not sufficiently resourced to provide translation into some languages needed in Ballarat.¹⁴ The Sunraysia Ethnic Communities Council told the Committee that the main problem for NESB people is not in understanding the actual law, but rather in properly understanding the process of the law. In not understanding that process they do not understand what rights they have to other services as well. Often there is no written information that explains the court system itself in a language they can read, and that 'is their downfall'.¹⁵

There are moves being made to address the lack of provision of translated material that explains the processes of the legal system. For example, the Federal Court's website

...will provide translation and readout facilities in the not-too-distant future. It currently has those for a limited number of areas, such as human rights and equal opportunity.¹⁶

There are a number of documents that currently are not available in languages other than English, and which the Committee believes should be. The Committee heard that intervention order information booklets in Victoria do not contain information in other languages. At the time of the Committee's public hearing, the Gippsland Migrant Resource Centre was in discussion with Victoria Legal Aid and the Victorian Law Association, which printed the English versions, to redress this problem. The Gippsland Migrant Resource Centre would like to see intervention order information,

...in every court and every police station in every language, because if women who are making a decision about whether to take out intervention orders ... do not have the full range of information available and think there may be residency issues, there is a real problem.¹⁷

Much has been written on the crucial importance of having qualified interpreters in the legal system and there seems to be general agreement that access to interpreters should be improved.¹⁸ The Committee's research and the submissions received all confirm these

¹³ M Elding, *Minutes of Evidence*, 18 July 2000, p. 621–22.

¹⁴ S Dhanapala, *Minutes of Evidence*, 27 April 2000, p. 42.

¹⁵ N Forsberg, *Minutes of Evidence*, 18 July 2000, p. 611.

¹⁶ P Seccombe, *Minutes of Evidence*, 11 September 2000, p. 803.

¹⁷ L Sinha, *Minutes of Evidence*, 13 September 2000, p. 921.

¹⁸ See, for example, *Access to Interpreters in the Australian Legal System*, Commonwealth Attorney-General's Department, April 1991; *Multiculturalism and the Law*, ALRC 57; Victoria Police and the

contentions. The Committee takes the opportunity to again raise the issue and to note the importance of the role of interpreters in facilitating access to justice.

The Committee heard accounts of unacceptable waiting times for on-site (as opposed to over the telephone) interpreters in rural and regional Victoria. This may be due to a lack of interpreters fluent in the required languages, and/or the reluctance of interpreters to travel given the lack of appropriate recompense. A domestic violence crisis worker in Warrnambool reported to the Committee:

[W]e do not have adequate services for people from non-English-speaking backgrounds in this town by any stretch of the imagination. I have a client who was in crisis and in need of an interpreter and it took me three days to get one. That was not adequate because the situation was a crisis. I felt extremely frustrated that I could not get someone to support me in that area sooner.¹⁹

The Committee was also concerned to hear of instances regarding the Magistrates' Court and its use of interpreters. Section 40 of the *Magistrates' Court Act 1989* states:

If-

- a) a defendant is charged with an offence punishable by imprisonment; and
 - b) the Court is satisfied that the defendant does not have a knowledge of the English language that is sufficient to enable the defendant to understand, or participate in, the proceedings
- the Court must not hear and determine the proceeding without a competent interpreter interpreting it.

The Committee heard anecdotal evidence that in practice the Court may ask the client to bring in a friend or relative to interpret in directions hearings or other pre-trial proceedings. The Committee notes that the person's best interests may not be served by using a friend or relative to interpret in legal proceedings. Friends and relatives may not be familiar with legal terminology and the interpreting process, and this could result in misunderstandings.

[T]he major difficulty with respect to the use of interpreters in the legal system is not that of finding someone willing to interpret but the use of untested or incompetent interpreters. The consequences are too grave to allow them to operate in the legal system.²⁰

Australian Bicentennial Multicultural Foundation, *Police Services in a Multicultural Australia, Conference Report*, Melbourne 1991.

¹⁹ D Downes, *Minutes of Evidence*, 21 June 2000, p. 422.

²⁰ Attorney-General's Department (Commonwealth), *Access to Interpreters in the Australian Legal System*, April 1991, p. iii.

The consequences of the use of unqualified interpreters are far-reaching. NESB persons cannot effectively communicate or receive information through unqualified interpreters.²¹

There is a further risk that legal services providers, including court staff, are not sufficiently trained in determining whether or not a person's English is sufficient to fully understand the significance of legal proceedings, advice or documentation. The Committee notes that an adequate level of conversational English is not always fully sufficient in court, as noted by the NSW Supreme Court:²²

The mere fact that a person can sufficiently speak the English language to perform mundane or serial tasks or even business obligations at the person's own pace does not necessarily mean that he or she is able to cope with the added stresses imposed by appearing as a witness in a court of law.

Pursuant to s.13B of the *Magistrates' Court Act 1989*, the Chief Magistrate has the responsibility for directing the professional development, training and continuing education of the Registrars and Magistrates. The Court states that it places particular emphasis on enhanced cultural awareness programs, particularly concerning the Aboriginal community, the Vietnamese community and ethnic groups within the community whose cultural background and traditions are not readily understood by the Court or the community as a whole.²³ However, Magistrates and Registrars are not specifically trained in communication through an interpreter. The Committee supports the current cultural awareness programs and encourages their extension. It particularly encourages the Magistrates' Court to train its Magistrates and staff in working with interpreters.

A lack of awareness of the client's proficiency in written and spoken English can be a particular risk for the private profession when providing legal advice or taking instructions. The Committee commends the work of the NSW Law Society in this area. The Law Society has produced a guide to best practice for lawyers in dealing with interpreters and translators. It canvasses issues such as determining the client's need for an interpreter and recommends care in verifying that a client's response reflects an accurate understanding of questions put to them.²⁴

²¹ C Hadju, *The Provision of Interpreters in the Victorian Legal System 1996 Parliamentary Internship*, p.1

²² *Adamopoulos v Olympic Airways SA*, 25 NSWLR 75, 1991 per Kirby P.

²³ www.magistratescourt.vic.gov.au

²⁴ NSW Law Society, *Guide to Best Practice for Lawyers Working with Interpreters and Translators in a Legal Environment*, Sydney, June 1996.

The Committee is of the opinion that insufficient research and training has been conducted in Victoria into the use of interpreters by the legal profession. It urges the legal profession to recognise that Victoria is a multicultural community and that many clients will be in need of interpreting services.

The Department of Justice should study the question of legal interpreting and consider ways to make it more readily accessible in court proceedings. The Law Institute of Victoria has a responsibility to train its members in working with interpreters and should consider adapting the guide produced by the NSW Law Society and making it available to all practitioners in Victoria.

Recommendation 63

That the Department of Justice undertakes a comprehensive study on the use of interpreters in the legal system, focussing on unmet need especially in rural and regional Victoria.

Recommendation 64

That the Law Institute of Victoria develops a continuing legal education program for legal practitioners on cross-cultural awareness, the use of interpreters and how to determine the adequacy of a client's level of English.

The Committee notes that some government reviews on this issue have been done in the past. For example, in 1994, the then Victorian Ethnic Affairs Commission undertook a review of service delivery by government departments to culturally and linguistically diverse Victorians.²⁵ The review recognised the extent of unmet need in Victoria for interpreting and translating services. One of its recommendations was that:

A study be commissioned on the extent of unmet need for interpreting and translating services across departments, and the reasons for such unmet need.²⁶

Importantly, it recognised that the fundamental issue with the provision of interpreters is that they are a limited resource in high demand. This often means that rural and remote areas are insufficiently serviced, due to problems of distance, travel time and resources. The Inquiry considered ways of increasing the current pool of interpreters and recommended that:

²⁵ Victorian Multicultural Commission, *Multicultural Victoria Inquiry Report*, 1994/5.

²⁶ *ibid*, Recommendation No. 13.

The Victorian Government encourage the National Accreditation Authority for Translators and Interpreters (NAATI) to take a proactive role in increasing the supply of interpreters by investigating options such as waiver of examination fees and/or financial assistance to study to qualify as an interpreter in hard-to-fill languages.²⁷

The Committee echoes the above quoted recommendations from the Multicultural Inquiry Report and suggests that a study of unmet needs specifically considers legal needs in rural and regional Victoria. It would also suggest that the Victorian Government and NAATI consider ways to expand the pool of rural-based legal interpreters. It notes that the 1991 report on access to interpreters in the Australian legal system made a number of practical suggestions (for example, imposing a levy on court filing fees to fund interpreters when appropriate) which have not been implemented in Victoria.²⁸

Technology should have a significant role to play in improving access to interpreters in rural and regional Victoria. Telephone interpreting is already relied on to a great extent, however, video-conferencing for legal interpreters is not yet a possibility in Victoria. There are many occasions where telephone interpreting is not sufficient or appropriate. Where accredited interpreters are unavailable in a particular location, many service providers promote the use of telephone translating, but are of the view that technologies other than the telephone would be more appropriate in certain situations, such as in courts and hospitals. Using video link-ups would enable a Melbourne-based interpreter to be seen and heard via an on-site telescreen.²⁹

The Committee is of the opinion that video-conferencing should provide an ideal alternative to on-site interpreting. It would eliminate the problems associated with lengthy delay, distance and travel costs.

Recommendation 65

In recognition of significant evidence of unmet demand, that video-conferencing be used as a primary way of addressing the need for interpreters in rural and regional Victoria.

²⁷ Victorian Multicultural Commission, *Multicultural Victoria Inquiry Report 1994/5*, Recommendation No. 15.

²⁸ Attorney-General's Department (Commonwealth), *Access to Interpreters in the Australian Legal System*, Canberra, April 1991.

²⁹ L Sinha, *Minutes of Evidence*, 13 September 2000, p. 924. See also C Renton, *Minutes of Evidence*, 20 June 2000, p. 347.

Recommendation 66

That the Government encourages the uptake of the use of video-conferencing in the provision of interpreter services, by training interpreters in its use, making access points available in rural and regional areas and actively promoting the availability of these facilities to people of non-English speaking background including through the ethnic media.

Recommendation 67

That other providers of legal information to the community actively consider the provision of this information in a range of community languages.

NESB Communities and Access to Legal Information

Efforts have been made in Victoria to ensure that legal information through print and electronic media are available in a range of community languages. For example, mention has already been made in Chapter 4 of the Victoria Legal Aid Multilingual Telephone Information Service. Legal Aid information brochures are also available in a range of languages. The Department of Justice has some limited information on its website in different languages, but this relates mainly to victims of crime referral. The Tenants Union provides a guide for NESB tenants which answers the most common tenancy questions in eleven different languages.³⁰ The Law Institute only provides legal information in English.

In March 2001 the Legal Ombudsman's office launched its multilingual information for the consumers of legal services. This information includes translations of its publication *Checklist: Working with Your Lawyer* into Arabic, Chinese, Croatian, Greek, Italian, Macedonian, Russian, Serbian, Somali, Spanish, Turkish and Vietnamese. The *Checklist* is a guide to effective communication with lawyers, and its wider dissemination is a response to the fact that many of the complaints received by the Legal Ombudsman are the result of a breakdown in communication between solicitor and client. The translated information will be available through Migrant Resource Centres, Community Legal

³⁰ Tenants Union of Victoria, *Tenants Rights: A Guide for Non-English Speaking Tenants*, Tenants Union of Victoria, Melbourne, 1999.

Centres and ethnic organisations, as well as from the offices of the Legal Ombudsman and the Ombudsman's website.³¹

The Committee noted with concern that much printed legal information is only available in English and wonders how access to legal information for all segments of the community can be ensured if this is the case. It urges legal service providers such as Victoria Legal Aid, the Department of Justice and the Victoria Law Foundation to work with the Ethnic Communities Council of Victoria to prioritise the provision of written information in other languages. The Committee is of the opinion that one pressing priority is the provision of information on intervention orders in languages other than English.

Some legal documents are also available in languages other than English. The police summons in Victoria includes a statement in twelve community languages which indicates that the matter is important and that the person should obtain legal advice. This was in response to the realisation that when a summons is issued, NESB people do not always understand its import and may fail to attend court proceedings. The Committee notes the comments of Laster and Taylor in this regard:

While the intention is admirable, such reforms will not have their intended effect unless both interpreter services and legal advice are readily available. The paradox is that the greater awareness of the need to inform NESB people about their legal rights comes at a time of shrinking public funding for service provision.³²

Recommendation 68

That the Department of Justice expands the range of information available in languages other than English, in particular the information on intervention orders.

Immigration Information and Advice

An issue which was repeatedly brought to the attention of the Committee throughout Victoria concerned the adequacy and accessibility of immigration advice and legal assistance. The Committee is aware that immigration is a federal responsibility. However, it feels that it is appropriate to report some of the concerns that were raised. The provision of immigration advice is regulated by the Migration Agents Registration Authority.

³¹ www.legalombudsman.vic.gov.au/

³² K Laster and V Taylot, *Interpreters and the Legal System*, 1994, p. 146.

Agents as well as lawyers who wish to practise in this area must be registered annually, pay a registration fee and fulfill continuing legal education activities throughout the year. The Committee heard that there are few registered agents in rural and regional Victoria, and few solicitors who practise in this area. People requiring immigration advice must therefore be referred to Melbourne. Even in Geelong, a sizeable regional centre, the Committee was told:

There are very few migration agent solicitors — solicitors who are expert in migration matters. I am a migration agent, I am not a solicitor. If any of my clients is in trouble and it is out of my depth or too much for me to deal with I often refer him or her to Melbourne.³³

Similarly, in Ballarat:

Nobody in the community legal centre is qualified to advise on that aspect. Migrants must be prepared to pay a solicitor for that advice and sometimes a migrant living in a rural community will need to travel to Melbourne for that advice. Somebody, particularly living in Ballarat, such as the community legal centre should be available to give free legal advice because it is the first step for many migrants.³⁴

The Committee heard anecdotal evidence that migrant resource centre workers give unqualified advice, in response to the fact that the migrants have no other source of information or no possibility of obtaining legal advice. Advice from an unregistered person is prohibited under the migration registration provisions. However, it is a reasonable expectation that migrants are able to access qualified advice on such pressing issues. The Committee notes with concern that immigration advice is not readily accessible in rural and regional Victoria.

Recommendation 69

That the Attorney-General raises the issue of the adequacy and accessibility of immigration advice and legal assistance, including the lack of access to interpreting and translating services in rural and regional areas and the effect on justice issues, at the next meeting of the Standing Committee of Attorneys-General.

³³ G Shrimpton, *Minutes of Evidence*, 29 June 2000, p. 520.

³⁴ S Dhanapala, *Minutes of Evidence*, 27 April 2000, p. 42.

CHAPTER 10 - PRISONERS

Prisons in Victoria

The prison population in Victoria and elsewhere in Australia is increasing. Statistics from the Australian Institute of Criminology (AIC) show that the number of prisoners in Victoria rose between 1982 and 1998 from 1,753 to 2,858.¹ This represents a rise in the rate of imprisonment in Victoria from 60.8 per 100,000 in 1982 to 79.7 per 100,000 in 1998. Victoria's current imprisonment rate is 85.4 per 100,000.² Although it is increasing, Victoria's rate is the lowest of any Australian State or Territory with the next closest being South Australia with a rate of 114.9/100,000. The Australian rate is 143.9/100,000.

The prison population grew significantly even in the four years from 1995 to 1999 with an increase of 18.5 per cent.³ On 30 June 1999 the prison population was 2,923. The prison occupancy rate⁴ also rose substantially in this period from 88.5 per cent in 1995 to 101.7 per cent in 1999.

¹ Australian Institute of Criminology, Trends in Australian Prison Populations and Imprisonment Rates, see www.aic.gov.au/research/corrections/stats

² Kirby, P. *Report of the Independent Investigation into the Management and Operations of Victoria's Private Prisons*, Department of Justice, Melbourne, October 2000, p. 9.

³ Office of the Correctional Services Commissioner, *Statistical Overview of the Victorian Prison System 1995-96 to 1998-99*, Melbourne, 2000.

⁴ This records the number of beds occupied throughout the prison system. 100% occupancy would indicate that all beds were full. A rate of over 100% as recorded here would suggest a level of overcrowding. As this is an average rate we could expect that at certain times the occupancy rate would have been higher and sometimes lower.

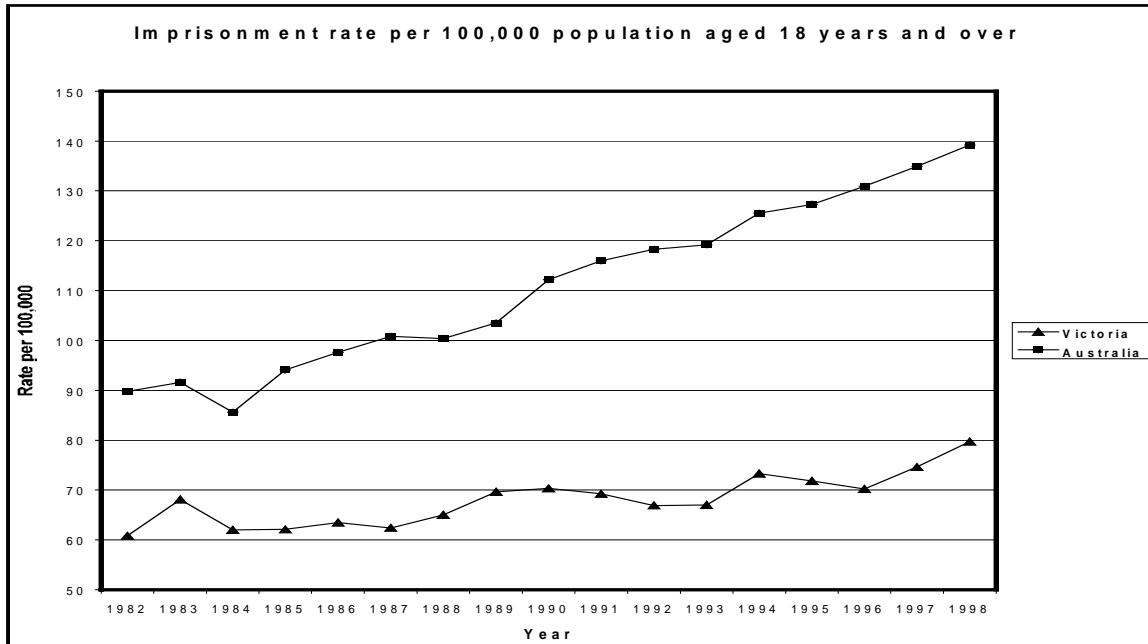


Figure 14

Source: Figures from the Australian Institute of Criminology

As of 30 June 1999 the Victorian prison system consisted of ten government-run prisons and three privately operated prisons. These thirteen prisons are designed to accommodate 2,875 prisoners. Ten of the thirteen Victorian prisons are located in rural and regional areas. This accounts for approximately two-thirds of the prison population, which in October 2000 was around 3,000.⁵

The private prisons in Victoria, first established during 1996 and 1997, have been opposed by a number of prisoner advocate groups. In October 2000 the State Government resumed control of the Metropolitan Women’s Correctional Centre (MWCC), a privately operated facility.

The Committee did not hear evidence during their public hearings that prisoner access to legal services differed according to whether the prison was privately or government run. The Committee did not meet directly with any prisoners but did hear evidence from a prisoner advocacy group. The Committee’s interest lies in ensuring that adequate government monitoring of all prisoners is undertaken and in particular that prisoners can access legal services. The Committee notes, however, that a substantial report (the Kirby Report) into Victoria’s private prisons was commissioned by the State Government following the findings of the State Coroner in his investigation into five deaths at Port

⁵ Kirby, P. *Report of the Independent Investigation into the Management and Operations of Victoria’s Private Prisons*, Department of Justice, Melbourne, October 2000, p. 7.

Phillip Prison.⁶ The findings of this report as they relate to legal service delivery are considered below.

Within the prison system access to legal services can be doubly important if prisoners seek to assert that their treatment while in State custody is contrary to the law.

While prisoners have been removed temporarily from the broader community, they remain entitled to most of the same rights as other citizens. This was argued strongly in evidence taken by the Committee:

The scope of our submission...is about the need for prisoners to have access to appropriate legal services, information and advice, and that they are very much and should not be considered as anything other than citizens in our State. It is unfortunate that with many reviews and inquiries we look at what people need in the community, and prisoners are often ignored. We consider that prisoners are part of our community, and should be afforded the same rights and opportunities as other members of our community.⁷

In recent years there has been considerable attention given to instances of neglect of responsibility by government, in relation to people in their care. Most recently in Victoria this has been in relation to child wards of the State.⁸ The Royal Commission into Aboriginal Deaths in Custody found that nearly half (43 of a total of 99) of the Aboriginal people whose deaths in custody were investigated, had been removed from their families by State agencies.⁹

It is noted that prisoners can be a disadvantaged group in terms of their ability to exercise their rights while in the custody of the State, and also in the context of a general level of social and economic disadvantage.¹⁰ For these reasons it is essential that adequate legal advice and representation is available to them.

Legal Services for Prisoners

The Committee heard widely different views about the adequacy of access to legal services for prisoners. In some cases these differences reflected different attitudes to what

⁶ Kirby, P. *Report of the Independent Investigation into the Management and Operations of Victoria's Private Prisons*, Department of Justice, Melbourne, October 2000.

⁷ C Gow, *Minutes of Evidence*, 25 September 2000, p. 948.

⁸ *The Age*, 20 October 2000, reported that child wards of the State are often moved through a large number of foster care arrangements to the detriment of their social development.

⁹ Royal Commission into Aboriginal Deaths in Custody, *National Report*, Volume 1, para 2.2.9.

¹⁰ Disadvantage may relate to mental illness, intellectual disability or low socio-economic status.

is appropriate service delivery but in others the evidence received was clearly contradictory. It is not the function, nor is it within the capacity of the Committee to seek to independently verify the many statements made to it by witnesses. In the comments recorded below the Committee has sought to give adequate space to the different evidence received.

The main issues which were raised related to:

- the adequacy of services provided by VLA;
- the use of video-conferencing facilities;
- the provision for confidentiality in prison facilities for client–solicitor consultations; and
- the adequacy of advice available to prisoners for internal disciplinary matters and Parole Board Hearings.

Evidence was received from the Advocacy Program for Women in Prison, the Public Correctional Enterprise CORE, and Victoria Legal Aid. A written submission was also received from a prisoner.

Mr Brendan Money, General Manager of the Central Region Prisons, described the region he was responsible for as follows:

The Central Region Prisons include Loddon Prison, a medium security male prison for sentenced prisoners with a capacity for 310 prisoners; Bendigo Prison, also a medium security, male prison for sentenced prisoners with a population of 80 prisoners; and Tarrengower Prison, a minimum security women’s prison for sentenced prisoners with 38 beds.¹¹

Mr Money gave evidence that legal visits organised by prisoners are available seven days a week with prior notice to management. He also stated that appropriate facilities are available in the prisons for prisoners to have privacy for their meetings with legal advisors. The Committee was advised that prisoners are transferred to Melbourne for court appearances in outstanding matters and no video-conferencing facilities are available in the prisons. Sometimes prisoners have had access to these facilities at the Bendigo Court for court appearances where the matter is not contested. The General Manager felt that access to video-conferencing facilities would be useful at Loddon, which is a large prison.

¹¹ Brendan Money, CORE Central Region Prisons, Submission no. 55; B Money, *Minutes of Evidence*, 26 July 2000, p. 730.

Victoria Legal Aid Prison Visiting Services

Prisoners are currently provided with access to legal advice mainly through Victoria Legal Aid.

The VLA Prison Advice Service visits metropolitan and country prisons and provides telephone advice and information to prisoners. Prisoners in country areas are able to reverse the charges of the telephone call.

The VLA visiting advice service operates in the following locations:¹²

Adult prisons

Ararat	every 3 weeks
Barwon	every 3 weeks
Beechworth	as needed
Dhurringile	every 3 months
Langi Kal Kal	every 3 months
Loddon	every 3 months
Melbourne Assessment Centre	daily
Metropolitan Women's Prison	every week
Port Phillip Prison	twice each week
Sale, Fulham Prison	every two weeks
St Augustine's Ward	as needed
Tarrengower (Maldon)	as needed

Juvenile Justice Centres

Malmsbury	as needed
Metropolitan	Tuesday and Thursday

VLA made the following comment about their prison visits:

We cannot provide a blanket coverage for all the prisons. We have to prioritise and work on a demand basis. Our resources are very much focused on the best use we have of our limited number of people and amount of resources where the need is greatest — Port Phillip, Deer Park and, as you can see from the material, the other prisons we visit to a lesser or greater extent. We feel it acutely. If we can improve our service, we will. We are looking at some issues raised by those who gave evidence to the Committee to ensure we are not failing in our delivery of service, but we

¹² Victoria Legal Aid, *Legal Aid Handbook*, 12th edition, October 2000, p.13.

would be criticised if we had a regular visit to, for example, Beechworth. If we went there once a week you would be saying, 'Why spend money sending a lawyer there to see one person?'.¹³

VLA solicitors provide assistance as follows:

Certainly criminal law occupies the minds of prisoners under sentence and therefore represents the main body of advice work of the service. However, family issues, debt, unpaid fines, immigration and general civil issues arise in prison, and are dealt with by VLA's visiting services. The Family and Civil Division of VLA, for example, regularly receive casework referrals from the Prison Advice Service.¹⁴

Evidence received by the Committee from the Advocacy Program for Women in Prison¹⁵ identified a number of problems experienced by prisoners, particularly women prisoners, in accessing legal services. In their initial remarks it was noted that the approximately 200 women in prison have approximately 400 children directly associated with them.¹⁶ Common legal issues that arise for these women, such as child custody and other family law matters, and debt, have a direct impact on the wellbeing of these children and hence a lack of access to legal services has an impact much broader than on the individual prisoner alone.

In addition it was noted that the risk of prisoners committing suicide is much increased around the time of court hearings whether the matters are criminal or civil. It was suggested to the Committee that this made adequate access to legal advice a crucial factor in prisoner wellbeing.¹⁷

The Advocacy program representatives gave evidence that VLA provided no advice other than criminal law advice and that even in this area there is a lack of promotion of VLA services in prisons and prisoners are not made aware of intended visits in many prisons. Information is available in English only. It was also stated that VLA solicitors do not often travel to country prisons because of a lack of funding for travel. This leads to the advocates, who are not lawyers, often taking on the role of intermediary between prisoners and their legal representatives in Melbourne.

It seems that there is a considerable level of misunderstanding between the Advocacy Program and VLA about the available services, and perhaps more communication

¹³ N Papas, Minutes of Evidence, p. 1113.

¹⁴ Tony Parsons, Victoria Legal Aid, Submission no. 87, p. 18.

¹⁵ C Gow, *Minutes of Evidence*, 25 September 2000, p. 948.

¹⁶ *ibid.*

¹⁷ *ibid.*

between the two organisations may assist so that both are clear about the other's capacities and responsibilities.

What the Committee does feel it can suggest is that VLA services be more actively promoted to prisoners.

The Committee has indicated its view that it is an important human right that prisoners have access to legal services. Another important issue is how people reintegrate into the community after their release from prison, and the benefits which flow to individuals and the community generally of a reduction in post-release self-harm and re-offending. How well prisoners are able to deal with legal matters not related to their criminal matters, before their release will have a significant bearing on prisoners' post-release situation.

I think around 70 per cent of the women I see...have to deal with not only their criminal matter but also family law matters and potentially some debt matters...unpaid fines and things like that. We need to try to resolve them so that when they are released they have an opportunity for survival on the outside and an opportunity to reintegrate and, hopefully, get on with their lives after the prison system.¹⁸

The Committee was advised that VLA is providing other legal advisory services, with its Bendigo office planning to commence regular monthly visits to Tarrengower prison.

The office has recently recruited a dedicated family lawyer and will now be able to commence sending a specialist family lawyer to the prison on a regular basis to deal with family law and related welfare issues together with whatever criminal law matters may arise. This new service could commence from 1 December 2000.¹⁹

The Committee has since been advised by the Bendigo Office of VLA that beginning in December 2000 a solicitor with family law experience has been attending Tarrengower on a monthly basis.²⁰

¹⁸ C Gow, *Minutes of Evidence*, 25 September 2000, p. 953.

¹⁹ Tony Parsons, Victoria Legal Aid, Submission no. 87, p.17.

²⁰ Notes of Discussion, M. Rerden, 5 April 2001.

Recommendation 70

That Victoria Legal Aid more actively promotes its services to prisoners, and makes written information available at the prison in community languages.

Recommendation 71

That Victoria Legal Aid timetables regular visits to all rural prisons.

Recommendation 72

That Victoria Legal Aid and prison management work together to develop a system for booking appointments with VLA solicitors. The system must be widely known about by prisoners, and providing information about it should be part of prisoner reception activities.

Victorian Aboriginal Legal Service (VALS)

In their latest annual report²¹ VALS noted that they have been working to improve their profile in the prisons with some success. Assistance from the Koori Unit at CORE was identified as a major contributor to this improvement. The Committee received evidence that there are about 150 Aboriginal people in prison at any time.²²

Additional Services

The Committee is aware that prisoners in rural and regional prisons are at a significant disadvantage when attempting to obtain legal advice. Their choices are severely limited and in many cases they are completely dependent on VLA. They can rarely access a community legal centre or take advantage, for example, of a free first advice session with a private legal practitioner. The costs involved in obtaining private representation are increased considerably by the need for the private legal practitioner to travel to the prison.

The Kirby report findings in relation to prisoner legal services noted the very limited access which all prisoners have to legal services, whether they are in rural or metropolitan prisons, and concluded that:

²¹ Victorian Aboriginal Legal Service (VALS), *Annual Report 1998-1999*, Melbourne, 1999.

²² T Munro, *Minutes of Evidence*, 15 May 2000, p. 127.

Cost-effective access to quality legal advice and assistance for prisoners could be provided through a prisoner legal service that was established in association with an existing community legal service.²³

The Report called for the Department of Justice to establish and fund such a service.²⁴

The submission received from the Advocacy Program for Women in Prison also called for the setting up of a Prisoners' Community Legal Centre.²⁵ The Committee notes the findings of the Kirby Report that prisoners' access to legal services is very limited and that community legal centres offer cost-effective service delivery. The Committee does not seek to provide services to prisoners that are not available to other members of the community, but rather to redress the existing lack of access to services.

The establishment of a specialist community legal service would go some way to bridging the gap between the services offered by VLA which are restricted by their guidelines and the work of groups such as the Advocacy Program whose members are not qualified lawyers. The Committee notes the comments of VLA in relation to the need to coordinate service delivery so that scarce resources are used most effectively.²⁶ The Committee would expect that a specialist CLC would work closely with the VLA Prisoner Advice Service.

Recommendation 73

That the Department of Justice funds a Prisoners' Community Legal Service attached to, or in association with, an existing community legal centre.

Legal Information and Resources

It was suggested to the Committee that the provision of access to legal information and resources would be of substantial benefit to prisoners and may partially alleviate the difficulties of obtaining advice from solicitors. In a submission, a prisoner made the following comments, firstly noting that prison libraries do not contain legal resources:

²³ Kirby, P. *Report of the Independent Investigation into the Management and Operations of Victoria's Private Prisons*, Department of Justice, Melbourne, October 2000, p. 77.

²⁴ *ibid*, Recommendation No. 15.

²⁵ C Gow and D Williamson, *Advocacy Program for Women in Prison*, Submission no. 76, p.8.

²⁶ Tony Parsons, *Victoria Legal Aid*, Submission no. 87, p.19.

Prisoners are...reliant on the periodic visits of Victoria Legal Aid duty solicitors who will provide only limited advice in the absence of a legal aid grant.

In the light of the minimal provision of legal services to prisoners in non-metropolitan prisons, I submit that methods of improving the provision of legal services should be examined...[such as] the supply of legal materials by community legal centres and the provision of internet or phone access to Victoria Legal Aid.²⁷

The Committee heard evidence that prisoners are not allowed to use 1800 telephone numbers and consequently do not have access to the VLA Telephone Advice Service.²⁸

The Advocacy Program suggested in their submission that legal publications and information in a range of languages and on audio tapes be made available in all prisons and that all prisoners have access to the VLA Prison Advice telephone number or the Community Legal Centre telephone number for their area. They also suggested that

...legal education workshops be incorporated into prison programs/portfolios in order for prisoners to be able to resolve issues themselves and/or understand the legal process. Such workshops should be on a regular basis and available to all prisoners regardless of their classification and/or placement. Further such workshops should be run on a continual basis and not just once a year as the turnover of prisoners in any one prison is high.²⁹

The Committee agrees that increasing prisoners' understanding of their legal issues and awareness of their rights would be a positive step towards them obtaining access to legal services. Many of the issues raised before the Committee relate to the lack of awareness of available services.

Another possible way of improving access to legal information could be allowing prisoners access to email, provided that appropriate monitoring and vetting procedures are developed. This could operate in much the same way as phone calls or letters are vetted. It would overcome some of the problems with phone calls such as the person or organisation not being available when the prisoner calls and the prisoner not being able to accept returned calls. It would also be considerably quicker than mail and more appropriate if, for example, a prisoner needed urgent advice about an upcoming court appearance or internal disciplinary matter. While the Committee is aware that practical

²⁷ J Knight, Private Citizen, Submission No. 66.

²⁸ Prisoners in NSW are also not allowed to use 1800 numbers. In Queensland, prisoners can access the Prisoners Legal Service, a community legal service on a 1800 number.

²⁹ C Gow and D Williamson, Advocacy Program for Women in Prison, Submission No.76, p.8.

difficulties and access to resources would both be considerable barriers to the establishment of email access for prisoners, it believes it would be worth considering.

Recommendation 74

That prisoners in rural and regional areas be given access to the Victoria Legal Aid 1800 telephone information and advice number and the VLA Prison Advice Service telephone number.

Recommendation 75

That CORE and the private prison operators develop programs of legal education workshops for prisoners that focus on how the legal system works and where assistance can be gained both inside and outside prison. Introductory workshops should be run on a frequent and regular basis to ensure that all prisoners have access to them.

Recommendation 76

That, where a number of prisoners have similar legal issues, prison authorities undertake to arrange for workshops on these issues (for example, child residence/contact or debt-related matters). This could be done by requesting that a workshop be presented in the prison by Victoria Legal Aid or a local community legal centre.

Recommendation 77

That CORE considers the feasibility of allowing prisoners limited access to email subject to appropriate security restrictions.

Internal Disciplinary Hearings and Parole Board Hearings

CORE advised the Committee that no legal representation is allowed for internal disciplinary matters and Parole Board hearings although prisoners may seek legal advice prior to the hearings if they wish. It is possible for certain independent observers to be present at internal disciplinary hearings such as the Office of the Public Advocate or the Prison Official Visitor but the need for such observers is determined by the prison governor rather than being at the request of the prisoner.

While internal disciplinary hearings cannot lead to any increase in a prisoner's sentence, the Committee was concerned to hear that nevertheless the outcome of such a hearing

will be available in Parole Board hearings and in this way may affect a prisoner's eligibility for parole.

The Committee heard conflicting evidence about the extent to which Victoria Legal Aid provides advice in relation to these matters. The Advocacy Program for Women in Prison reported that in their experience no assistance was provided by VLA for these types of matters.³⁰

VLA however provided the following evidence:

[L]egal representation is not available before the Parole Board or at Governor's hearings. In these matters we give procedural advice. Victoria Legal Aid has long advocated for representation to be allowed at such hearings, but this would require legislative change...

Whilst all VLA staff who attend at the various prisons strive to provide procedural and substantive advice to prisoners facing Governor's hearings, the time lines for the hearing after notification is often only a day or so, and assistance is restricted to telephone advice.

VLA is very concerned about the conduct of private prison management in the handling of internal disciplinary hearings. VLA believes that there are major deficiencies in the way that those matters are conducted. VLA conducts some casework in this area. Specifically, we are currently handling two appeals to the Supreme Court in which the respective prisoners are seeking judicial review of the procedures that were used by prison management before imposing penalties such as loss of privileges or a change in security classification.³¹

Again it seems that there is misunderstanding between the Advocacy Program and VLA about the available services. As the Advocacy Program is largely presenting the views of prisoners to the Committee it seems that there is at least a perception amongst prisoners that they cannot get assistance in these areas. Such a situation, whether created through lack of actual service delivery or through misapprehension, needs to be addressed. These issues are likely to be exacerbated for prisoners in rural and regional areas.

The Committee is concerned that despite the fact that the outcome of internal disciplinary hearings may affect a prisoner's success in obtaining parole (and hence the prisoner's liberty), prisoners cannot have legal representation at such hearings, nor are they always able to obtain legal advice prior to the hearings.

Recommendation 78

³⁰ C Gow, *Minutes of Evidence*, 25 September 2000.

³¹ Tony Parsons, Victoria Legal Aid, Submission No. 87, p 18,19.

That the issue of the procedures for Parole Board Hearing and Internal Disciplinary Hearings, including the issue of representation for prisoners, be considered as a topic for future reference to a Parliamentary Committee or the Victorian Law Reform Commission.

Recommendation 79

That Victoria Legal Aid's promotion of its services to prisoners includes information about the advice that can be provided in relation to Parole Board and internal disciplinary hearings.

Both VLA and the Advocacy Program gave evidence that notice to prisoners about internal disciplinary hearings was often insufficient for them to be able to prepare their case properly or to obtain advice.

Prisoners are not necessarily informed in advance of the scheduled date, time nor nature of hearings. We have received complaints of disciplinary procedures being put in place before a hearing has been heard. This is exacerbated by a lack of access to prison rules and regulations and a tendency not to notify the prisoner of the exact charges which they face. This raises the question of how a prisoner is meant to be prepared for such hearings when there is not information at their disposal. Further, prisoners are often called for disciplinary hearings without being aware that this is what they are called for, therefore attending at an office only to be shuffled into the hearing with no paper work, no warning, and no opportunity to prepare a defence. This challenges all notions of natural justice.³²

³² C Gow and D Williamson , Advocacy Program for Women in Prison, Submission No.76, p.6.

Recommendation 80

That the Office of the Correctional Services Commissioner, as part of its role in developing and maintaining state-wide policy and standards, establishes a policy in relation to internal disciplinary hearings which provides for the basic principles of natural justice to be accorded to prisoners. This should include providing accurate and sufficiently detailed information about the nature of the allegations or charges against them; adequate notice of the hearing date; and information about the possibility of seeking advice from Victoria Legal Aid or other sources prior to the hearing.

VLA Video-Conferencing

Video-conferencing has the potential for significant cost savings, through the reduction in travel time for legal practitioners travelling to prisons, and by avoiding the necessity for prisoners to be transported to court for adjournments and mentions.

Five prisons currently have video-conferencing facilities set up by the Victorian Government Reporting Service which provides technical support and maintenance of the equipment.³³ VGRS reported positive feedback from prisoners:

Our feedback from people in custody is that they have warmed to the system because the proceedings disrupt their lives. If you can call a prison a home, certainly they prefer to stay there. They do not like the idea of coming out for a short hearing whereby they might not go back to that bed that night. So the feedback from prisoners on video-conferencing has been very positive. It also addresses some equity issues for people in custody, on the basis that they have access to remedies in the court system and to their legal counsel, without people physically going to where they are.³⁴

The Committee heard evidence from VLA that video-conferencing links are often used to interview prisoners in prisons with facilities.

Generally [video-conferencing] works very well. I get a lot of clients who do not want to come to the Geelong police cells and who use the video-conferencing facility, particularly people in custody.³⁵

In its written submission to the Committee VLA wrote:

³³ M. Francis, *Minutes of Evidence*, 25 September, p. 1020. The prisons are Port Melbourne, Melbourne Assessment Centre, Fulham Correction Centre, Barwon Prison and the Dame Phyllis Frost Centre at Deer Park.

³⁴ *ibid*, p. 1021.

³⁵ M Brugman, *Minutes of Evidence*, 20 June 2000, p.536.

VLA sees the advent of video-conferencing as representing an important advance in ensuring the access of prisoners to their legal advisors and to other service agencies. VLA uses video-conferencing facilities extensively from the Melbourne Office and the Geelong Office [with facilities soon to commence in Morwell and Bendigo]. VLA is linked to the Victorian Government Reporting Service system, which connects Victorian Courts with most prisons...

VLA, whilst welcoming the introduction of this technology, does not see video-conferencing replacing the need for face to face contact with clients. For example, it is expected that lawyers in VLA will always travel to the relevant prison or police gaol facility to meet the client for the first time. The use of video-conferencing is only appropriate where a solicitor-client relationship has been established or where usage is unavoidable for other reasons, such as urgency caused by an impending hearing.³⁶

Concerns were raised with the Committee about the confidentiality of video-conferencing sessions. The Advocacy Program for Women in Prison wrote:

Video-conferencing is not confidential because an officer has to be present with the prisoner at all times and therefore hears the entire conversation between the lawyer and prisoner.³⁷

However, Victoria Legal Aid gave evidence that when their officers use this technology, steps are taken to ensure that the prisoner is alone. They wrote:

When speaking to any prisoner via video-conferencing it is the responsibility of the adviser to ensure that there is no officer present in the room before discussing the case with the client. This procedure is certainly followed by our service when speaking to prisoners. When our solicitors ask the prison officer to leave the conference room, the officers comply.³⁸

The differing accounts heard by the Committee are likely to reflect different experiences, perhaps in different prisons and with solicitors who are more or less experienced in the use of video-conferencing technology. The Committee agrees with the VLA statement that the responsibility for ensuring that confidentiality is being respected should lie with the adviser rather than the prisoner. This is not to suggest that the prison authorities do not also have a responsibility to facilitate confidential access to legal advice by the prisoners. In the first instance it is the prison management who must ensure that the facilities are available and who should be committed to ensuring confidentiality. However, once this has been provided, the responsibility to ensure confidentiality in each individual video-conference contact needs to be taken on by the solicitor.

Recommendation 81

³⁶ Tony Parsons, Victoria Legal Aid, Submission no. 87, p. 15.

³⁷ C Gow and D Williamson, Advocacy Program for Women in Prison, Submission no.76, p. 7.

³⁸ Tony Parsons, Victoria Legal Aid, Submission no. 87, p. 15.

That Victoria Legal Aid considers developing a written protocol for the use of video-conferencing technology for contact with prisoners. The protocol should cover issues such as the circumstances in which video-conferencing contact is appropriate and the practical requirements for its use, including the need to ensure confidentiality.

Recommendation 82

That this protocol be made available to both in-house solicitors and private practitioners on the Victoria Legal Aid panel.

The issue of the use of video-conferencing for court appearances is discussed further in Chapter 15, Magistrates' Court.

Facilities for Solicitor – Client Conferences

In relation to the adequacy of facilities for prisoners to speak to legal representatives in private, the Advocacy Program evidence directly contradicted that of the CORE representative as follows:

Something else we wanted to raise is that when a prisoner is able to meet with a legal representative there is not usually an appropriate place for that to happen. It usually happens in the visitors centre, where other people are having visits with their representatives or family or community workers. So there is an issue regarding confidentiality.

In the rural prisons the resources are such that usually the room that is set aside for legal representatives to meet in is being used to run programs at the same time. In the case of Tarrengower, at the moment the library where we originally met with prisoners is closed... [T]he visitors centre is usually being used to run programs or classes so you cannot meet there. The other place where they usually put us is the bunkhouse, which is used for families and for children to come and spend time with the women... If the weather is fine you can sit out at one of the picnic tables but if it is not there is basically nowhere to go where there is privacy, where prisoners feel comfortable divulging personal information, that is not in earshot of other prisoners or officers.³⁹

While this statement indicates to the Committee that at Tarrengower attempts are being made to accommodate the need for privacy during legal visits, the Committee is nevertheless concerned that facilities are not available. Evidence received by the Committee from the CORE General Manager responsible for Tarrengower to the effect that facilities are available to allow privacy, suggests that senior management are unaware of the lack of such facilities. The Committee considers that the issue is an important one and that insufficient priority is being given to it.

³⁹ D Williamson, *Minutes of Evidence*, 25 September 2000, p. 950.

Recommendation 83

That access to a space that allows for privacy to conduct interviews with legal practitioners be a minimum requirement afforded to all people in custody.

Recommendation 84

That providing such access be accorded a high priority when resources within prisons are being considered.

Recommendation 85

That the Office for the Correctional Services Commissioner takes up this issue in their standards setting and monitoring activities.

Prisoners in Police Custody

An issue not specifically within the Committee's terms of reference but which was raised by a number of witnesses was that of the conditions of prisoners kept in police custody, often for extended periods of time.

In Bendigo the Committee heard of a recent attempted-hanging while in the police lock-up by a man who was suffering from a psychiatric illness.⁴⁰ The prisoner had been in the cells for 24 hours before the suicide attempt and came to the attention of a VLA lawyer two days later only because another prisoner, who actually cut down the man, told the lawyer about him. In other incidents people were held for 13 days and 19 days in the police cells, for three of these in a small cell without reading matter, writing material, TV, radio or any distractions at all. The witness continued:

It is really frightening seeing people held in those conditions... [A]t Port Phillip when the lock down occurred there, everyone was credited with 15 days for 3, every day was worth five because of the comprehension of what it means to be in solitary and to not have your basic human rights of being able to exercise or to write or read things as you choose.⁴¹

Another witness in Geelong also felt strongly about the conditions in police cells:

The Geelong police cells are underground and must have the lights on 24 hours a day. The prisoners get frozen food to be heated in the microwave oven, and are supervised by one or two

⁴⁰ M Bourke, *Minutes of Evidence*, 26 July 2000, p. 763.

⁴¹ id.

police officers. The police are kept busy. The police officers have to give them the methadone and answer all the needs of the prisoners. The conditions are atrocious. Their cause may not be popular but prisoners are consumers of the legal system here. The longest a prisoner has been held in the cells here is 29 days.⁴²

It is more difficult for a prisoner to access legal services when they are being held in police custody than when in prison. As noted above, police are often too busy to provide other than very basic services to prisoners in lock-ups and facilities are inadequate.

While outside of its strict terms of reference, the Committee includes these comments as important issues brought to its attention which the Committee feels should be heard more broadly.

⁴² M Brugman, *Minutes of Evidence*, 20 June 2000, p. 539.

CHAPTER 11 - CHILDREN AND YOUNG PEOPLE

In the Human Rights and Equal Opportunities Commission/Australian Law Reform Commission Report, *Seen and Heard: Priority for Children in the Legal Process*, it was noted:

The inquiry received extensive evidence of the problems and failures of the legal process for children. Of particular concern is evidence of ... the concentration of specialist services and programs in metropolitan areas, disadvantaging rural and remote children in their access to services, the legal process and advocacy.

Rural and remote children involved with the legal process ... experience problems such as access to appropriate and timely legal services, detention facilities that are not designed to accommodate young people and children's detention or care facilities that are hundreds of kilometres away from their families.¹

The Report goes on to say:

Appropriate participation by children in legal processes is often difficult because legal processes are not designed for children... The Inquiry has had regard to the barriers that an adult legal system presents for children. Our emphasis is on appropriate and effective participation for children.²

Legal Services for Young People

Ms Sarah Nicholson, a lawyer for the Youth Legal Service, a community legal service, noted that there are few specialist legal services for young people available in Victoria and even fewer in rural and regional areas:

¹ Para 1.30, 4.53.

² para 1.31.

[T]here is a lack of youth specific services in Victoria per se, but that void is even more so in rural and regional areas — that is, there is virtually nothing.³

Victoria Legal Aid Youth Legal Service

The services offered by VLA's Youth Legal Service are outlined in some detail in Chapter 4, Victoria Legal Aid. Specialist solicitors operate only out of the Melbourne office but all VLA solicitors representing children undergo a comprehensive training program, including solicitors in regional offices.

The Youth Legal Service

The Youth Legal Service is a state-wide service, although as it employs only one solicitor, its coverage is very limited. It is located at the North Melbourne Legal Service, a community legal centre. It offers a casework service and acts as a resource for community legal centre solicitors and other practitioners working with young people. The Service also undertakes community education including the production of publications and presentations for young people and youth workers. It makes four trips to rural areas each year to provide community education and resourcing work. The Service also undertakes community development and law reform work.

The Youth Legal Service offers two outreach services for young people in the metropolitan region; by contrast, it offers none in rural and regional areas. The Frontyard Youth Service is a one-stop shop located in the city where a number of different services for young people are located. The other, called Outlaw, is based at the community centre in the public housing high-rise flats in North Melbourne. The community centre is used by young people on a daily basis for sporting and social activities. A legal service is provided there once a week. The Committee was advised that both of these services are provided in places where young people feel comfortable and could seek legal advice when they needed it.⁴

While aware of the lack of services available in rural and regional areas, the Youth Legal Service is unable due to lack of resources to offer outreach in any rural or regional areas. The extent of services offered to these clients is phone advice and assistance.

³ S Nicholson, *Minutes of Evidence*, 25 September 2000, p. 958.

⁴ *ibid*, p.959

Wyndham Youth Justice Project

The way that services are delivered to young people is a factor in determining levels of access to those services. Appropriate delivery has been shown to be important for other groups such as Indigenous people. In a pilot project being carried out at Werribee, delivery methods specifically for young people are being developed. The Committee heard evidence from the Werribee Legal Service about the Wyndham Youth Justice Project, which has recently received funding and is being run by the Legal Service.

The Wyndham Youth justice project seeks to work with young people most at risk of drug-and-kind use. It uses prevention and early intervention strategies and aims to support and empower young people and build a community connectedness. It involves four elements: it will pilot a youth legal service; it will work with the Werribee police to develop an independent person register; it will produce research on drug and crime issues from a youth perspective; and it will facilitate a youth justice group.⁵

The Project is a pilot scheme that was launched in August 2000. The Youth Legal Service will provide free legal advice on issues related to crime, justice, drugs and the legal process. It will also provide referrals to other support services and undertake legal education in schools and in the broader community.

By providing legal advice to young people we seek to provide information, support and options at critical times in young people's lives. It is our experience that the resolution of legal issues is an important factor in a person being able to address other issues, such as substance abuse, homelessness and mental health issues.⁶

The pilot will also consider what models of legal service provision and legal education work best with young people. It is hoped that the participation in the project of young people will inform this process.

Secondly the project will work with the Werribee police to establish and operate a register of trained, on-call volunteers who will attend at the police station and act as independent persons when a young person is being interviewed by police. The presence of an independent person is a legal requirement⁷ and police may not be able to interview a young person if an independent person cannot be found. The project aims to assist both the young people and the police.

⁵ *ibid.*

⁶ *ibid.*

⁷ *Crimes Act 1958*, s 464E(1)

Research on young people's experiences and perspectives of justice, crime and drug issues will be the third element of the project. Subsequently strategies and projects will be developed to address the issues and needs identified by the research.

As the final element of the project the legal service will facilitate a Youth Justice Group which will be made up of young people with direct experience of drug and crime issues. The function of this group will be to give young people a chance to speak out about these issues and to be involved in developing responses to them. Involvement in the group should also be a confidence-building experience for those involved and a chance to develop new skills.

Although still in its early stages, the Committee was impressed by the project as presented to it. The provision of direct legal services to young people is seen by the Committee as a high priority for two main reasons. As noted by the Werribee Legal Service, timely advice in relation to legal problems can often greatly assist in enabling young people with multiple problems to address other issues as well. In addition, the Committee notes that early intervention with young people who come into contact with the criminal legal system or who can be identified as at high risk of such contact, can reduce the likelihood of recidivism and hence benefit not only the individual young person but also the whole community.

Another feature of the project is the decision to focus on the establishment of a registrar of on-call volunteers to act as independent people in police interviews. The use of volunteers from the local community and the cooperative approach with local police is particularly noteworthy.

The recognition of the need to involve young people in the project and to include a research component are also commended. Both of these measures are aimed at providing targeted and effective services.

The Committee believes that a project similar to Wyndham should be established in a large regional centre. An area with a large Indigenous population could be chosen in recognition of the over-representation of Indigenous young people in the criminal justice system.⁸ In the 1996 census the greatest number of people of Indigenous origin in

⁸ G.S. Gardiner, *Indigenous People and Criminal Justice in Victoria: Alleged Offenders, Rates of Arrest and Over-representation in the 1990s*, Centre for Australian Indigenous Studies, Monash University, 2001. See particularly page 90: Arrest rates for Indigenous juvenile (under 17) males in Victoria in 1996/7 was 186 per 1,000 which was 4.6 times higher than the non-Indigenous rate. For

regional Victoria was found in the Goulburn Region⁹ and hence the Committee suggests Shepparton as a suitable centre for a regional pilot project.

Recommendation 86

That a pilot project similar to the Wyndham Youth Justice project be investigated for establishment in a regional centre such as Shepparton. The project must include a multi-disciplinary support team including a social worker and a youth worker and be undertaken with police liaison.

The Children's Court

The issue most often raised with the Committee in relation to children and young people was the lack of access to the specialist Children's Court in rural and regional areas. In country Victoria Magistrates sit as the Children's Court while in Melbourne the Children's Court is a separate Court and has specialist Magistrates and a number of support services. This was seen by many as denying children in country Victoria the support services and specialised skill available at the Children's Court in Melbourne.

[O]ther real issues for regional Victoria are Children's Court services — access to a specialist Children's Court clinic and specialist magistrates who are able to hear those cases in the country as they do in Melbourne — and diversion services in drugs.¹⁰

The Committee heard evidence in a number of locations that drugs are a significant and increasing problem particularly for young people. Perceptions that drugs are a predominantly urban problem were dismissed by evidence received. In response to a question about the type of drugs being used in Echuca, two community workers responded:

Harder drugs, not just marijuana.

We are just a microcosm of the rest of society, and we experience the same difficulties as those in other communities.¹¹

Indigenous female juveniles the rate was 28 per 1,000, which is 3.5 times higher than for non-Indigenous juveniles. The book also provides statistics which show that Indigenous juveniles are much more likely to be arrested for offences rather than summonsed and much less likely to receive a police caution than non-Indigenous juveniles in relation to similar offences.

⁹ Parliamentary Library Research Service, Research Paper, *Ethnicity and Religion — People of Indigenous Origin*, 16/11/2000. The Goulburn region had 11 per cent of the total Indigenous population of Victoria of 21,474 or approximately 2,362 people.

¹⁰ M Wighton, *Minutes of Evidence*, 15 May 2000, p. 69.

¹¹ D Walsh, *Minutes of Evidence*, 25 July 2000, p. 672.

In many cases travelling to Melbourne to access Children's Court services was required:

Centralising services to Melbourne can sometimes make it difficult for regional residents. One example of a centralised service is the Children's Court clinic. When a child comes before the Children's Court a clinical assessment by a psychologist of all the child's family members is often required to ascertain family dynamics and provide the court with an understanding of how the family works before it makes orders about the child's protection and accommodation needs. That service is available only in Melbourne. When the family lives in Ballarat, it involves every member of that family getting on a train, going down to Melbourne and spending the day there. That is just one example of instances where many people from Ballarat have to travel to Melbourne to visit one person who, if the situation were dealt with on a more regionalised basis, could travel to Ballarat and conduct the assessment here.¹²

The Court hears cases in both the Family Division and the Criminal Division. In the Family Division it hears and determines protection applications and irreconcilable difference applications relating to children up to 17 years of age.

In the Criminal Division the court hears all criminal charges against children who are aged 10 to 16 years, except murder, attempted murder, manslaughter, culpable driving and arson causing death. These matters would be heard in the Supreme or County Courts. The Criminal Division may also hold committal proceedings for serious criminal offences.

The services available at the Children's Court include a psychologist and a social worker who can prepare reports for the Court; a specialist Victoria Legal Aid duty lawyer; interpreters (advance arrangements need to be made); and a Salvation Army Officer. Access to the Victorian Aboriginal Legal Service is also available as required.

As well as the concern about the lack of services available to children in the country, there were concerns raised about the appropriateness of Magistrates who deal predominantly with adult offenders also dealing with children, and the problems of Children's Court matters being held in the same court facilities as adult matters.

In Melbourne I think it [the Children's Court] runs well; there is a new central Melbourne Children's Court that has good physical facilities and interview facilities, and so on. In the country in some regions matters are still being heard, not at the same time as adult court matters, but either side of them. They are still heard in the large courtrooms by magistrates whose heads are still full from having to sentence and deal with some pretty nasty offences. How a magistrate can go from that to deal with a complex family divisional matter is a little beyond me. It concerns me that particularly with the family division or welfare matters currently there is not a scheme whereby specialist Children's Court magistrates go on circuit to hear the contested matters, which are very difficult cases. Asking regional magistrates to handle such cases is asking a lot of them.

¹² N Feeney, *Minutes of Evidence*, 27 April 2000, p. 6.

Now the court has been elevated in status, which we think is a terrific thing, it would be good if there could be at least some circuit work. I understand there are all sorts of financial constraints and issues surrounding that, but some steps could be taken that would make the elevation of the court more than just symbolic.¹³

And from another witness:

[T]he other issue relates to the family division of the Children's Court. Effectively we have found the situation in country areas to be different to that in the metropolitan area. The reason for that is complex. The Melbourne area has a Children's Court complex which has a certain ethos and way of understanding things. In addition, it has a wide range of service provisions which offer a number of alternatives for families who have difficulties with raising their children.

In country areas magistrates effectively run the Children's Court part-time. I imagine most of their time would be devoted to the more serious criminal and civil matters in the Magistrates Court. The provision of services is often a lot more limited for the families involved.¹⁴

One witness was concerned that the sentences given to children were higher in rural and regional areas, a situation he felt was caused by the lack of specialist magistrates.

In the city there is a specialist Children's Court service, and rightly so, because they have everything that the kids and young people need, with many of the services linked in effectively... As in other country areas the magistrates who hear the adult matters also hear the children's matters. Often you have children mixing with adults in the same court at the same time on the same day.

At the Children's Court in Melbourne they even separate the family division hearings from the criminal hearings, but that does not happen in country areas...where everybody is in it together. Why does that principle apply only to Melbourne? Why does it not apply in rural and regional areas?

I was at the bar for eight years and did a lot of Children's Court work. I saw a lot of committed magistrates... I mean no criticism of the magistrates or anything like that. They do their job well, and it is a hard job. They work in the spirit of the *Children and Young Persons Act* and have a different frame of mind when dealing with kids, rather than looking at them in an adult frame of mind. It is pretty hard to switch from one to the other. Rather than name individuals and cases and produce facts to you, I say that from what I have seen the tariffs in country areas are significantly higher for children compared with my experiences in Melbourne.¹⁵

Country Magistrates' Courts do try to list Children's Court matters separately and are aware of the issues concerning the need to keep children's matters separate as much as

¹³ K Robertson, *Minutes of Evidence*, 15 May 2000, p. 75.

¹⁴ T Munro, *Minutes of Evidence*, 15 May 2000, p. 127.

¹⁵ M Brugman, *Minutes of Evidence*, 20 June 2000, p. 537.

possible. In response to a question as to whether Children's Court matters are held on separate days, one Magistrates' Court Registrar responded:

We do. Again we have difficulties in that we cannot completely comply with the legislation by providing separate buildings and so on for dealing with Children's Court matters. A current example is that this morning we had the unsavoury prospect of running not only a Children's Court but two jurisdictions together, being the family division and the criminal division, which is in conflict with the legislation. We also have people attending Magistrates' Court matters later in the day. We have no other option, unfortunately.¹⁶

The Committee shares the concerns expressed about access to Children's Court Services and specialist magistrates. The Committee is particularly concerned with the anecdotal evidence from one practitioner that children in rural and regional areas are receiving higher sentences than children in the metropolitan area. The Committee believes that the Chief Magistrate should investigate this matter.

The Committee notes suggestions received in evidence that Children's Court magistrates could go on rural circuits. Another possible approach would be to provide training for rural magistrates in Children's Court work. The Committee saw value in both these suggestions. The Committee does not feel it was able to gain sufficient insight into the issues to recommend either of these options. However, the Committee does feel that the matter needs to be addressed and that this should be done as a matter of urgency.

¹⁶ G Chirgwin, *Minutes of Evidence*, 18 July 2000, p. 569.

Recommendation 87

That the Department of Justice reviews the current level of service delivery for Children's Court matters in rural and regional areas with a view to improving access to the ancillary support services and providing training for Magistrates in the range of issues that arise in dealing with Children's Court matters.

Magistrates' Court Juvenile Justice Court Liaison Service

On 1 January 1998 the Victorian Magistrates' Court commenced a Juvenile Justice Liaison Service in response to the high number of young people between the ages of 17 and 21 being sentenced to detention in Senior Youth Training Centres and the adult prison system. In January 1999, following the success of the program, an additional position was established at the Dandenong Magistrates' Court.

The Juvenile Justice Officers try to intervene at the young person's first court appearance to assist with the resolution of personal issues which may lead to further offending before sentencing. The Service provides:

- Qualitative youth training centre suitability assessments;
- Bail assistance by linking young people into appropriate services such as substance abuse counselling, accommodation, psychiatric and psychological services, legal advice and outreach support;
- Detailed qualitative information to the Court about the young persons appearing before the Court; and
- Basic counselling service for the young person at Court and at times on bail.¹⁷

In its 1999/2000 *Annual Report*, the Magistrates' Court reported that the Juvenile Justice Court Liaison Officer saw and assessed 561 people of whom 166 were detained in a Youth Training Centre and 42 were sentenced to a term of imprisonment.

The report notes:

The liaison service is expected to be expanded in 2000/2001 to include some of the metropolitan courts.¹⁸

¹⁷ Magistrates' Court of Victoria, *Annual Report 1999/2000*, p. 45.

¹⁸ id.

The Committee notes that the service is described as state-wide by the Court. However, as both positions are located in metropolitan Melbourne it is unlikely that young people in rural and regional areas would receive the same level of service as those in Melbourne.

Recommendation 88

That the Magistrates' Court considers placing a Juvenile Justice Liaison Officer in a large regional centre to improve services to young people in rural and regional areas.

Technology and Young People

Australian Bureau of Statistics figures show that young people are frequent users of the internet. In the 12 months to August 2000, 73 per cent of people in the 18–24 age group were internet users.¹⁹ In the 12 months to April 2000, 72 per cent of children aged 12–14 years had accessed the internet and although figures are not provided for 16 and 17 year olds it can be assumed the figures for usage in this age group would be similar.²⁰

The internet also has the advantage of anonymity, which for young people particularly in rural areas can be a significant issue.

The traditional avenues for obtaining legal assistance are generally not user-friendly and specifically targeted to children and young people. Many young people with legal problems or issues do not have the skills or the confidence to contact a lawyer by telephone or in person for advice. They are more likely to feel intimidated, confused and embarrassed concerning their legal problem or question. These problems are often exacerbated for children in rural, regional and remote areas, due to easy identification and familiarity in a rural community, and also due to the chronic lack of youth-specific services in rural and regional areas.²¹

A youth-specific website called *Lawstuff* was established in 1997 by the National Children's and Youth Law Centre (NCYLC).²² The site provides legal information specific to each individual State and Territory. In October 1998 *Lawstuff* was expanded to include *LawMail* which provides legal advice via email.

The NCYLC reported that *Lawstuff* has approximately 8,000–10,000 visitors each month. *LawMail* had received 1,101 requests for information in an approximately 19-month

¹⁹ Australian Bureau of Statistics, *Use of the Internet by Householders*, August 2000, p. 8. This figure compares with 59% in the 25–39 year age group, 51% in the 40–54 age group and 18 % for those 55 and over.

²⁰ id.

²¹ Louis Schetzer, National Children's and Youth Law Centre, Submission no.19, p. 2

²² At www.lawstuff.org.au

period from its inception to the end of April 2000, 183 of these coming from Victoria.²³ The Committee believes that usage of the service has increased since these figures were produced as it heard evidence that there is now a six-week wait to get a reply from email questions in Victoria.

We have talked to them [NCYLC] about assisting them with some brokerage model to answer emails from young people in Victoria. But it is not something for which there are resources either here or there.²⁴

The Committee believes that both *LawStuff* and *LawMail* are effective services for young people and particularly young people in the rural and regional areas. They provide a cost-effective method of reaching young people in an appropriate forum which young people are happy to use. The Committee is concerned that the funding for both services is currently inadequate. The Committee would like to see Legalonline establish a link to the site.

Recommendation 89

That Legalonline expands its links to relevant youth sites including LawStuff.

Recommendation 90

That the State Government provides a funding input to existing youth-related law services provided through the internet.

Supervised Child Contact Facilities

In a submission from Horsham the Committee received evidence that the lack of supervised access facilities for non-resident carers to have time with their children was a problem.²⁵ No such facilities exist in the region and individuals must make their own arrangements. This can mean that supervised access is effectively denied to parents if they cannot find a person acceptable to both parties who is prepared to undertake the role of supervisor.

²³ Louis Schetzer, National Children's and Youth Law Centre, Submission no.19, p. 9.

²⁴ S Nicholson, *Minutes of Evidence*, 25 September 2000, p. 963.

²⁵ Adele Campbell, Wimmera Uniting Care, Submission no. 88, p.2.

This situation affects both adults and children and places children in difficult situations when less than satisfactory arrangements are all that can be organised. Access visits taking place in public areas such as McDonald's restaurants are not uncommon as an alternative to supervised contact visits.²⁶ Changeovers taking place at police stations are also a solution used as a last resort where other facilities are not available.

Until recently in Victoria, government-funded centres existed only at the Brimbank Community Legal Centre in Deer Park and in Mildura. However, in the six months to April 2001 seven new centres have opened in Victoria, located at Frankston and Watsonia in the metropolitan area, and in the rural locations of Morwell, Bendigo, Ballarat²⁷, Albury/Wodonga and Geelong. All have been funded by the Federal Government for a four-year period. Some privately run centres also exist in the metropolitan area.

The Committee visited a child access centre in Toowoomba, Queensland, which was very impressive in its simplicity and efficiency. The Toowoomba Children's Contact Centre operates Fridays from 4pm to 7.30pm and on Saturday and Sunday from 9.00am to 5.00pm. The Committee heard that the Centre has been in operation for 11 years without any government funding, surviving on the small fees charged for use of the service, donations and voluntary labour. The Committee was impressed with the work of all involved in this Centre and in particular the volunteer coordinator Ms Judy Nichols who has worked for many years to keep the Centre going.

The Committee commends the Commonwealth Government on its establishment of seven new centres in Victoria, particularly those located in regional locations. The Committee hopes that further expansion will be possible as the national program develops. Evidence received by the Committee in Horsham²⁸ and Warrnambool²⁹ indicated that centres were needed in those towns, neither of which has been catered for in this current round of new centres.

Recommendation 91

²⁶ see, for example, B du Vergier, *Minutes of Evidence*, 21 June 2000, p. 397.

²⁷ The Member for Ballarat Province informed the Committee that the new centre in Ballarat which operates from Child and Family Services offices, was opened by the Federal Attorney-General on 15 February 2001.

²⁸ B du Vergier, *Minutes of Evidence*, 21 June 2000, p. 397.

²⁹ Adele Campbell, Wimmera Uniting Care, Submission no. 88, p. 2.

That the Commonwealth Department of Family and Community services considers a further expansion of child contact centres in regional areas of Victoria.

CHAPTER 12 - TENANCY AND CONSUMER SERVICES

Around Victoria there is a network of tenancy and consumer advice services funded by Consumer and Business Affairs Victoria. There are also public tenants advice services funded under the Rental Housing Support Program, a program of the Department of Human Services.

In addition, the Tenants Union, the Consumer Law Centre and the Consumer Credit Legal Service operate in Melbourne. All three are specialist community legal centres which list their catchment areas as the whole of Victoria.

In regional Victoria there are tenancy and consumer advice services located in Bacchus Marsh, Bairnsdale, Ballarat, Bendigo, Camperdown, Geelong, Hamilton, Hastings, Horsham, Mildura, Morwell, Portland, Sale, Shepparton, Swan Hill, Wangaratta, Warrnambool and Wodonga.

Public tenant advice services are located in each of these locations except Bacchus Marsh, Camperdown, Geelong, Hamilton, Portland and Sale.

The Consumer and Tenancy Advice Services are contracted out to local organisations. They provide advice to tenants and consumers as well as landlords and traders. However, the services offered to tenants and consumers is more comprehensive. Landlords and traders will generally be provided with information and initial advice. In relation to tenants, the services can advocate on their behalf, including non-legal advocacy in VCAT hearings. In addition tenants can access legal advice through solicitors employed by the Tenants Union in Melbourne.

For consumer matters neither the trader nor the consumer is allowed to have legal representation before the Tribunal. However, the workers at the tenancy and consumer advice services can assist consumers to prepare their case. The Committee heard evidence that this can include sitting with the consumer in Tribunal hearings.

I will sit next to them (the consumer), write notes and assist them ... It is just a matter of being aware of what the Tribunal members are looking for in preparing evidence.¹

The Public Tenant and Advice Referral Services provide advocacy, information and advice on a broad range of public housing issues. Such advice is provided to existing public tenants and people wishing to access public housing. A major part of their work is representing public tenants in matters before VCAT. The workers are not legally qualified and therefore representation is limited to non-legal assistance.

The major problems identified by the workers in both these services were difficulties involved in travelling to larger regional centres for VCAT hearings. This is an issue of general concern to people living in rural Victoria and affects their access to all types of services. However, the matter is particularly difficult for low-income people and this point was made by workers from a public tenants advice service.

Many rural towns do not have a regular public transport system, or if they do they may only have one service that goes per day, which means that often by the time they get to town where the hearing is listed they may be too late, or they may have to go the day before in order to get there for the time the hearing is listed, which again creates another expense of having to stay overnight in another town. Generally people I work with are on very low incomes. They are living in public housing so they have to plan financially to attend a hearing if it is a substantial distance away, and that is another barrier there, as with the time lines, because of the short notice they might get of a hearing.²

Another worker made the further observation:

I would also add that a large number of our client group are sole parents — families headed by women — and the expense is then tripled. You have children that you either have to find before and after school care for, or you have to triple the public transport costs and accommodation costs.³

The difficulties associated in travelling to regional centres, in addition to the potentially short notice of hearings means that tenants may not be able to attend their hearings. Workers outlined how the effect of a missed Tribunal hearing can escalate the problems faced by public tenants. Where tenants do not appear there is no opportunity for the Tribunal to hear evidence of the financial situation of the tenant and orders made in their absence may compound existing financial difficulties. If these difficulties ultimately lead to eviction, crisis housing and financial services may then be required, drawing on scarce resources in a situation where it may have been avoidable.

¹ C Sweet, *Minutes of Evidence*, 13 June 2000, p. 245.

² R Ritchie, *Minutes of Evidence*, 26 July 2000, p. 708.

³ *ibid.*

The Committee is concerned that tenants in rural and regional areas, particularly those in public housing whose incomes are usually limited, suffer considerable hardship when required to travel to regional centres or Melbourne for VCAT hearings. The Committee refers to its recommendation No. 1, which recommends the setting up of a litigant transport fund.

All the tenants advice services and tenants have access to the Tenants Union solicitors in Melbourne for legal advice as required. Advice can be provided by phone, fax or email. In some situations the solicitors may represent tenants, however, the solicitors do not travel to VCAT hearings outside Melbourne because of limited resources.⁴ Thus a tenant will have the choice of having the matter relisted in Melbourne, in which case they will have to bear the additional travel and accommodation costs, or proceeding in their local area without legal representation.

The Committee was impressed with the spread of services in regional and rural areas and the obvious commitment and good work being done by the local advocates. It is of concern that Tenants Union solicitors cannot travel to rural areas, thus disadvantaging people outside the metropolitan area. It was suggested to the Committee that an increase in the number of lawyers employed by the Tenants Union would overcome some of this disadvantage.

We have a formal protocol arrangement with the Tenants Union of Victoria and also a 1800 number where in particular situations it is agreed we can draw on their legal branch as well ... [but] their funding levels are not extensive, and while they offer the best they can, they do not have the resources to cover the region. So a clear recommendation to your inquiry is that the Tenants Union of Victoria have more money to provide more solicitors with VCAT experience that we can use.⁵

The Committee considered that a more cost-effective approach would be the better utilisation of video-conferencing facilities. As the main issue identified is the lack of legal representation in VCAT hearings held on circuit in Magistrates' Courts, the Committee recommends that the Magistrates' Court video-conferencing facilities be made available to Tenants Union solicitors in Melbourne to appear in matters in regional Victoria.

Recommendation 92

That the Melbourne Magistrates' Court allows the Tenants Union solicitors access to its video-conferencing facilities for the purpose of representing tenants in rural and regional locations when Victorian Civil and Administrative Tribunal circuit sittings are held at local magistrates' courts that have video-conferencing facilities.

⁴ A discussion of the circuit arrangements of VCAT and its use of video-conferencing facilities is contained in Chapter 16, Circuit Courts.

⁵ A Burchell, *Minutes of Evidence*, 26 July 2000, p. 710.

Use of Technology

The Committee notes that the Tenants Union Website won the Australian Institute of Judicial Administration Award in 2000 for the best Community Sector legal website. The site contains comprehensive contact details for rural and regional tenant services and a number of useful facts sheets. Particularly noteworthy is the availability on the website, and in hardcopy of the handbook, *Tenants Rights – a Guide for Non-English Speaking Tenants*. The handbook comes in ten community languages, all of which are available on the website.

CHAPTER 13 – PRIVATE LEGAL PROFESSIONAL SERVICES

The Committee met with a number of representatives of the private legal profession, both individuals and representatives of professional associations, barristers and solicitors. In reviewing access to legal services in rural and regional Victoria, the Committee took evidence and received submissions on the major issues for rural and regional practitioners affecting service delivery.

There were a number of themes common to the different regions of Victoria that the Committee visited. This chapter provides an overview of the private legal profession in Victoria and discusses the main themes for country practitioners; namely, recruitment of lawyers, professional development, conflict of interest and confidentiality, and a growing tendency for country firms to lose some types of work to larger city firms.

Overview of the Profession in Victoria

Victoria has inherited the traditional English division of the legal profession into solicitors and barristers.¹ Although a law graduate is admitted to practice as both a ‘barrister and solicitor’, the profession is voluntarily divided. Each branch of the profession regulates its area separately. Each branch has its own recognised professional association. Nevertheless, solicitors do have appearance rights in all Victorian courts.

The Victorian Bar

The Victorian Bar is the professional association for legal practitioners who practise solely as barristers. It came into existence in 1884, and in 1900, the first Bar Council (then a Committee of seven members) was formed. Today, the Bar Council is elected annually and comprises 21 members. It is supported by the Bar Secretariat which

¹ For a comprehensive narrative of the history of the divided legal profession in Australia see D. Weisbrot, *Australian Lawyers*, Longman Cheshire, Melbourne, 1990, Chapter 6.

implements the policies and procedures determined by the Council, in areas such as legal education, membership, disputes and member services.² Members of the Victorian Bar are centralised in Melbourne and housed in six buildings in the city. The theory behind this arrangement is the promotion of professional development and ethical control, through the creation of a collegiate environment.³

Barristers in Rural and Regional Victoria

There are approximately 1,350 barristers currently practising in Victoria. Only five barristers in Victoria have chambers outside Melbourne, another five have chambers in Melbourne but live and regularly practice in rural and regional areas.⁴

As the courts are centralised in Melbourne, most court work is carried out in the city. The Bar Council submitted that:

[U]nless and until there is significant local work, particularly in the larger regional centres, it will be impossible to encourage barristers to take up practice in these regional centres on a full-time basis, beyond the few who currently so practice. A method of increasing the availability of members of the Victorian bar in the country would be to provide for more of the work currently done in the city to take place in the country. A significant number of matters that have their origin in the country, particularly commercial matters, are tried in Melbourne.⁵

Enabling Access to Barristers in Rural and Regional Victoria

Although the Victorian Bar is centralised, barristers do travel and are willing to do circuit work. The problem is rather that skilled representation is obtained by furnishing the appropriate fee and, as payment of a circuit fee is part of this cost for rural people, the overall cost of representation may be too great.

The Committee heard from the Victorian Bar Council of the financial constraints on briefing counsel from Melbourne for matters heard in the country:

Members of the Victorian Bar in Melbourne have the expertise to fill the gap, if you like, arising out of the absence of services in the country. However, the economic reality is they are not able to do so viably because of funding constraints. High costs are involved in the provision of services from metropolitan Melbourne to the country. The low level of funding,

² www.vicbar.com.au/vb/organisation/index.htm

³ M Derham, *Minutes of Evidence*, 15 May 2000, p. 107.

⁴ Of the five barristers who have chambers outside Melbourne, two have chambers in Albury, and others are located in Ballarat, Mildura and Sale. Of the five who have chambers in Melbourne but regularly travel to regional areas, two work mainly in Geelong, and others work in Swan Hill, Bendigo and Wangaratta. Information supplied to the Committee by the Victorian Bar, 23 May 2000.

⁵ M Derham, *Minutes of Evidence*, 15 May 2000, p. 108.

particularly in legal aid matters, and the subsequent unavailability, except in special circumstances or by special arrangements, restricts the availability of counsel in the country.⁶

The potentially prohibitive cost of engaging Melbourne-based barristers combined with the limited number of barristers actually located in rural Victoria means that there is a lack of skilled representation in the country. Further, the few barristers who practice in country Victoria must spread their services across a wide array of legal issues, and they therefore have less chance to specialise.

[T]here is an increasing degree of specialisation in the provision of legal services at both solicitor's and barrister's level in metropolitan Melbourne. This becomes a serious problem when dealing with serious or complex civil or criminal matters. It also becomes a problem in specialised jurisdictions. For example, when the Children's Court is sitting in rural or regional Victoria and when the matter is of any seriousness or complexity, as a rule you have to engage counsel from the city.⁷

Although many solicitors provide court representation, this may not always be appropriate in specialised cases.

The centralisation of the Bar also means that there are significant practical and economic impediments for clients in rural and regional Victoria. To attend barristers' conferences means travelling to Melbourne. Video-conferencing could be utilised between barristers and clients in order to overcome this particular difficulty. The Committee put this issue to the Victorian Bar and received the following response:

The Victorian Bar acknowledges that people in rural and regional areas may face difficulty attending barristers' conferences in Melbourne. The Victorian Bar supports initiatives that would remove the need for people to travel long distances to attend a conference where it would be possible and appropriate for clients and practitioners to communicate through other means such as video links. The Bar believes that the internet and other electronic facilities may provide more convenient forms of communication... [I]nternet facilities can be adapted for conferencing fairly easily. A basic camera and software to conduct video-conferencing can be purchased for around \$130 – \$150. The Bar Council would be willing to purchase a small number of sets of equipment to be used by barristers to conduct video-conferences. The Bar Council believes that such an arrangement would be useful to encourage barristers to try such equipment before purchasing their own. It would be useful to newer members of the Bar operating on a more limited budget.⁸

The Committee commends the Victorian Bar Council on its progressive and flexible attitude to new technologies and its commitment to providing video-conferencing for its members. The Committee urges the Bar Council, in promoting the use of video-

⁶ M Derham, *Minutes of Evidence*, 15 May 2000, p. 108.

⁷ *id.*

⁸ Correspondence from Mark Derham QC, Chairman of the Victorian Bar, dated 15 November 2000.

conferencing to its members, to ensure that such technology is fully utilised by providing people in rural and regional areas with access to it.

Recommendation 93

That the Victorian Bar promotes the use of video-conference technology by barristers for client conferences, particularly in rural and regional Victoria.

Recommendation 94

That the Victorian Bar works with the Law Institute of Victoria to develop protocols between solicitors and barristers in the use of technology with a view to minimising the cost of legal representation to rural and regional consumers.

The Law Institute of Victoria (LIV) and Country Law Associations

Founded in 1859, the Law Institute of Victoria is the professional association for Victorian solicitors.

LIV provides a number of services to its members such as advice and information, publications and a library, continuing legal education, dispute resolution, mediation and counselling services, and social activities. All solicitors can be full members of the Institute. Associate membership is available to solicitors, barristers, academics, articulated clerks, students, legal executives and others in the legal industry.

LIV is affiliated with ten Country Law Associations around Victoria. The relationship between LIV and the country law associations is not readily defined. Some of the associations were formed independently and others were set up by LIV. There is no formal documentation governing the relationship, but regular contact between the associations and LIV is maintained through the Country Law Associations' Committee. LIV partly funds the Associations by paying them an amount per member and the Associations annually provide LIV with their income and expenditure statements and balance sheets.

The Committee met with representatives of LIV and the following Country Law Associations: Ballarat and District, Bendigo, Geelong, Gippsland, Goulburn Valley, North East, North West, Western District and Wimmera Law Association. The level of participation, and the activities of the associations, varied from region to region. However, in all cases the Committee was impressed with the extensive knowledge of the area shown by representatives of the associations, their dedication to the profession and their comprehensive submissions on the terms of reference of this

review.⁹ The Committee recognises the work of the Country Law Associations, in terms of the support given to members, and encourages them to develop programs further on a systematic basis. For example, the associations could play a more consistent role in the provision of continuing legal education (see below). The Committee also noted the relative isolation of some of the associations and encourages further coordination among them.

Solicitors in Rural and Regional Victoria

According to figures from the Law Institute as at October 2000, there are 1009 practitioners in country Victoria. This compares with 5212 solicitors in the CBD and 2563 in Melbourne suburbs. Sixty-eight practitioners work interstate or overseas and fall into the 'other' category in the chart below.

⁹ Submission nos. 28, 52, 56, and *Minutes of Evidence*, 27 April 2000, 13 June 2000, 21 June 2000, 29 June 2000, 18 July 2000, 25 July 2000, 26 July 2000, 12 September 2000, 28 September 2000.

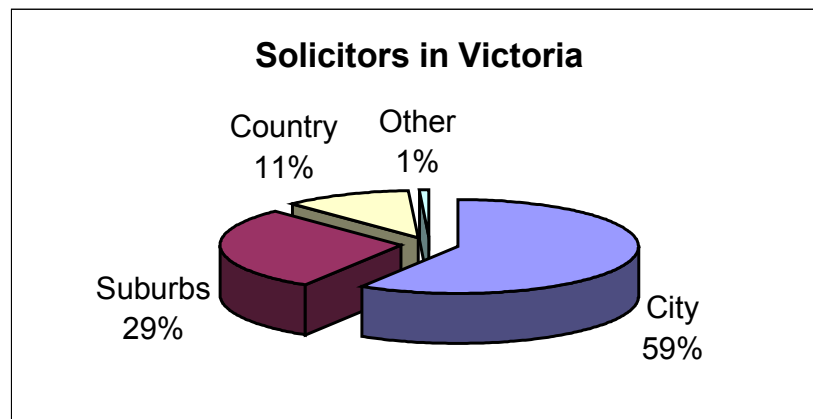


Figure 15

Source: Law Institute of Victoria, October 2000

Although only 11 per cent of Victorian solicitors practise in the country, the rural population is 28 per cent of Victoria's total population. Purely on percentages of population, it could be concluded that rural Victoria is under-represented in solicitor numbers. Further, this under-representation appears to be increasing. In 1997, the rural population figure was 28.5 per cent whereas 13 per cent of Victoria's solicitors practised in the country.¹⁰

It is important, however, to note that population is not the only measure of legal workflow, and that there may be other factors influencing the distribution of lawyers in Victoria. For example, in areas of significant specialisation in legal practice, there is not sufficient workflow to sustain a practice in regional Victoria. The increasing push to specialisation in general in the law means that an increasing number of practitioners will be seeking to work in locations where their specialisation meets its clientele. For some, this is likely to involve moving to larger regional centres or to the city. However, technology is changing the structure of work in the legal profession. One of the effects of this new structure is a gradual shift in demographics. As legal practitioners adopt new technologies they will be able to manage their practices and conduct an increasing proportion of their work without being in close proximity to clients or potential clients. It is the view of the Committee that the increasing use of technology will facilitate sharing of expertise between country and city practitioners, as people will not be hampered by geographical distance in utilising the services of the specialist legal practitioner they require.

LIV conducts an annual survey of Victorian legal practitioners, in order to gather a profile of respondents in terms of areas of practice, gender, age distribution, pro bono

¹⁰ Ian Dunn, Present and Future Bright for Country Practice: The Current State of Country Legal Practices, *The Law Institute Journal*, 72(2) 1998, p. 12.

work, occupational trends, job satisfaction and future prospects, LIV membership and member services. The last completed survey was attached to practising certificate renewal forms distributed in September 1999. The survey, therefore, is not random, as respondents themselves decided whether to complete the questionnaire. While there may be a tendency in a survey of this nature to attract respondents at the two extremes — the very satisfied and the very dissatisfied — the response rate and the final number of respondents taking part in the survey suggest a reasonably good cross-section: 8,435 questionnaires were sent out with 3,119 completed questionnaires returned, representing a response rate of 37 per cent.¹¹

The following results reveal the profile of country solicitors:

- 75% are male and 25% are female;
- The average age is 43 years: 17% are 30–39 years, 36% are 40–49 years and 31% are over 50 years of age;
- They are more likely than CBD practitioners to be an equity partner (34%) or sole practitioner (27%): 11% have one partner, 21% two and 12% three partners;
- More than 50% have 16 or more years of experience; 20% have 16 to 20 years and 37% have more than 20 years' experience;
- 67% expressed satisfaction with their current job;
- The average income is \$70,000, and 44% earn less than \$50,000;
- 88% of country practitioners have access to the internet, similar to the figure of 90% for the total sample.¹²

Unfortunately, LIV was unable to provide comparable statistics for metropolitan practitioners, which would have highlighted differences and similarities.

The Legal Profession and Technology

Too often in the past lawyers have been portrayed as unsophisticated dullards but we know that that is not the case and in fact has never been the case.¹³

The Committee's view is that the legal profession in rural and regional Victoria needs to obtain the highest standards of professional practice management, and this clearly involves the use of information technology. According to LIV, over 90 per cent of solicitors have access to the internet and this figure is only slightly lower (88%) in

¹¹ Law Institute of Victoria, http://www.liv.asn.au/whatsnew/20000901_apcs1999.html

¹² Annual Practising Certificate Survey Results 1999.

¹³ Former Attorney-General Jan Wade at the 1998 Victorian Legal Profession Technology Awards, as quoted in *LIV News* No. 11, November 1998, p. 4.

rural and regional Victoria. However, this does not necessarily mean that these practitioners have individual access to a computer on their desk. Anecdotal evidence received by the Committee suggests that many firms and legal practitioners recognise the benefits technology can offer, but lack the opportunity to capitalise on them.

In its previous report, *Technology and the Law* (1999), the Committee discussed cultural and organisational change within the legal profession.¹⁴ Evidence received by the Committee during the course of this Inquiry has shown many observations made in that report as still relevant in rural and regional Victoria. Although Victorian firms are utilising information technology, the majority need training and exposure to its potential benefits. The Committee heard that many private practitioners in country Victoria use the internet for legal research and find it an invaluable and efficient tool in maintaining their knowledge of developments in the law.

Services available online for practitioners are expanding rapidly, and significant amounts of legal information can be accessed without the need to leave the office. Cases and legislation are available on a number of websites, as well as through subscriber services that supply updates and amendments. The LIV library catalogue can be searched over the internet, and books or articles delivered by fax or DX. Tools such as stamp duty calculators, and damages calculators for use in personal injury cases, are also available online. Increasingly, courts are using technology to enable electronic lodgement and video-conferencing. The benefits of such services to rural and regional practitioners, especially those in relatively isolated situations, are evident: practitioners have access to current information at their desktops, wherever they may be located.

However, the range of tools is rapidly expanding, and keeping abreast of technological advancements is often beyond the means of law firms, especially smaller ones in rural and regional areas. The Committee heard in evidence that rural and regional practitioners would welcome more training and support the use of technology.

The Committee believes that video-conferencing technology can be of great benefit to country firms. It can ensure that the solicitor can advise clients and communicate with the court. The Committee believes that LIV should monitor the Victorian Bar's plans for PC-based video-conferencing facilities and investigate implementing a similar pilot scheme.

¹⁴ Victorian Law Reform Committee, *Technology and the Law*, 1999, p. 213.

The Committee reiterates the view expressed in its last report, *Technology and the Law*:

[P]rofessional organisations should and can do more to aid their members in adopting technology to ensure the legal profession remains relevant to its clients... [T]he Committee has been disappointed with professional organisations in Victoria. The Committee believes that the Law Institute of Victoria should play a much bigger role in ensuring that all its members move through into the next millennium with adequate support and understanding of new technologies.¹⁵

The Victorian Bar has a Local Area Network in chambers provided by the Bar's company, Barristers' Chambers Limited, which enables barristers who want it to have a permanent direct connection to the internet over a 2 MB link. It also employs a full-time Network Administrator to run the network. Approximately 350 barristers and clerks are presently connected and this figure continues to rise. The Bar has a committee that promotes and coordinates this facility. Organising internet connection in this way is extremely cost-effective for individual barristers.

The Committee believes that LIV can also take a leadership role in the uptake of technology among its membership. As the reach of technology increases, its uptake needs to be managed carefully so that people can use the systems they purchase to continue to improve their business performance. Training is essential in this process, as is the ongoing maintenance and upgrading of systems to a high standard. Assistance and support from LIV is particularly important to ensure that smaller firms and sole practitioners are not left behind. This is even more pertinent in rural and regional areas.

LIV reports that it has 'been engaged in relatively constant attempts to persuade country members of the advantages of computerisation, and particularly e-mail'.¹⁶ The Committee believes that the establishment of a formal scheme to encourage the uptake of technology and to assist in its technical aspects could counter the resistance that some practitioners feel to embracing new technologies. The Committee believes that the NSW Law Institute's establishment of the position of technology adviser is a helpful adjunct in enabling the legal profession in that State to capitalise on new technologies. The adviser assists members to make appropriate choices and informed decisions about their technology direction and requirements, and helps members maximise the use of technology in their practices, thereby improving the delivery of legal services to clients. Consultation time with the technology adviser is free to

¹⁵ *ibid.*

¹⁶ Communication from Ian Dunn, CEO of the Law Institute to the Committee, 13 October 2000.

members of the NSW Law Society; however, travel costs are reimbursed by the law firm receiving the advice.

The Law Institute of Victoria could play a key role in the application of new technologies to legal practice management. In embracing a culture of technology take-up, LIV could pave the way for its members in the application of technology in legal practices, training lawyers in the use of IT, and continuing to provide education, training and support in ways that are assisted by the latest technologies. In doing this, LIV could capitalise on the expertise already developed amongst its membership. The membership could be organised into peer user-groups, coordinated by LIV and operating to assist the profession as a whole in the implementation of changes to legal practice management.

The Committee believes that unless LIV itself places technology at the centre of its own operation, it will be unable to bring its rural and regional membership up-to-date on the potential of technology for practice management and further legal education. The consequences will be that rural and regional practices fail to compete and that there will be a further concentration of lawyers in city practices. Currently, the level of experience in country firms is higher than in metropolitan firms, as many country practitioners have spent longer in practice. LIV could play a key role in facilitating the continuing development of expertise by country legal practitioners as well as their increasing technological capability, which in turn could expand the reach of their practices. The Committee would like to see LIV develop an intranet, for use solely by its membership. This would enable all members, including country legal practitioners, to have access to common electronic resources as well as to modes of interactive communication such as bulletin boards.

Recommendation 95

That the Law Institute of Victoria takes a leadership role in the application of information technology in best practice management and service delivery particularly in meeting the needs of rural and regional practitioners.

Recommendation 96

That the Law Institute trains legal practitioners in new technologies in best practice management and service delivery, including its members in rural and regional Victoria.

Professional Development

Continuing legal education programs are said to contribute to profession-wide competence by allowing lawyers to keep up to date in their own and related fields, by refreshing and expanding substantive knowledge and professional skills, and by aiding effective specialisation.¹⁷

The Law Institute conducts seminars, conferences and workshops for the purposes of continuing legal education. The Leo Cussen Institute also offers a legal professional development program, which is widely used by the profession. In 1999, over 8,400 practitioners and support staff participated in the Leo Cussen programs alone.¹⁸ Nevertheless, the Committee heard, nearly without exception, that practitioners outside Melbourne are rarely able to attend seminars in Melbourne due to the time of travel and cost of being away from the office. Many workshops or seminars are held on weekday evenings, which means it is not viable for country practitioners to attend. As one practitioner stated:

In Melbourne there are lots of fantastic seminars put on by the profession and its suppliers — the Leo Cussen Institute, et cetera — which run from 5.00 p.m. to 8.00 p.m. However, you cannot link into them from Mildura because you cannot afford the time or the cost to fly there. We hope that when video-conferencing gets to its next stage we will be able to tap into those seminars. You can already do that with some on an audio basis, but it has not been taken to its ultimate end whereby we should be able to sit in our Mildura office and participate in whatever is going on in a seminar in Melbourne.¹⁹

The difficulty in accessing continuing legal education means that country practitioners need to work harder to keep up to date with changes in the law. This too can prove difficult for small country firms or isolated sole practitioners.

You are behind in changes in the law and it's a constant struggle to keep up because you are small. If you are a practitioner working in a big firm, you constantly have material coming across your desk to keep you up to date. You are meeting with other practitioners who can tell you what's happening. We don't get that. It's difficult to keep up to date with the law and legal practice.²⁰

It was also observed that the centralisation of the Family Court meant it was even more difficult, and less practicable, for rural solicitors to keep up to date with changes in family law, which is an increasingly specialised area. There is therefore a risk that clients are not always receiving the most current information and advice. For example, the Women's Legal Service expressed its view that:

¹⁷ D Weisbrot, *Australian Lawyers* 1990, p. 152.

¹⁸ <http://www.leocussen.vic.edu.au/indexa.htm>

¹⁹ P Maloney, *Minutes of Evidence*, 18 July 2000, p. 577.

²⁰ The President of the Mornington Peninsula Law Association, as quoted in Brown, M. 'A Country Practice' *Law Institute Journal* October 2000 at 19.

[W]hen you have a centralised court in the city, the expertise in rural areas among legal practitioners drops off. Some solicitors associated with our organisation are agency solicitors; they get clients from the rural areas and represent them in the metropolitan courts. An observation made by them is that rural solicitors are not up-to-date with current practices surrounding, for example, family law.

That trend also comes through on our telephone advice service, when rural women ring up. The concepts of family law they talk about — custody and so forth — are sometimes old or outdated. They are not being given up-to-date advice about the agreements that can be made, the trends of family law, the latest cases and so on.

We almost have to re-educate solicitors in the country, although the rural solicitors have to face the fact that the court circuit will only come to the region twice a year, and then only for a couple of weeks at a time. It is probably not good business for them to try to develop an expertise in an area. But that means women do not get good advice, according to our observations, in the country region. Centralised courts have an impact outside the fact that somebody has to travel.²¹

To some extent, this situation, at least in respect of family law, has been ameliorated by the Law Institute's specialisation scheme (see below). There are over 36 accredited family law specialists in rural and regional Victoria.

LIV holds about two or three events outside Melbourne per year, usually in response to a request from country law associations. LIV emphasised to the Committee that it would always assist a country law association to hold a continuing legal education event if it were asked to do so, however there is no regular rural or regional program and no intention to create one. Evidently, this system is not working to the satisfaction of country practitioners. The Leo Cussen Institute has conducted two series of seminars (each covering four topics) by telephone conference to country areas in 1997, 1998 and 1999. Its experience has been that while there is initial enthusiasm for the idea by rural and regional practitioners, the eventual take-up rate is disappointingly low. The reasons for this need to be further investigated and it is suggested that country law associations define their legal education needs and propose a program to LIV and Leo Cussen Institute.

It is the Committee's view that continuing legal education should be readily available and accessible for all practitioners, not only those based in Melbourne, and that it is the responsibility of LIV, as the professional body for solicitors, to ensure that this is the case. LIV receives an annual contribution from the Legal Practice Board specifically for continuing legal education. It also charges for attendance at all seminars and workshops. The Committee urges LIV to give further priority to enabling rural practitioners to access its professional development program. It was clear to the Committee that country practitioners want this access, and that there is a

²¹ A Foster *Minutes of Evidence*, 11 September 2000, p. 800.

need for LIV to explore flexible service delivery for its rural and regional membership, in particular by making legal education seminars and workshops accessible via video-conference. PC-based video-conferencing requires only a computer, microphone and camera and is extremely affordable. Although the quality of such technology may not be appropriate for witness testimony in trials, it is suitable for disseminating information, interactive participation and providing advice. The Committee also suggests that the Law Institute of Victoria thoroughly investigates the provision of continuing legal education over the internet. One method of internet delivery would be to videotape seminars and make them available on the LIV website for access by LIV members. If the receiver doesn't have sufficient bandwidth or other capability, the LIV can have a mail-out facility as back-up.

Recommendation 97

That the Law Institute works with Country Law Associations to develop a framework for providing continuing legal education online, by video-conferencing or by other distance education methods, to rural and regional legal practitioners.

Specialisation

LIV operates a legal specialisation scheme which aims to provide recognition for individuals who have achieved an appropriate level of competence in a particular area of law. According to LIV, the standards for gaining accreditation are designed to engender confidence that practitioners accredited as specialists are able to provide services of high quality. The criteria for accreditation include experience (a minimum of five years in practice), a high degree of involvement in the area of practice, and support from other professionals in the form of references. In addition candidates are required to demonstrate a high level of knowledge and the capacity to apply that knowledge in practice.²²

²² All assessment programs include formal written examination. The emphasis in these examinations is on the practical application of knowledge of the law and procedures. Where appropriate, additional forms of assessment are used to address specific aspects of practice. These include assignments based on mock files, drafting exercises, simulated interviews and examples of the candidate's work. See the overview of the specialisation scheme at www.liv.asn.au/about/specialists/specialists-Overview.html

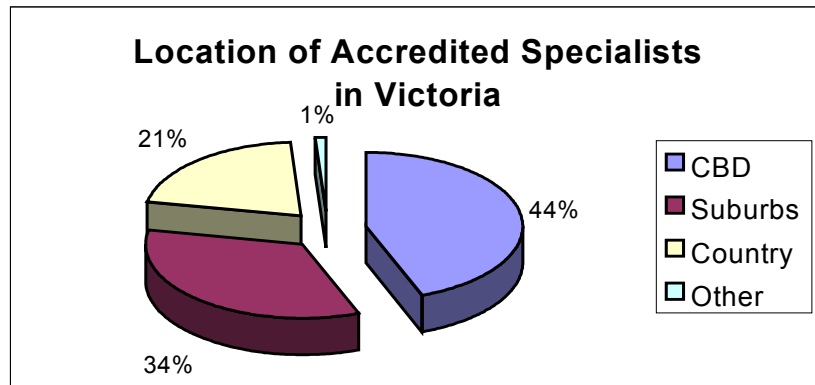


Figure 16

Source: Law Institute of Victoria, October 2000

Of the over 632 currently practising specialists accredited with the Law Institute, 280 are based in the Melbourne CBD, 214 are based in Melbourne suburbs, 131 are based in the country and 7 fall into the ‘other’ category, meaning solicitors practising interstate or overseas. In percentage terms, this means that 5.4 per cent of solicitors in the CBD are accredited specialists, and 13 per cent of country practitioners are accredited specialists.²³

The following table gives a breakdown of accredited specialists in country Victoria by region, and includes non-practising lawyers (unlike the figures above).

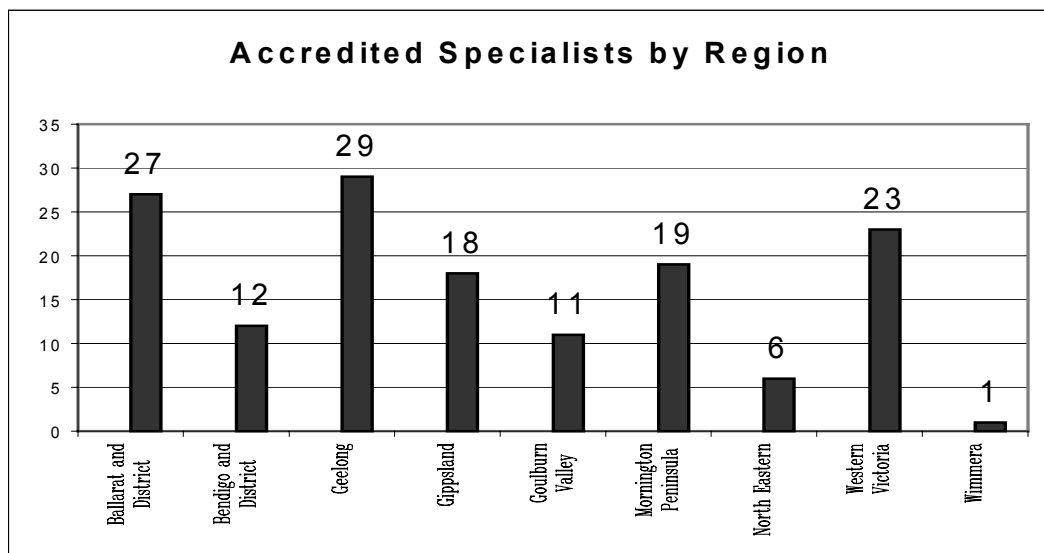


Figure 17

Source: The Law Institute of Victoria, 2000 (NB: includes non-practising lawyers)

The specialisation scheme has been welcomed by country practitioners, with some firms using it as a marketing tool to demonstrate the level of expertise which exists in the country. Although traditionally country solicitors have been generalists working across a broad range of areas, increasingly specialisation is seen as necessary.

²³ As at October 2000, figures supplied by the Specialist Accreditation division of the Law Institute

The downside for the country practitioner is that you never get to be a real expert in anything. Ten years ago I would have said that's a benefit of practice. But the practice of law is becoming so complex and so demanding that a lawyer needs to be extremely competent in the area of law that he or she deals with and that means narrowing your field of practice to where you are competent to do the job. Sadly, I think the days of the sole practitioner are gone.²⁴

Loss of Work

The Committee heard that highly specialised legal work has traditionally gone to Melbourne firms, and that this continues to be the case. There was an impression, however, that country firms were missing out on work which they have traditionally received, due to a perception that they were not capable of handling it.

A common grievance heard from all regions of Victoria was that a significant amount of government and local government work is no longer being given to local practitioners but is being done by large city firms. Local practitioners felt that much of the work could be done at the local level, but was being lost due to new competitive tendering processes. One factor causing this shift has been the amalgamation of local councils. Formerly, there were a number of shires and councils in a given region that would distribute their legal work among local firms. Since amalgamation, however, the legal work has been subject to a compulsory competitive tendering process and, according to evidence received, is often going to larger firms outside the local region. This was also noted to be the case for the work of water authorities and some country hospitals.²⁵

In the Bendigo region:

Prior to Council amalgamation there was probably up to 8 Shires and Councils in the region which distributed their work amongst a variety of firms. Since that, most of that work has been combined into three tenders and the tenders, whilst at least partially being awarded to local practitioners, are more attractive to firms outside the region and so work has been taken away from the region. This pattern has been repeated in other significant areas such as Water Boards.²⁶

At Echuca, it was stated:

Firstly, Melbourne practitioners and firms are trying to move into the country's bigger clients — hospitals, municipal councils, water authorities and those sorts of clients — that were traditionally serviced by local practitioners. I do not know whether the clients see that they need to have Melbourne firms representing them, but there was certainly a push from

²⁴ President of Mornington Peninsula Solicitors Association, as quoted in Brown, M. 'A Country Practice' *Law Institute Journal* October 2000 at 19.

²⁵ Marika McMahon, Bendigo Law Association, Submission no. 56, p. 6.

²⁶ *ibid.*

Melbourne firms to pick up the bigger country clients. That is a declining area of work for country practitioners.²⁷

A practitioner in Gippsland stated that agencies such as the Office of Public Prosecutions, State Trustees and VicRoads did not give their work to local practitioners, and so the amount of work and consequently the number of lawyers in the region was declining. Further, the region has seen

...local government work, legal work for water and sewage authorities, and other agencies whose centres of power are in rural and regional Victoria accepting tenders from Melbourne on the basis of a perceived inadequacy in the legal competence of rural and regional lawyers.²⁸

The effects of government and councils situated in rural and regional Victoria sending their legal work to Melbourne are potentially far-reaching. It underscores a perception that Melbourne firms are superior, and means less work for rural and regional firms. In turn, lower levels of profitable work will decrease the amount of time spent on pro bono matters, or on legal aid work. It may also affect salary levels and the possibility of recruiting lawyers to the region.

For example, the Goulburn Valley Law Association submitted to the Committee:

The reduced profitability of many country practices has put pressure on lawyers to stop providing services that are uneconomic. In the past provision of these services was seen as part of the 'swings and roundabouts' of practice but many practitioners now say they just can't afford to do legal aid work.²⁹

The Committee encourages a reversal of this trend in order to maintain the viability of legal practice in rural and regional areas. Government and local councils should develop and implement policies to ensure that the work generated in regional and rural areas stays in those areas and that local firms are awarded such work.

Recommendation 98

That government authorities and local councils located in rural and regional areas develop strategies to ensure that their legal work is, where appropriate, carried out by local practitioners.

²⁷ S Bubb, *Minutes of Evidence*, 25 July 2000, p. 685.

²⁸ Mark Woods, Tyler Tipping & Woods, Submission no. 62, p. 2.

²⁹ Stephen Bubb, Goulburn Valley Law Association, Submission no 52, p. 4.

Complaints and Regulation

Prior to the enactment of the *Legal Practice Act 1996*, the legal profession was largely self-regulating. Professional standards and conduct disputes were addressed by the Law Institute (solicitors) or the Victorian Bar Council (barristers). With the introduction of the *Legal Practice Act 1996*, regulation of the profession is the responsibility of three independent bodies: the Legal Practice Board, the Legal Ombudsman and the Legal Professional Tribunal. The Legal Practice Board delegates its regulatory responsibilities to Recognised Professional Associations (RPAs), which it accredits and monitors. Each legal practitioner is obliged to belong to a RPA.³⁰ These associations receive and investigate complaints about conduct and costs disputes, and have the authority to prosecute practitioners. LIV and the Victorian Bar have been accredited as RPAs and now have regulatory responsibility for solicitors and barristers respectively.³¹

The Legal Ombudsman can also investigate disputes about conduct, but is not empowered to investigate costs disputes. The Legal Ombudsman is also empowered to review the decisions of the RPAs and their handling of complaints. To assist in carrying out her responsibilities, the Legal Ombudsman has developed a community outreach program, which sees the Legal Ombudsman and her staff regularly visit rural and regional centres and meet with a variety of legal service providers and representatives of community groups.³²

The Legal Professional Tribunal conducts formal conciliation or can make a final decision on a complaint. If the case involves misconduct, the Tribunal can fine, reprimand, suspend or cancel the solicitor's right to practice.

The Attorney-General has commissioned a review of the regulatory arrangements under the *Legal Practice Act*, the draft report of which is currently circulating for comment. The review is to investigate and report on the following matters:

- the effectiveness and efficiency of the regulatory system and the operational relationships between the Legal Practice Board, the Legal Ombudsman, the Legal Profession Tribunal and the Recognised Professional Associations under the Act;
- the division of responsibility for complaint handling between the Office of the Legal Ombudsman, Victorian Lawyers RPA and the Victorian Bar;

³⁰ Legal Ombudsman, *What You Need to Know about the Regulation of the Legal Profession*, Fact Sheet at www.legalombudsman.vic.gov.au/publi-RegOfLegProf.htm

³¹ As Victorian Lawyers RPA Ltd and Victorian Bar Inc.

³² Kate Hamond, Legal Ombudsman, Submission no. 9, p. 1.

- the consistency of the statutory requirements of the Act with accepted good business practice in the wider economy;
- whether breach of ethical conduct reviews should be conducted by the Law Institute and Bar Council alone;
- any occurrences of waste, duplication or inefficiency in the operation of the legal profession caused by the regulatory requirements of the Act; and
- any related matter.

Any outcome from this review that clarifies and simplifies the complaints procedure for rural and regional Victorians would be a welcome contribution to Victorian regulatory arrangements.

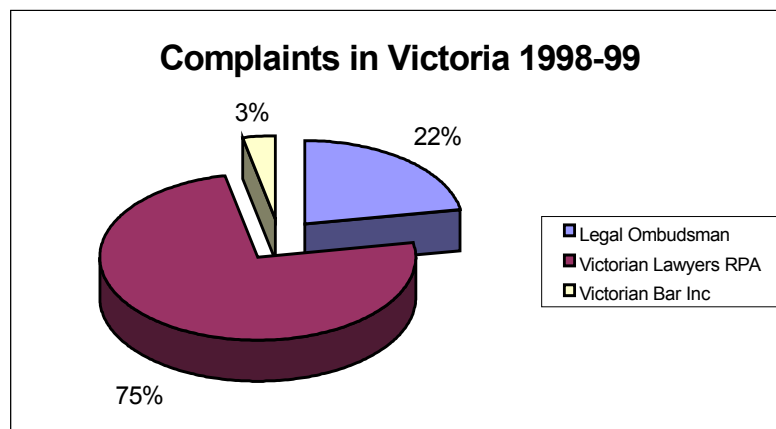


Figure 18

Source: Office of the Legal Ombudsman, 2000

In 1998–99 the number of complaint and dispute files opened by the Legal Ombudsman was 636; Victorian Lawyers RPA opened 2114 files and the Victorian Bar opened 95.

Victorian Lawyers RPA received the highest number of complaints, but it does not keep detailed statistics. The office of the Legal Ombudsman was able to provide the Committee with detailed statistics. Approximately 23 per cent of complaints received by the Legal Ombudsman are from people in rural and regional Victoria.³³ Detailed statistics provided by the office of the Legal Ombudsman show several areas where complaints made by rural Victorians are greater per capita than those from their city and suburban counterparts.

Bearing in mind that the rural and regional population of Victoria is 28 per cent of the State's overall population, the Ombudsman received more complaints from country Victorians in the following areas of law: criminal law (35.29% of complaints

³³ From 1 January 1997 to 30 June 1999, Submission no. 9, p. 12.

received), crimes compensation (45.83%), mortgages (32.69%) and wills (55.55%). Aside from the small numbers of complaints that emanate from interstate or that cannot be sourced, the remainder comes from metropolitan Melbourne.

There is no particular category of complaint about lawyer behaviour and the legal system that emanates in greater numbers per capita from country Victorians. Areas where complaints represent the highest levels are breach of confidentiality (26.92%), communication failures (24.18%), conflict of interest (29.89%), the court system (29.16%), delay (27.58%), duress or intimidation or pressure to settle (28.57%) and negligence (27.31%). In many other categories of complaint, country Victoria was significantly under-represented. For example, there were no complaints pertaining to communication with the client of another practitioner and no complaints of anti-competitive practice. Only 2.63% of complaints of poor communication about costs came from country clients.³⁴

The Legal Ombudsman began its rural outreach program as a response to the under-representation of rural and regional Victorians in complaints received.³⁵

Issues in Rural Areas

For Presidents of each of the ten country law associations in the State, lifestyle was the major factor in their decision to live and practice in country Victoria.³⁶ The attractions of country living included minimal travel time to work, time for involvement in local sporting activities, a different pace of life, and the lower cost of living. For example, the President of the Western District Law Association stated:

I reckon I have an extra two hours in the day because there is no travel time. I leave home at eight and I'm at work by eight. At lunchtime, if I want to go home and have lunch with my wife or children I can. Or I can go for a walk along the beach.³⁷

Professionally, however, some drawbacks and difficulties were cited. The following section details some of the issues affecting country practitioners and the provision of legal services in rural and regional areas.

³⁴ For the full statistical breakdown, see Submission no. 9, p. 14–15.

³⁵ Kate Hamond, Legal Ombudsman, Submission no. 9, p. 2

³⁶ M. Brown, 'A Country Practice', *Law Institute Journal* October 2000, p. 14.

³⁷ Tony Robinson, quoted in Brown, M. 'A Country Practice' *Law Institute Journal* October 2000, p. 15.

Recruitment

All representatives of the country law associations and the private practitioners who gave evidence before the Committee agreed that recruitment of lawyers to rural and regional areas is difficult and is becoming an increasingly pressing problem. There is an identified shortage of graduates prepared to move away from Melbourne. According to the Law Institute, there are 1742 Victorian practitioners aged under 30. Only 87 of these, or 5 per cent, are based in the country.³⁸

The main issues in attracting graduates to country areas are encapsulated in the submission of the Bendigo Law Association.:

There is a difficulty in attracting practitioners to Bendigo... Working in the country is seen as a lesser option; there is an inability of country practitioners to meet the salary scale, and fewer country students are being accepted into law degree courses. High-quality law graduates are less committed to practising in rural areas. Evidence of this is the fact that the quality and number of unsolicited applications that country solicitors receive has dropped, particularly in recent years, and the low profile of country practice.³⁹

The perception of country firms being a 'lesser option' to graduates was one repeated to the Committee around Victoria. There are a number of possible explanations for this trend. It may be due to the increasing urbanisation of Australia, with many services being centralised and urban populations increasing. It would also be due in part to the fact that most country firms cannot compete with the salaries being offered by city firms to graduates. Further, accepting a position in a country firm involves a move and change of lifestyle, and career options may appear limited. For many graduates, working in the country may simply not be an option because it has never been considered, or not enough information about it is available. The Committee believes that more needs to be done to expose young lawyers to the benefits of working in rural and regional Victoria. The Committee agrees with the submission of the Bendigo Law Association:

There has been a practice that the practitioners who have come to Bendigo have done so following a period of work experience or vacation placement in the country. The formal establishment of the scheme for students to do such and the coordinated policy and promotion of the country option could both help alleviate this problem.⁴⁰

The Committee is of the view that the positions offered by country firms should be actively promoted to graduates. As a first step, the Committee believes that LIV should further develop ways of promoting rural firms to graduates or providing

³⁸ M. Brown, 'A Country Practice' *Law Institute Journal* October 2000, p. 17.

³⁹ Marika McMahon, Bendigo Law Association, Submission no. 56, p. 5.

⁴⁰ *ibid*, p. 6.

incentives to graduates to work in rural or regional areas. The Committee heard that LIV's present activities in this regard include receptions for newly admitted practitioners during which graduates are informed that vacancies exist in country Victoria.⁴¹ The Committee suggests that LIV institutes a scheme to ensure that these graduates are provided as a matter of course with detailed information on the opportunities for them in rural and regional areas. Student placements, such as summer clerkships, should be promoted and facilitated, so that students are able to appreciate working in a country practice.

One main disincentive for graduates to work in rural firms that cannot be ignored is the inability of such firms to compete with salaries offered by major city firms. Addressing salary inequalities among law firms may not prove realistic. However, it may be the case that education on the advantages of living in the country and the breadth of professional experience offered, as suggested above, may contribute to a more realistic evaluation of salary level.

Further, certain strategies that have been applied to attract the medical profession to rural areas may be applicable to the legal profession as well. The Commonwealth Department of Health and Aged Care has formulated a range of long-term strategies to increase numbers of medical professionals in rural areas over time, and to provide encouragement to medical students to consider a career in a rural area. For example, some of its research has suggested that medical graduates who have a rural background are more likely to return to rural areas to practice once they have completed their training. There are however a number of barriers which prevent rural students from participating in tertiary education, such as the financial burden of travelling to and living in the city.⁴² The Rural Australia Medical Undergraduate Scholarship (RAMUS) Scheme commenced in August 2000 and provides scholarships to medical students from rural areas, to assist in meeting accommodation, living and travelling expenses while studying.

The Committee believes that research needs to be done to assess whether such a scheme would translate appropriately and effectively to law graduates. Anecdotal evidence suggests that it is law graduates with a rural background who return to rural areas to practise. As the representative of the North West Law Association stated:

Our view is that the best way to recruit lawyers to Mildura is to recruit Mildura people to be lawyers. We offer work experience to people as they go through high school. We offer summer clerkships to people as they are studying at university, with a view that they perhaps

⁴¹ Communication to the Committee from Ian Dunn, CEO of the Law Institute, 13 October 2000.

⁴² Department of Health and Aged Care, Rural Health Fact Sheet *Medical Undergraduates* at www.health.gov.au/ruralhealth/publications/factsheet/ramus.htm

may not come back when they first graduate, but by the time they are 28 or 29 and want to settle down with a family they will come back to the area. That is only in its early stages. We have been trying that for eight or nine years. Certain people have come back, but probably not enough.⁴³

The Committee notes that it is primarily the responsibility of individual regions and practitioners to develop ways of making legal practice in country areas an attractive option for new graduates. Nevertheless, the Committee sees a role for government also.

Recommendation 99

That the Victorian Government, in conjunction with the country law associations through LIV and universities, researches ways to promote working in regional and rural practices to law graduates, including education and placements at the undergraduate level and initiatives such as scholarships for rural students.

Conflict of Interest and Confidentiality

The *Legal Practice Act* 1996 lays down general principles of professional conduct, which include the duty to avoid conflicts of interest, both between the practitioner or firm and client, or between clients (s. 64).

Lewis and Kyrou acknowledge that:

[T]he problem is acute in country areas where refusal to act for both parties may mean that one of the parties will be greatly inconvenienced by having to go to another town to find another practitioner...

However much you may desire to avoid this inconvenience to someone who may be a well-established client, you should bear in mind that the risks associated with finding yourself in a conflict of interest situation are just too great.⁴⁴

The Committee received evidence that the problem of conflict of interest arises often in small towns with one or only a few legal firms. Concerns were raised on this subject by community groups, lawyers and public advocates.⁴⁵

The Legal Ombudsman provided the Committee with an example of conflict of interest in country areas. In 1998, the Ombudsman reprimanded two practitioners, each of whom worked for the same firm but in separate offices in different country towns. The conflict of interest occurred when one office of the firm undertook to

⁴³ P Maloney, *Minutes of Evidence*, 18 July 2000, p. 575.

⁴⁴ G Lewis and E Kyrou, *Handy Hints on Legal Practice*, The Law Book Company 1993, p. 33.

⁴⁵ See, for example, M Camilleri, *Minutes of Evidence*, 27 April 2000, p. 36; K Hamond, *Minutes of Evidence*, 15 May 2000, p. 142; C Sweet, 13 June 2000, p. 242; M Martin, *Minutes of Evidence*, 13 June 2000, p. 250.

represent a man whose wife had already engaged the services of another of the firm's lawyers through another office. The husband had been a long-standing client of the firm. He and his wife had a property dispute, the sum of which was relatively small. The wife first saw a legal practitioner in one branch office and a solicitor commenced to act for her. The husband then saw his solicitor at the other branch office. As the dispute seemed likely to settle, the solicitors sought the consent of both parties for the firm to act for both. As there were no other family law practitioners in the area, both parties consented, but when the dispute did not settle difficulties arose regarding conflict of interest. The wife became very unhappy and complained to the Office of the Legal Ombudsman. The determination was that:

1. It was improper for the firm to act against the long-standing client in the first place;
2. It was inappropriate for the firm to have accepted the husband's instructions once it had accepted the wife's; and
3. Both practitioners should have realised this.⁴⁶

The problem was raised with the Committee, yet it is difficult to propose effective and realistic solutions. Conflict of interest problems in the provision of information have been lessened to some extent where there is a nearby community legal centre which provides legal information through community education programs. In some areas, CLCs offer legal education classes, for example, divorce workshops. This means that both parties can access information, but are not given individual advice. It means that some legal information is available and locally accessible.

As the representative of the Central Highlands Community Legal Centre noted:

For example, we were seeing people who wanted assistance with divorce on an individual basis and we decided to run divorce classes, which we have been doing for quite a while. They do not become clients of the centre, we see them as a group. Similarly, we offer family law advice sessions in relation to both property and children. Again, the people participating in those sessions are not clients because we are seeing them as a group. People can come to the sessions and get two hours of fairly extensive information in both those areas. After that, if any would like to go further and see a solicitor individually, we can make them appointments. Those classes were set up to try to alleviate the problem of conflict of interest on a first-in, first-served basis, and we are providing information to a larger group of people. Even if we cannot eventually assist them all individually because we have seen the other partner, at least they have received some information.⁴⁷

⁴⁶ Communication to the Committee from the Office of the Legal Ombudsman, 12 October 2000.
⁴⁷ M Camilleri, *Minutes of Evidence*, 27 April 2000, p. 37.

The problem is more acute when individual advice or representation is required. This is particularly the case in family law matters. The Committee heard reports of one party in a family law or family violence case obtaining advice from all the firms in a given town, thereby meaning that the other party could not access any legal advice in that town.

For example, the representative of the community legal centre in Warrnambool noted that:

The conflict of interest issue is quite common in a lot of legal services in smaller towns Australia wide. It has come up again and again. You might have two private law firms in a small town. I have known of family law cases where, for instance, the male party goes to both those solicitors, sometimes with the intention, because they know the rules, of acting as a barrier to the other party — the woman, in most circumstances — seeking legal advice.

If we are visiting that town as an outreach service we can provide that woman with one other option; but often, particularly in contested family law matters, we can provide only one-off advice or appropriate referrals if legal aid is available. Private solicitors would have to be in another town, and that is assuming the woman can afford it and can travel to that other town. There is a range of issues that stem from the conflict of interest.⁴⁸

The obvious solution would be to be able to access a lawyer in another town in the region, but as noted above, this is sometimes not feasible or creates significant difficulties due to transport and financial constraints.

The Committee also envisages that technology has an important role to play in accessing lawyers from another town or region. It is the Committee's vision that video-conferencing technology be available in a central point in each town, such as the local community centre, which can be used by all members of the community for a minimal cost. The Women's Justice Network, set up by the Queensland Legal Aid Office, is an excellent example of how remote communities can access a solicitor and have a 'face-to-face' appointment via a computer.⁴⁹ As discussed in Chapter 3, in order to achieve this vision, the Government must give priority and funding to improving communications in rural areas. In this way, clients would be able to have face-to-face appointments with a lawyer in another town or region, without the difficulty of travelling.

Recommendation 100

That the Victorian Government gives priority to the installation, in consultation with local communities, of video-conferencing facilities in rural and regional locations.

⁴⁸ J Williams, *Minutes of Evidence*, 21 June 2000, p. 392.

⁴⁹ See Chapter 4 for more information on the Women's Justice Network.

Confidentiality is another potential problem in small towns with only one or two law firms. Solicitors have both a contractual and an ethical duty to keep the affairs of clients confidential. The Legal Ombudsman noted that country Victorians complain more about breach of confidentiality than their urban counterparts. Often, the nature of a small country community, where everybody knows everybody else, means that this issue will arise, despite the best efforts of country lawyers. For example, unsuccessful attempts at negotiation of the case on behalf of the client can be seen as a breach of confidentiality. Often, the issues may arise in conjunction with, or as a result of, a conflict of interest issue. The Committee believes that the vast majority of practitioners are scrupulously ethical and that to some extent a loss of privacy in one's daily business is part of living in a small town.

CHAPTER 14 – PRO BONO SERVICES

Large city firms do not have potential legal aid clients arrive on their doorstep. They do not frequently have to explain the deficits in the justice system to needy and often stressed clients, nor resign themselves to providing unpaid or reduced fee assistance because nothing else is available to the client. For country and suburban lawyers pro bono is no longer a matter of choice but an inevitable and inescapable part of practice in a system which is failing to meet the community's basic needs for access to justice.¹

For centuries, pro bono work has been willingly accepted as part of a lawyer's professional duty toward the community, to ensure equal access to justice for disadvantaged people. In Victoria today, the significance of pro bono work is rising, as litigation costs increase and access to legal aid is further restricted. Although pro bono legal services are provided through a number of formal schemes, the bulk of pro bono work still appears to be the direct, informal, and often unacknowledged provision of legal services by lawyers to clients who are unable to pay. This is particularly the case in regional and rural Victoria.

This chapter will provide an overview of the formal pro bono schemes operating in Victoria and then go on to describe the pro bono work done by practitioners in regional and rural Victoria. The Committee recognises the often disproportionate burden carried by rural and regional practitioners in the provision of pro bono services and makes recommendations aimed at relieving this burden while ensuring access to legal services for the community.

Definition

Pro bono publico is a Latin term meaning 'for the public good'. In general terms, it is used to refer to legal work carried out for little or no fee. However, while the concept of pro bono work is readily accepted by the legal profession, there does not seem to be a universal view on what work is covered in practice. Many professional bodies, law

¹ Michael Gawler, Immediate Past President of the Law Institute of Victoria, 'Pro Bono in the Suburbs and Country', Paper presented at the First National Pro Bono Law Conference, August 2000, Canberra.

firms and legal assistance schemes have adopted their own definition.² Evidence given to the Committee highlighted the range of views among the profession whereby the concept could stretch to cover legal aid work, ‘no win no fee’ cases, legal advice and representation for friends and family, and civic work such as membership of a local school board. However, an analysis of the different definitions used around Australia as well as literature on this topic suggests that such work should not be covered within the concept of pro bono. For example, the NSW Law Foundation studied the question of what types of services constitute pro bono work, and concluded:

The view supported by most participants, and endorsed by the Centre, is that only ‘professional legal services’ should be regarded as pro bono work. ‘Professional legal services’ encompasses a wide range of activities which draw upon a lawyer’s legal training, experience and skills. It includes legal advice and representation as well as activities designed to improve particular laws or aspects of the legal system. Many lawyers will choose to fulfill their sense of public duty through general civic and charitable activities, such as membership of the board of a hospital. While these services should be recognised and encouraged, they should not be regarded as pro bono legal services if they do not involve the exercise of professional skills.³

It is not the function of this report to suggest yet another definition of pro bono legal services.⁴ In Australia, the most widely accepted definition is that offered by the Law Council of Australia:

1. A lawyer, without fee or without expectation of a fee or at a reduced fee, advises and/or represents a client in cases where
 - i) a client has no other access to the courts and the legal system; and/or
 - ii) the client’s case raises a wider issue of public interest; or
2. The lawyer is involved in free community legal education and/or law reform; or

² For an overview and analysis of some of the definitions used in Australia, see C Arup, ‘Defining Pro Bono: Models and Considerations’, Briefing Paper for Plenary 2, The First National Pro Bono Law Conference, August 2000, Canberra.

³ NSW Law Foundation, *Future Directions for Pro Bono Legal Services in NSW*, Sydney, 1998, p. 96. See also R West, ‘Characteristics of Successful Pro Bono Schemes’, Briefing Paper, The First National Pro Bono Law Conference, August 2000, Canberra, who writes: ‘Pro bono work does not include work performed at no charge as a favour to a friend or an existing or prospective client for “business development” reasons. Nor does it include work performed for private schools, clubs or organisations (such as arts and cultural organisations) with which a lawyer has an association, meritorious as these activities may be’.

⁴ One of the aims of Voluntas, the Pro Bono Secretariat, is to move toward a single shared definition of pro bono publico in Australia. The Secretariat has its own definition which has slightly adapted the Law Council of Australia definition to include the concept of advice or representation where a client may have some access to the courts or legal system, but that access is inadequate.

3. The lawyer is involved in the giving of free legal advice and/or representation to charitable and community organisations.

This definition is used by 87 per cent of rural law firms in Victoria (defined as more than 30 kilometres from the GPO), according to a survey conducted in 1999 by the Pro Bono Secretariat of the Victoria Law Foundation, Voluntas. The survey sought to identify and document firms' thoughts about, attitudes to, and practices in pro bono work. This survey is the first of its kind in Australia and gives a valuable description of the commitment of Victoria's legal profession to pro bono work. Over five hundred firms responded to the survey. For the purposes of this report, therefore, this definition will be used.

Formal Schemes

A number of formal and semi-formal pro bono schemes operate in Victoria, all of which are Melbourne-based. In general, their aim is to match lawyers with pro bono cases. The merits of a formal scheme are undisputed. For the community, formal schemes can offer greater equity of access by providing a point of access to practitioners willing to take on pro bono work. For the profession, the schemes allow a degree of choice in the area of work taken on, and will screen requests for assistance so that lawyers work only for the most meritorious cases.⁵

The relevance of the present formal schemes to rural and regional practitioners, however, is not well defined. The Committee received evidence of disparate notions of pro bono in the country and in Melbourne. Pro bono work in rural and regional Victoria is increasingly done by private practitioners to fill the gaps in government-run services and legal aid. In rural and regional practices, pro bono is not usually a matter of choice. Rather, it is done on a daily basis, as lawyers advise people on their rights and their options, help others to understand government bureaucracy, and assist those who are unable to obtain legal aid funding, without charging a fee for their time.

By contrast, firms in the city have a choice in the type and amount of pro bono work they undertake. Often, they may conduct test cases or public interest cases on a pro bono basis, but they do not regularly proffer free advice or take on clients for free as a consequence of diminishing legal aid.⁶ Bearing this in mind, some of the formal pro

⁵ Victoria Law Foundation, *Pro Bono Directory: A Guide to Pro Bono Opportunities for the Legal Profession*, 3rd edition, October 1999, p. 7.

⁶ For example, Freehill Hollingdale & Page, in its submission to the Australian Law Reform Commission for its review of the federal civil justice system distinguished 'between those cases which may be appropriate for consideration on a pro bono basis, and those which simply

bono schemes and much of the debate and literature on the issue are simply not always valid for rural and regional areas.

A number of the larger Melbourne firms currently conduct in-house formalised pro bono schemes. For such schemes to succeed they require the support of senior members of the firm, a co-ordinated approach with a dedicated budget and the development of guidelines which cater for partner aspirations for pro bono referrals. The pro bono work is usually not mandatory but encouraged with, for example, fee credit being given for pro bono work undertaken.

The Committee suggests that these firms may be able to assist in rural and regional areas by providing specialist advice to rural and regional practitioners undertaking pro bono work. The Committee notes the existence in the United States of a scheme whereby experts in particular areas of law participate in organised but informal lunches with legal practitioners undertaking pro bono work in their field. This skills-sharing and network-building exercise is a more structured version of the informal networking that already takes place in the legal profession. The Committee believes that rural and regional legal practitioners have less opportunity to participate in this type of activity and that other methods of supporting them need to be developed. The Committee recommends that the Law Institute of Victoria and the Bar Council develop opportunities for rural and regional legal practitioners to access specialised advice to assist them in undertaking pro bono work.

Recommendation 101

That the Law Institute of Victoria and the Bar Council develop opportunities for rural and regional legal practitioners to access specialised advice to assist them in undertaking pro bono work.

Overview of the Schemes

LIV Legal Assistance Scheme

Run by the Law Institute, this scheme was set up in 1999 with the assistance of an initial grant from the Victoria Law Foundation. The scheme maintains a database of solicitors who are prepared to volunteer their services to the scheme. Applicants must be residents of Victoria, or have a legal action that arose in Victoria, be unable to obtain legal assistance from any other community agency and satisfy a means and

represent the demand for a greater aggregate of available legal services to meet an unfunded need'. ALRC, *Managing Justice*, Report 89, Ch 5 at note 35, January 2000.

merit test. Applicants must be able to pay for disbursements, including Counsel's fees. All areas of law are considered and assistance depends on having a volunteer with the appropriate expertise.

Some 2000 solicitors around Victoria have volunteered to assist clients under the Law Institute Scheme, yet in the 15 months since the inception of the scheme, only 180 applications for assistance have been received and around half of these were referred to volunteers.⁷ The Scheme is not extensively advertised and referrals are expected to come through solicitors.⁸

The Committee did not receive evidence to explain the small number of applications received by the Law Institute. The Committee notes that 2000 lawyers offering their time without remuneration is a significant resource which is being under-utilised. An evaluation of the scheme needs to be undertaken.

The Victorian Bar Council Pro Bono Scheme

The Bar's scheme was established in 1995. It does not have formal eligibility criteria, but requires that the case has merit and that the assistance requested is either legal advice, or legal representation in a court or tribunal. Over 700 barristers have indicated their willingness to participate in the scheme, which is indicative of the number of barristers already participating in pro bono work. The scheme is not widely advertised, but receives requests for assistance from a variety of sources including judges and officers of the County and Federal Courts, staff from the registries of courts and tribunals, Public Interest Law Clearing House (PILCH), solicitors, community legal centres and the Law Institute.

Barristers also conduct informal pro bono work. In relation to rural and regional Victoria, this is evidenced during circuit work, where barristers may be called upon to assist by the bench, solicitors and unrepresented clients present in court. Voluntas conducted a survey of the pro bono activities of Victorian barristers in June 2000⁹. The results showed that some barristers of the Victorian Bar do a considerable amount of pro bono work and that criminal law is the most common area of law in which pro bono legal assistance is provided. The survey showed that 90 per cent of respondents

⁷ M Gawler, 'Pro Bono in the Suburbs and Country', Paper presented at the First National Pro Bono Law Conference, August 2000, Canberra.

⁸ The Scheme is referred to on Legalonline.

⁹ Roberts A, *Survey of Pro Bono Activities of Victorian Barristers*, Voluntas, June 2000. Based on a survey mailed to all practising members of the Victorian Bar in November 1999. 1,380 responses were received.

had done some pro bono work at some stage over the past two years and that, on average, the median monthly value of pro bono work done by barristers is \$1,500.¹⁰

Further, the survey found that of those barristers who practice criminal and family law, 68 per cent believed that in the last three years cuts to legal aid funding had resulted in a large increase in demand for pro bono services. The application of VLA guidelines may affect the demand for pro bono services. For example, the VLA guidelines relating to funding for criminal appeals currently refers to section 24(4)(c) of the *Legal Aid Act* which requires that consideration be given to the reasonable grounds for the appeal. How this requirement will be interpreted is not made clear.

Mr Mark Derham of the Victorian Bar Council made the following comments in evidence before the Committee:

It is unsatisfactory for our legal system to depend upon that kind of voluntary work to the extent it does. It is unsatisfactory to depend upon the continuing goodwill and availability of qualified professionals who just happen to be present. Even though pro bono work and pro bono appearances are a very good thing for the profession to be undertaking, they are no substitute for professional representation based on properly prepared briefs prepared by people who are properly remunerated. Ultimately, there will be a limit to the suitability of the reliance on pro bono services in the country as there is in the city.¹¹

Law Aid Scheme

In 1995 an amendment to the *Legal Aid Act* added Part VIA and established the Law Aid Scheme. A one-off grant of \$1.68 million was made to the Scheme by the State Government in 1996. The Scheme is designed to be self-funding. It is managed by eight trustees, four of whom come from the Victorian Bar and four from the Law Institute of Victoria.

Law Aid is available for civil litigation excluding family law. The applicant must pay a non-refundable application fee of one hundred dollars. The applicant's means and the legal merits of their case will be considered before an application is granted. In addition the applicant must have a solicitor or barrister who is prepared to represent them on a 'no win, no fee' basis.

The Scheme will provide money to an applicant's solicitor to pay for disbursements such as expert fees, medical certificates, travel, accommodation, witness expenses and filing fees. This money must be refunded by the applicant if the case is successful. In addition the Trustees of the Scheme are entitled to claim up to 10 per cent of a

¹⁰ *ibid*, p. 3.

¹¹ M Derham, *Minutes of Evidence*, 15 May 2000, p. 112.

successful verdict or settlement. However, in the majority of cases the Trustees have sought 5 per cent as the fee payable to the Scheme.¹²

Where a case is unsuccessful, the applicant will not be required to repay any of the funds from the Scheme or the professional costs of their solicitor and barrister.

In November 2000 the trustees of the Law Aid Scheme announced that the Scheme would fund a wider range of cases.¹³ Cases that are considered to be particularly worthy, although unlikely to result in a return to the Scheme, will now be funded.

These are cases that have real merit or public interest... The change has been made because the trustees perceived there was a need to fund very worthwhile matters, both to the individual and the public, that fell outside the strict guidelines the trustees were bound by.¹⁴

The Scheme has not been as widely utilised as was originally anticipated and the trustees are keen to encourage more applications.¹⁵ In the period since it began operation until November 2000 the Scheme had received almost 200 applications of which close to half have been funded.¹⁶

Public Interest Law Clearing House

The Public Interest Law Clearing House (PILCH) was established in 1994 to coordinate the pro bono work of the private legal profession in cases of public interest. PILCH takes requests from individuals and community organisations and screens them against a public interest criteria. To be eligible, a case must:

- affect a significant number of people, or
- raise matters of broad public concern, or
- impact upon disadvantaged or marginalised groups, and
- require a legal remedy, and
- require addressing pro bono publico, meaning, for the common good.

Cases that fit the criteria are passed on to member law firms or barristers. Membership of PILCH is comprised of a number of major and middle-sized law firms, the Victorian Bar Council, the four University law schools, the corporate legal department of AXA and Lawyers Engaged in Alternative Dispute Resolution (LEADR). Its members are mostly based in Melbourne, although PILCH's services are accessible to

¹² At www.liv.asn.au

¹³ *Law Institute of Victoria News*, No. 11, November 2000, p. 3.

¹⁴ id

¹⁵ id

¹⁶ id.

rural and regional Victorians. However, there are some factors that act as a disincentive or barrier to use of the service. These include the fact that PILCH does not have a 1800-number to reduce the costs of calls made on an STD basis. In 1999, PILCH received 284 inquiries for legal assistance. Of these, 47 emanated from regional Victoria, or 16.54 per cent of the total.¹⁷

Federal Court Assistance Scheme

The Federal Court has established a Court Appointed Referral for Legal Assistance Scheme in all jurisdictions except South Australia. In Victoria the establishment of the scheme was announced in November 1998. The operation of the scheme is incorporated into the Federal Court Rules, and is known as Order 80. The rule allows a Judge to refer a litigant for assistance to a pro bono lawyer. The Judges must decide that a referral would be appropriate, taking into account the means of the litigant, the ability to obtain assistance elsewhere and the nature and complexity of the case. The Chief Justice commented:

The Court is constantly assessing what it can do to improve access. The scheme is not intended as a substitute for legal aid, but will provide assistance in some difficult areas of the law where no assistance is presently available.¹⁸

The Court maintains a list of practitioners who have volunteered to do pro bono work in different areas of law. The Court may order that professional fees be paid if litigants obtain costs orders in their favour. Litigants must already be a party to proceedings in the Court.

Coordination of Pro Bono Schemes

The question of coordinating pro bono services and schemes is currently being much debated in Australia. The central issues concern the maximisation of finite resources and the improvement of service delivery. To date, pro bono schemes have been established, and have grown, on an ad hoc basis. Their effectiveness in terms of client needs and how they relate to each other is now due for review.

The NSW Law Foundation has studied the question in detail and has recommended a new structure of a central contact point to coordinate pro bono schemes to ensure centralised policy development and improved access to pro bono services while

¹⁷ Caitlan English and Samantha Burchell, Public Interest Law Clearing House (PILCH), Submission no. 15, Annexe A.

¹⁸ Federal Court of Australia, 'Federal Court and Victorian Bar Cooperate to Establish New Scheme', Media Release, 30 November 1998 at www.fedcourt.gov.au

maintaining a diverse range of local and institutional schemes in operation.¹⁹ The proposed central coordinating agency would operate as a first point of contact and direct referring organisations or individuals to the most appropriate scheme. Its role would also involve the development of information materials, the promotion of pro bono services to community organisations and the development of policy making in the area.²⁰

The extent and coordination of pro bono assistance schemes in Victoria is arguably more advanced than in other Australian States. This may be due to the establishment of Voluntas, a pro bono Secretariat, by the Victoria Law Foundation. Voluntas was established in 1998 with the aims of increasing opportunities for lawyers to undertake pro bono work, to coordinate and establish links between pro bono schemes and to increase knowledge about pro bono services generally. Voluntas, while performing some of the functions of a coordinating agency, does not operate as a central reference point for locating the most appropriate scheme. This means that potential clients must ‘shop around’ for the most appropriate service, or may remain unassisted because of a lack of knowledge of available services.

An important role for a coordinating body must also be evaluation. Kate Harrison of Gilbert & Tobin has reviewed models of service delivery, considered criteria to assess the effectiveness of current models and reviewed options for changing the structural framework within which services are provided to improve service delivery.²¹ She suggests that each model of service delivery (eg, private firm based, court based, public interest based) be evaluated using the following criteria:

- Whether the scheme is easily found and accessible
- Whether it is responsive to need
- Whether it delivers results to the client
- Whether it has potential to grow to meet needs
- Whether it is resource-effective, giving value for money
- Whether it is well coordinated with related services.

Most models rated poorly using the above criteria. In terms of the Committee’s review of legal services, the criterion of access to the schemes is particularly relevant. None of the formal schemes in Victoria would qualify as easily found and accessible

¹⁹ New South Wales Law Foundation, *Future Directions for Pro Bono Legal Services in NSW*, Sydney, 1998, p. iii.

²⁰ *ibid*, p. 114.

²¹ In her presentation given at the First National Pro Bono Conference, Canberra, August 2000. Gilbert & Tobin is a large Sydney commercial firm which has two solicitors working full-time providing pro bono services.

to the public, with perhaps the exception of PILCH. Harrison suggests that there is very limited promotion of most models, that firm schemes are unknown, selective and ad hoc, that there is no one-stop access point or gateway and that the public has problems finding the appropriate scheme.

Harrison's analysis also points to the need for structural change. Harrison's preferred model, judged on the above criteria for assessing effectiveness, is that of a single central clearinghouse. The clearinghouse would screen requests and refer clients to lawyers on a register, as well as provide information about schemes, promote pro bono work to lawyers and provide pro bono support services and policy work. This model should maximise accessibility to the public, as there would be a single entry point for all schemes, it would identify unmet need and give greater control of resources.²²

The Commonwealth Attorney-General has recently appointed a pro bono task force which will examine the coordination of resources under existing pro bono schemes, as well as consider issues such as promotion of pro bono, best practice resources and quality assurance guidelines and mechanisms. A number of Victorians have been appointed members of the task force. The task force originated from the First National Pro Bono Conference held in Canberra in 2000.

Extending Formal Schemes to Rural and Regional Victoria

The reality for legal practitioners and firms in rural and regional areas is that they generally do not have the size and financial capacity to undertake the volume of pro bono work done by large city law firms. Nevertheless the Committee observed that a large amount of pro bono work is undertaken by rural and regional practitioners and the Committee believed that this work is insufficiently recognised.

The question to consider is how formal pro bono schemes with defined eligibility criteria can assist rural and regional practitioners. As Francis Regan writes:

The most intractable problem...is the high volume of routine, but not necessarily uncomplicated cases. These family, criminal and civil cases appear in courts around the globe every day. Despite the best of intentions, pro bono schemes are unable to provide the volume and variety of services required by these cases. The historical problem has not changed: prior to the creation of state schemes, the pro bono resources of the profession were limited and unable to cope with ordinary citizen's demand for legal services... The inescapable conclusion

²² *ibid.*

is that without considerable complementary state involvement, pro bono schemes are, on their own, unable to ensure equal justice.²³

The Committee agrees with the above conclusion: that pro bono schemes cannot, and should not, be a substitute for sufficient legal aid and government-funded legal services. Legal Aid and pro bono schemes are not interchangeable, although they can work together well in a complementary fashion. The NSW Law Foundation highlighted in its principles for the delivery of pro bono legal services that the primary responsibility for ensuring access to justice for all people, regardless of their means, rests with the government. It also encourages the legal profession and pro bono scheme coordinators to take an active part in the debate about legal aid funding and to take on a lobbying role.²⁴

The Committee therefore does not feel that formal pro bono schemes are able to impact greatly on the type of pro bono work regularly done by rural practitioners, which is often advice where the client is unable to pay. Nevertheless, it makes some suggestions as to how the resources of large firms and the established schemes could be used to benefit rural and regional areas.

The available resources needs to be more fully utilised. For example, some of the lawyers in regional centres who volunteered to participate in the LIV Scheme, may be interested in staffing a free legal advice drop-in clinic in the evenings, such as those run by CLCs, in a rural town where there is no such service. This would be done in consultation with the local practitioners and law association.

Recommendation 102

That the Law Institute of Victoria and the Country Law Associations consult with their members on the innovative use of volunteer legal practitioners, focussing on rural and regional areas.

The Committee felt that one important issue for pro bono work in rural and regional areas was the difficulty of matching the pro bono work needed by the client with a legal practitioner who had both the time and the particular skills necessary for that work. While personal contacts with other legal practitioners is usually the way such cases are referred on, the Committee suggests that where such an approach is not successful a more extensive matching exercise could take place by the use of

²³ Regan, F., 'Legal Aid Without the State: Assessing the Rise of Pro Bono Schemes', *University of British Columbia Law Review* 33(2), 2000, at 398.

²⁴ New South Wales Law Foundation, *Future Directions for Pro Bono Legal Services in NSW*, Sydney, 1998, p. 99.

electronic bulletin boards. The Committee suggests that the LIV host such a site which would allow access only to member of the LIV or participating practitioners.

Recommendation 103

That the Law Institute of Victoria in consultation with the Country Law Associations develops an electronic bulletin board for legal practitioners to publicise pro bono work.

Similarly, the services of PILCH are not used as widely in country Victoria as they could be. Over the last 5 years, the number of matters accepted by PILCH and referred to law firms emanating from regional and rural Victoria was fifty-three. Twenty-eight matters came from non-profit community organisations or groups of individuals who met the public interest criteria and 25 matters were on behalf of individuals. Of the matters which were accepted, none would have been eligible for legal aid and it is unlikely that the type of advice sought would have been within the expertise of a community legal centre. For example, legal advice was sought on environmental/planning issues, incorporation advice, tax, discrimination, the PERIN system and consumer issues.²⁵

Recommendation 104

That Legalonline includes a list of pro bono services available, and links to websites where appropriate.

Retired solicitors are also a valuable resource and could be more fully utilised. The Association of American Retired People (AARP) in Washington DC has had a pro bono program since 1977, and provides to retired lawyers office space, administrative resources and professional indemnity cover to facilitate their pro bono service.²⁶ Retired legal practitioners in country towns could be encouraged to work on a pro bono basis, for a few hours per week, to provide free information, advice, casework and representation. The Committee notes that there would be issues associated with the need for practising certificates and professional indemnity insurance but believes that the feasibility of the use of retired legal practitioners should be further investigated. A properly evaluated pilot project should be established in one regional location.

²⁵ Caitlan English and Samantha Burchell, Public Interest Law Clearing House (PILCH), Submission no. 15, p. 4.

²⁶ C. English, 'A Report on the Delivery of Pro Bono Legal Services in the United States and England', Report to the Churchill Trust, June 2000.

Such a strategy should be facilitated by the State Government and implemented by LIV and the country law associations. Consultation with local community legal centres should also be undertaken.

Recommendation 105

That the State Government, in conjunction with the Law Institute of Victoria and the country law associations, sets up a pilot scheme in one regional location using innovative models of pro bono service delivery such as the utilisation of retired lawyers to provide pro bono legal service.

Types and Extent of Pro Bono Legal Services in Rural and Regional Victoria

[T]he reality is that there is a significant amount of legal advice provided by the profession to rural and regional Victoria on a pro bono basis without any recognition whatsoever.²⁷

It is difficult, if not impossible, to quantify the extent and monetary value of pro bono work performed across Victoria.²⁸ To give some indication of its extent, across Australia during 1998-99, law firms estimated that 1,782,000 hours was spent on pro bono work, comprising 826,600 hours providing legal services without a fee, 835,200 hours providing legal services at a reduced fee and 120,300 hours of involvement in free community education and law reform work.²⁹ From the public hearings conducted around Victoria, it is clear to the Committee that rural and regional practitioners conduct a significant amount of pro bono work, often on a daily basis, much of which is unaccounted for, and unrecognised.

The President of the Ballarat Law Association reported in his evidence before the Committee:

It is almost impossible for legal practitioners anywhere not to provide telephone advice, referrals and information, and to participate in advisory activities without a fee. I believe the need to do so is greater in the country, and I submit that all country solicitors provide

²⁷ David Faram, Law Institute of Victoria, Submission no. 4, p. 4.

²⁸ The NSW Law Foundation's 1998 report states that, 'The exact nature and extent of the contribution to pro bono work by all legal practitioners in New South Wales is not known. This is due in part to the informal way in which such work is performed (many lawyers do not keep any record of their pro bono work), the wide range of views as to what activities constitute pro bono work, and the absence of a comprehensive survey of the legal profession. However, some indication of the nature and extent of pro bono legal services can be drawn from recent studies and the activities of the major pro bono schemes.' (p. 21.) This is also relevant to Victoria.

²⁹ Australian Bureau of Statistics, *Legal Services Industry, Australia, 1998-99*, Cat No. 8667.0.

extensive pro bono services – not only by giving telephone advice and referrals but also conducting first free interviews, which is now an almost universal process in the country.³⁰

Much of this work is seen by the lawyers themselves as part of having a country practice and living in a small community. The establishment of ‘first interview free’ schemes has been in recognition of the need to provide some legal advice without charging.

Nevertheless, the survey responses indicated, as did the law associations and practitioners who gave evidence to the Committee, that such pro bono work is becoming increasingly unsustainable for rural and small regional firms. The survey results suggest that rural firms simply do not have the capacity to absorb more pro bono work, and that some are struggling with the burden.

In my view local legal practitioners are called upon above and beyond the call of duty to provide pro bono services. We all provide pro bono services as part of our duties of practice, if you like, but I feel as though the legal profession is being used as a bit of a stopgap for the shortage of other facilities that are not available. Frankly, I think that we have to plug the hole that exists because of some other shortage.³¹

Areas of Law

The Voluntas survey showed that the areas where the demand is greatest for rural firms to do pro bono work are family law and criminal law, and that the inability of the client to pay is a key factor for deciding to do the work on a pro bono basis (rather than because the matter has public significance).³²

The pro bono work done by country practitioners is mainly either the provision of information and advice or free representation in court. Other types of pro bono work undertaken by country practitioners such as volunteer work at advice clinics and agreeing to advise and represent local community groups or associations will also be briefly considered.

Information and Advice

‘Information provision’ is not client-specific. It may include an overview of the applicable law, information about services that are available or providing a leaflet

³⁰ R Saines, *Minutes of Evidence*, 27 April 2000, p. 3.

³¹ P Howman, *Minutes of Evidence*, 20 June 2000, p. 380.

³² Noelene Gratton, Voluntas, Submission no. 18, p. 6.

about a topic.³³ The legal information available in Victoria is not always known about, widely distributed or accessible to rural and regional communities. The issue of access to legal information has been addressed in Chapter 3 of this report.

By contrast, ‘advice’ involves giving opinions about a client’s own problem. In rural and regional areas such advice may be provided on a pro bono basis, and due to the inability of the client to pay, or the disproportionate expense of sending an account and chasing up payment, may be part of a ‘first interview free’ which goes beyond the allotted time of 15 or 30 minutes.³⁴

Preliminary legal information and advice is provided by community legal centres in an effective way in the towns where they are established. For example, it was noted by the president of the Western District Law Association that since the Legal Centre opened in Warrnambool there has been less demand on private practitioners to provide free advice. That Legal Centre provided advice and casework to 579 clients in 1998–99.³⁵

The Committee notes that community legal centres provide an important service in the provision of information and advice. However, there are many towns in Victoria without a community legal centre. There are five CLCs in rural and regional Victoria located at Warrnambool, Mildura, Wodonga, Ballarat and Morwell. Although most CLCs attempt some outreach services, resourcing is always an issue.

Victoria Legal Aid also provides legal advice services through its employed solicitors, usually in the areas of criminal law, family law and general civil law. It also provides advice-related minor work services. Minor work is generally defined as legal services provided without a grant of assistance and generally limited to one hour of advice and negotiations.³⁶ The VLA offices at Geelong, Bendigo and Bairnsdale and Morwell all provide free advice which is not means tested. Again, however, most Victorian towns do not have a VLA office and outreach is limited.

Recommendation 106

³³ ‘Information provision occurs where the client does not give specific details of their own particular problem, or where the specific details of the problem are irrelevant to the information given, or where there is no discussion of options pertaining to the specifics of the client’s problem, but including information about services that are available, a referral to another service or sending a leaflet about a topic, by phone, mail, or face-to-face.’ (National Information Scheme: Community Legal Centre, Data Definitions, May 1996.)

³⁴ See *Minutes of Evidence* from Echuca and Bendigo.

³⁵ Community Connections (Vic) Ltd, *Annual Report 1999*.

³⁶ Victoria Legal Aid, Submission no. 8, p. 2.

That the Law Institute of Victoria, through its Country Law Associations, encourages the recording of pro bono activities carried out by rural practitioners, and undertakes collation of findings and research to determine the nature of such work, with a view to establishing suggested guidelines for targeted pro bono work within rural communities.

Representation and Advice in Court

A common theme running throughout the evidence and submissions collected by the Committee is that lawyers are often asked by Magistrates to represent a person in court, who would otherwise be unrepresented.

According to the President of the Ballarat Law Association:

Numerous examples can be cited of pro bono appearances by legal practitioners in Magistrates Courts in cases where legal aid is either not available or cannot be arranged in time but where legal representation is warranted.³⁷

The Voluntas survey also found that rural firms are much more likely than other firms to be approached to do pro bono work in courts or to be referred work from courts.³⁸ In a number of towns there was a high degree of constructive collaboration between court registrars and local legal practitioners. Of the 52 Magistrates' Courts in Victoria, there are 11 in country areas which have no duty lawyer scheme in operation. These are Ararat, Stawell, Horsham, Hopetoun, Nhill, St. Arnaud, Robinvale, Swan Hill, Seymour, Corryong, Cobram. According to VLA's evidence, four of these courts (Corryong, Nhill, St Arnaud and Hopetoun) are low priority for establishing a duty lawyer scheme as they are small registries used primarily for contested hearings and civil matters. Evidence collected by the Committee suggests that where duty lawyer schemes have been established, they operate well in terms of ensuring that every litigant at least has the chance to speak with a lawyer on the day of court. However, in towns with a court but no duty lawyer scheme, practitioners are under increasing pressure to fill in the gaps. Victoria Legal Aid, in its evidence to the Committee about the courts, stated:

Many of them are not under a formal duty lawyer scheme, but they rely on private practitioners to come in and assist where possible, almost on an at-call basis. We think that is a great thing for the practitioners to be doing, but that it is inconsistent, ad hoc and not a reliable form of service. As an organisation we would prefer to see every regional court that sits regularly and has, for example, mentions lists and people in custody to have access to the

³⁷ R Saines, *Minutes of Evidence*, 27 April 2000, p. 3

same level of services as do courts in metropolitan Melbourne and most country regional centres.³⁹

The Committee recognises and commends the amount of pro bono work done by rural practitioners at the request of the Court. However, it is unfair to impose this burden where it can be avoided and it is unreasonable to expect rural lawyers to carry out the role of duty lawyer on a pro bono basis. The Committee therefore strongly supports the move to establish duty lawyer schemes in every Magistrates Court in Victoria. These matters are further considered in Chapter 4, Victoria Legal Aid.

In some small towns, where there are very few firms, or mainly sole practitioners, some evidence suggested that it could be too time consuming for the private profession to run the duty lawyer scheme. If this is the case, it would therefore be the responsibility of VLA to ensure that on mention days, a VLA employee solicitor from the nearest office is available to act as duty lawyer.

Volunteer Services

Most community legal services have an evening advice service, staffed by lawyers who are volunteering their time. This is true in both Melbourne and country areas. During the Committee's hearings throughout rural and regional Victoria, evidence from community legal centres attested to the support given by private practitioners to their advice clinics.

Caitlin English, Magistrate and former Executive Director of PILCH suggests:

[P]ublic interest organisations such as community legal centres need to move beyond the traditional volunteer model of the night time advice services and creatively engage with the private profession in an institutional way to facilitate pro bono opportunities to address some of the legal issues the most disadvantaged members of the community face. There is a need to identify gaps in the delivery of legal services and structure creative pro bono solutions using the resources of large law firms.⁴⁰

The Committee would take this even further and suggest that community legal centres and large law firms consider ways to bring the work of community legal services to rural towns where there is no established centre.

In June 2000, the Victorian Attorney-General announced the establishment of a scheme whereby private firms may provide one or more of their solicitors on

³⁹ M Wighton, *Minutes of Evidence*, 15 May 2000, p. 74.

⁴⁰ English, C., Bringing the International Pro Bono Experience to a Community near You, or, How Innovative Manhattan Pro Bono "Best Practice" Can Work in Brimbank or Bankstown, First National Pro Bono Law Conference, Canberra, August 2000.

secondment to a Community Legal Centre or Victoria Legal Aid for a period of six to twelve months.⁴¹ A working group has been convened to develop the plan.

Advice/Representation to Community Organisations

The Committee heard of numerous examples in rural and regional Victoria where local firms would provide legal advice, and if necessary representation, to local community groups and non-profit organisations, for example, a local sporting or social club. The work mentioned to the Committee was done willingly, with a sense by local practitioners of contributing to their community. In cases, however, where the work may be burdensome or time consuming, advantage could be taken of the resources of large law firms who wish to undertake pro bono work. If the case has a public interest element, it could be referred to PILCH.

Alternatively, the community organisation could be matched to a city law firm willing to undertake pro bono work. The idea of institutional matches between law firms and public interest organisations, such as community welfare organisations, is successfully in place in parts of the US. For example, Volunteers of Legal Service (VOLS) in New York encourages and facilitates institutional matches between law firms and public interest organisations such as hospitals.

The matches enable the law firm and organisation involved to develop close relationships so that the firm develops expertise and can handle large cases expeditiously. The Sullivan Cromwell AIDS project has matched lawyers at Sullivan & Cromwell to regularly attend a New York hospital to work with mothers who have AIDS, on legal issues related to future planning. Advice provided includes areas such as benefit entitlements, return to employment issues, insurance and debt management. Another project involves lawyers from the same firm working with incarcerated mothers at Richers Island, the City's prison.⁴²

Large law firms could, for example, be matched with community organisations in a rural area, to provide advice to both the organisation and its members or clients on a regular basis.

Recommendation 107

That the Law Institute of Victoria investigates the setting up of a scheme for institutional matching of law firms and public interest organisations in rural and regional Victoria. The merits of using video-conferencing links to facilitate this scheme should be part of this investigation.

⁴¹ 'Hulls Announces Pro Bono Initiative', Media release, Office of the Attorney-General, 6 June 2000.

⁴² English, C., Bringing the International Pro Bono Experience to a Community near You, or, How Innovative Manhattan Pro Bono "Best Practice" Can Work in Brimbank or Bankstown, First National Pro Bono Law Conference, Canberra, August 2000, p. 18.

CHAPTER 15 – THE MAGISTRATES’ COURT IN REGIONAL AND RURAL VICTORIA

Without doubt legal and court services have, over many years, either been reduced or totally withdrawn from the local communities to be either located in larger regional centres or centralised in Melbourne... The court is an integral and central outlet for justice services but in rural Victoria many people believe they are being treated as being part of an outpost or backwater from Melbourne. This philosophy not only reduces the rural community access, it also costs them financially in terms of time, travel and accommodation expenses.¹

In Victoria, the role of the Supreme Court, County Court, and Magistrates’ Court is to hear both civil and criminal matters. Each court has the power to hear and determine criminal offences against State and Federal law. The Children’s Court hears and determines both State and Federal criminal matters involving children aged 10 to 16 years, and its family division hears and determines protection applications and irreconcilable difference applications. Additionally the Magistrates and Children’s Courts also exercise a Crimes (Family Violence) jurisdiction.

While these courts are separate entities and operate as such in metropolitan areas, the Magistrates’ Court in regional and rural Victoria acts as a multijurisdictional court. Rural and regional Magistrates’ Courts have to administer Supreme Court, County Court, Family Court and Victorian Civil and Administrative Tribunal (VCAT) circuits. Registrars in rural and regional Magistrates’ Courts act as registrars for all these jurisdictions² and have to provide support and information to the public on all courts and tribunals.

The terms of reference for this review require the Committee to investigate the adequacy and accessibility of court and tribunal services in regional and rural Victoria. In undertaking this investigation the Committee is to examine court locations in light of population shifts and the appropriateness of circuits. The Committee visited Magistrates’ Courts across regional and rural Victoria and was struck by the differences in facilities, and resources between the courts. At all courts the workload was heavy.

¹ John Dinsdale, Clerk of Courts Group, Submission no. 31, p. 1.

² Rural and regional registrars do not presently act as Registrars for VCAT.

This chapter will begin with an overview of the location of Magistrates' courts and the frequency of sittings and will examine the appropriateness of the location of courts in light of population trends. The chapter will then analyse the physical conditions of these courts and outline plans for future developments. It will finally highlight some of the issues that were raised in evidence including the role of country registrars, staffing issues for regional and rural courts, support services in regional and rural courts and the use of technology in these courts. The next chapter will focus on circuit arrangements with a view to analysing their appropriateness in meeting the demands of regional and rural Victorians.

Location of Courts and Facilities

In examining the location of Magistrates' courts, some history and context is relevant. In 1984, the then Law Department instigated a courts management change program that looked at the future and operation of courts in Victoria, the physical condition of courts and the information systems and support services available in courts. Part of this program involved a Courts Need Study which found that few courts in Victoria met the minimum standards of accommodation, taking into account their functional adequacy, building conditions and potential for upgrading. As the Chief Executive Officer of the Magistrates Court said:

The accommodation at most courts was found to be substandard, particularly in terms of public and staff areas. The scarce capital dollar was also a significant factor, along with infrequent use of many courts.³

In line with the major findings of the study, 54 courts have been closed across Victoria between 1986 and 2000. At the same time, 'fairly dramatic' budget cuts across the board have impacted on the services available from local Magistrates Courts.⁴

The tables below show court closures from the late 1970s.

Courts which closed before the 1985 Courts Management Program rationalisation program.

Table 6

Region	Magistrates' Court	Records relocated
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³ P Armstrong, *Minutes of Evidence*, 16 May 2000, p. 181.

⁴ id.

Ballarat	Cobden* Koroit* Mortlake# Terang#	Camperdown Camperdown
Bendigo	Merbein* Manangatang* Murrayville# Sea Lake# Walpeup*	Ouyen Swan Hill
Geelong	Lorne** Winchelsea**	Colac Colac

*Pre 1983, eg: Koroit closed 15 June 1977; # Closed 1 January 1983; **Closed 1 October 1984

Source: Mr John Isaacs, Manager Court Services and Regulations, Dept of Justice

Courts which have been closed as a result of the 1985 Courts Management Program rationalisation. All closed on 1 January 1990.

Table 7

Region	Magistrates' Court	Records relocated
Ballarat	Port Fairy Warracknabeal	Portland Nhill
Bendigo	Cohuna Kyabram Rochester Daylesford Eaglehawk Heathcote Red Cliffs	Kerang Echuca Echuca Kyneton Bendigo Bendigo Mildura
Geelong	Camperdown	Colac
Gippsland	Leongatha Traralgon Warragul Yarram Cowes	Korumburra Moe Moe Sale Wonthaggi

Region	Magistrates' Court	Records relocated
Shepparton	Nathalia	Shepparton
	Rushworth	Shepparton
	Tatura	Shepparton
	Alexandra	Mansfield
	Beechworth	Mansfield
	Bright	Mansfield
	Euroa	Mansfield
	Numurkah	Mansfield
	Rutherglen	Mansfield
	Tallangatta	Mansfield
	Yarrawonga	Mansfield
	Yea	Mansfield
	Kilmore	Seymour

Source: Mr John Isaacs, Manager Court Services and Regulations, Dept of Justice

The closure of courts has undoubtedly meant a reduction in access to legal services for regional and rural Victorians. A common theme that emerged from the Committee's evidence is that access to courts has been restricted by court closures due to the lack of public transport and additional support services and that costs associated with access have inevitably increased. However, the reduction in access is difficult to quantify and has to be examined on a region by region basis.

As country Magistrates' Courts function as multijurisdictional courts that also have to accommodate circuit sittings of the Supreme, County and Family Court and VCAT, the facilities available become critical. Many country courts struggle to provide facilities for the Magistrates' Court jurisdiction and have even greater difficulties in providing adequate services for circuit sittings. The Committee agrees with the Law Institute of Victoria in its assertion that:⁵

Ideal models for our regional Court facilities differ depending on the area covered and the volume of business conducted by the Court. Ideally, a Court in a major regional area should sit every day. The Court should be adequately resourced with a proper library and access to the internet and other IT and video-conferencing facilities.

Victoria is now divided into 12 Magistrate Court regions, with 5 of those regions located in regional and rural Victoria. The five country regions are Ballarat, Geelong,

⁵ David Faram, Law Institute of Victoria, Submission no. 4, p. 7.

Bendigo, Shepparton and Gippsland with each central regional court servicing courts in the region. Each region has a headquarters court, a senior magistrate, a senior registrar and a coordinating registrar. Regional boundaries are determined from time to time by the Chief Magistrate. The following table provides details of the current location of courts and circuit courts by Local Government area:

Table 8

LOCAL GOVERNMENT AREA	SUPREME COURT CIRCUIT COURTS	COUNTY COURT CIRCUIT COURTS	MAGISTRATES COURTS	VCAT CIRCUIT TRIBUNALS
ALPINE			MYRTLEFORD	MYRTLEFORD BRIGHT
ARARAT			ARARAT	
BALLARAT	BALLARAT	BALLARAT	BALLARAT	BALLARAT
BASS COAST			COWES, WONTHAGGI	WONTHAGGI
BAW BAW				WARRAGUL
BULOKE				
CAMPASPE			ECHUCA	ECHUCA
CENTRAL GOLDFIELDS			MARYBOROUGH	MARYBOROUGH
COLAC - OTWAY			COLAC	COLAC
CORANGAMITE				
DELATITE			BENALLA MANSFIELD	BENALLA MANSFIELD
EAST GIPPSLAND		BAIRNSDALE	BAIRNSDALE ORBOST	BAIRNSDALE
GANNAWARRA			KERANG	KERANG
GLENELG			PORTLAND	PORTLAND
GOLDEN PLAINS				
GREATER BENDIGO	BENDIGO	BENDIGO	BENDIGO	BENDIGO
GREATER GEELONG	GEELONG	GEELONG	GEELONG	GEELONG
GREATER SHEPPARTON	SHEPPARTON	SHEPPARTON	SHEPPARTON	SHEPPARTON

LOCAL GOVERNMENT AREA	SUPREME COURT CIRCUIT COURTS	COUNTY COURT CIRCUIT COURTS	MAGISTRATES COURTS	VCAT CIRCUIT TRIBUNALS
HEPBURN				
HINDMARSH			NHILL	
HORSHAM	HORSHAM	HORSHAM	HORSHAM	HORSHAM
INDIGO				RUTHERGLEN BEECHWORTH
LATROBE		MORWELL	MOE, MORWELL TRARALGON	MOE, MORWELL TRARALGON
LODDON				
MACEDON RANGES			KYNETON	KYNETON
MILDURA	MILDURA	MILDURA	OUYEN MILDURA	MILDURA
MITCHELL			SEYMOUR	KILMORE SEYMOUR
MOIRA			COBRAM	COBRAM
MOORABOOL				
MOUNT ALEXANDER			CASTLEMAINE	CASTLEMAINE
MOYNE				
MURRINDINDI				
NORTHERN GRAMPIANS			ST ARNAUD STAWEL	ST ARNAUD STAWEL
PYRENEES				
QUEENSCLIFFE				
SOUTH GIPPSLAND			KORUMBURRA	LEONGATHA KORUMBURRA
SOUTHERN GRAMPIANS	HAMILTON	HAMILTON	HAMILTON	HAMILTON
STRATHBOGIE				
SURF COAST				
SWAN HILL			SWAN HILL ROBINVALE	SWAN HILL
TOWONG				

LOCAL GOVERNMENT AREA	SUPREME COURT CIRCUIT COURTS	COUNTY COURT CIRCUIT COURTS	MAGISTRATES COURTS	VCAT CIRCUIT TRIBUNALS
WANGARATTA	WANGARATTA		WANGARATTA	WANGARATTA
WARRNAMBOOL	WARRNAMBOOL	WARRNAMBOOL	WARRNAMBOOL	WARRNAMBOOL
WELLINGTON	SALE	SALE	SALE	SALE
WEST WIMMERA				
WODONGA			WODONGA	WODONGA
YARRA RANGES				HEALESVILLE
YARRIAMIACK			HOPETOUN	WARRACKNABEAL

Ballarat

The regional court for the Ballarat region is located at Ballarat. The new complex, which has six courts and includes the police station, was opened in June 2000. The region also takes in courts in Maryborough, St Arnaud, Stawell, Horsham, Warrnambool, Hamilton and Portland. The Ballarat Magistrates' Court also visits Edenhope, Casterton, Nhill and Hopetoun once a month or once in three months depending on need.

The Magistrates' Court in Horsham acts as the main court for the Wimmera circuit. Court staff visit St Arnaud every Thursday with the court sitting once a fortnight. Nhill court is visited weekly on a Tuesday and the court sits there once a month. Hopetoun and Edenhope court are visited only on court days which is once every two months. Both Hopetoun and Edenhope do not have actual court buildings but utilise council facilities.⁶ The Horsham Court also provides bench clerk support to Ararat and Stawell courts on court days. On average, the court sits four days per month in Ararat and fortnightly in Stawell.

The Warrnambool Magistrates' Court is the largest of the three courts in the Western district and sits three days a week dealing with the Magistrates jurisdiction, the Children's Court, the Coroner's Court and the Victims of Crime Assistance Tribunal. The Warrnambool Magistrate also sits one day in Portland and one day in Hamilton.

⁶ T Nihill, *Minutes of Evidence*, 28 September 2000, p. 1036.

Facilities

The Committee visited the new law court/police complex in Ballarat in April 2000 and was impressed with the design and facilities of the complex. The court provides for several interview rooms, and has dedicated rooms for the Court Network, Salvation Army Court chaplain and the Duty Lawyer. It is well equipped with IT facilities and is connected to the police station. Apart from the new Ballarat court, the Committee received evidence that most courts in the region do not have adequate facilities to accommodate support services. As the Portland Registrar submitted:⁷

(T)he lack of room within court buildings means that victims and their families are forced to come into contact with the defendant which is a situation that can be very upsetting and traumatic. In smaller country courts, there are no side rooms or extra spaces that can be used as waiting areas for parties and victims. Hence the services that are provided in city courts and the main regional courts such as Victim Support Services or Court Network workers, are not provided for people in smaller communities so in a sense they feel left out.

Even courts that do have rooms for support services are not necessarily adequate. The Wimmera Law Association told the Committee that while there were three rooms available in the Horsham Magistrates' Court: an interview room, and a room each for the prosecutor and defence counsel, they were totally inappropriate because they were not soundproofed:

[T]he problem with them all is that none of them is soundproof, so if we have a prosecutor in one room and you are taking instructions from your client in the other room, the prosecutor can hear. So you often see the prosecutor wandering around outside while you are taking instructions.⁸

The Committee received submissions in relation to the serious inadequacy of a range of County Courts.⁹ The Registrar of the Magistrates' Court in Warrnambool commented:

The inadequacies of the old building include: not enough courtrooms to cater for the various sittings; no conference/meeting rooms for solicitors and clients; no jury pool room; no waiting rooms; no staff facilities; including no separate staff toilet, eating or kitchen facilities; a lack of adequate office area; an overcrowded Supreme Court Library; and a lack of storage and filing space. Basically, on a rainy day when a County Court or higher jurisdiction is sitting you have 40 or 50 jurors waiting outside in the miserable weather or crammed into the foyer, mingling with defendants and witnesses. It is totally inadequate.¹⁰

⁷ Andrew Tenni, Portland Magistrates' Court, Submission no 21, p. 3.

⁸ J Brown, *Minutes of Evidence*, 28 September 2000, p. 1070.

⁹ The Committee found that Warrnambool and Mildura courts were particularly deficient in this area.

¹⁰ P Langley, *Minutes of Evidence*, 21 June 2000, p. 402.

The Committee notes that the Government has committed \$8.8M to construct a new court in Warrnambool.¹¹

At the time of writing this report, the Department had acquired the site and was awaiting vacation by the vendor. An architect had yet to be engaged and the design process commenced. The Committee believes that a new courthouse for Warrnambool should be a priority. The fact that Warrnambool LGA is projected to grow by almost 20 per cent by the year 2021 adds to the importance of providing new facilities in the region.¹²

Recommendation 108

That there be no delay in the construction of the new Warrnambool Court.

Effect of Court Closures in the Region

The region has seen closures of courts in Mortlake, Camperdown, Cobden, Koroit, Terang and Port Fairy in the last two decades. Most of these closures occurred between 1985 and 1990, a period described as representing ‘a huge purge on small country courts’.¹³ The Registrar of the Warrnambool Magistrates’ Court commented that:

There is no reason why those courts could not be opened to service their local communities on a half-day basis once a week. The way we can move about now and with technology, matters could be filed at the regional courts and then the courts could operate on a visiting basis, with the magistrate and clerk attending half a day at Mortlake and half a day at Camperdown. Those towns are not far away, but they are a long way in terms of getting things done from here... There is no public transport between those places. You have to rely on the car; people out there are pretty well limited.¹⁴

The Western District Law Association while not explicitly advocating the reopening of courts in the region did highlight the gaps in access to courts:¹⁵

[W]ith the decline of the smaller country centres in recent years, as opposed to places like Warrnambool and Ballarat and the bigger places — which often increase at the expense of the smaller outlying areas if they struggle with hospital closures or whatever it might be — no-one is suggesting that Port Fairy should be reopened or anything like that. The one that does seem a pity — and people have to travel a fair way because of it — is Camperdown. A couple of people in the association asked me to mention that today. There is a bit of a black hole there. People from the Camperdown–Timboon area have to travel a significant distance to get

¹¹ Fiona Hanlon, Department of Justice, Submission no. 17, p. 2.

¹² See Chapter 2.

¹³ P Langley, *Minutes of Evidence*, 21 June 2000, p. 411.

¹⁴ P Langley, *Minutes of Evidence*, 21 June 2000, p. 412.

¹⁵ T Robinson, *Minutes of Evidence*, 21 June 2000, p. 449.

to court. Justice at the coalface of the Magistrates Court is quite removed from them if they have to travel to Warrnambool or Colac.

The Committee notes the Western District Law Association's view:

[I]t is important that people see justice occurring in their own communities. It is a bad thing if people have to travel great distances to get to a courthouse.¹⁶

For this reason it believes that any further closures in the region would cause disadvantage in accessing courts and legal services. The Committee heard evidence that people in the region see closures of essential services as inevitable. According to the Registrar of the Portland Magistrates' Court:

There is a real and genuine fear amongst the residents of Portland that their Court's days are numbered. As they see petrol prices rise, watch bank branches dissipate and observe government services make their way back down the highway towards Melbourne, the only logical conclusion is that the Court and the services that it provides is next to go.¹⁷

Geelong

The Geelong region takes in the large regional court of Geelong and Colac. The Magistrates' Court sits in Colac once a week on a Monday. The court complex in Geelong is relatively new and appears to cater for the needs of the local community. However, concerns were expressed over centralisation of services to Melbourne which was seen as affecting adequate service delivery in the region. The Senior Registrar of the Geelong Magistrates' Court gave the Committee an example of the effect of centralisation:

In relation to the Coroner's Court in Geelong, post-mortems are now carried out in Melbourne. Post-mortems or autopsies used to be done at the Geelong Hospital. Some time ago the Geelong Hospital performed all autopsies and a lot of the Coroner's jurisdiction was wholly and solely administered by the Geelong court. That system changed some years ago for reasons to do with budgets and other matters. An agreement could not be reached between the Geelong Hospital and coronial services, so Geelong became the only regional court to have post-mortems dealt with in Melbourne. That has an impact on the people of Geelong and on us in administering the Coroner's Court.

The wait for autopsy reports from Melbourne ranges from 10 to 12 weeks. I do not suggest that the situation is any different for the Melbourne courts, but when autopsies were handled in Geelong by the Geelong Hospital the turnaround of reports to registrars was invariably under four weeks. That represents a six-week difference. Obviously nothing can be done with coronial matters until autopsy reports are available, and delays hold up, among other things, families trying to wind up estates. They put an extra hurdle in the race for the community of Geelong and surrounds. Also, when registrars have the full operation of the coronial

¹⁶ T Robinson, *Minutes of Evidence*, 21 June 2000, p. 449.

¹⁷ Andrew Tenni, Portland Magistrates' Court, Submission no. 21, p. 1.

jurisdiction in their courts, they can deal with the people involved and understand the whole gamut of what is going on within the court, the hospital, and the whole process, making it a lot easier to administer.¹⁸

The Committee notes the views expressed and understands the frustration felt by the Geelong Magistrates' Court. The Committee urges the Magistrates' Court and Coronial Services to review the delays which have occurred since the transfer to Melbourne of post-mortem services and take the necessary steps to expedite such procedures.

Recommendation 109

That the Magistrates' Court and Coronial Services investigate the causes of the delay in receiving autopsy reports following the transfer of all Geelong's autopsies to Melbourne, and take the necessary steps to expedite the turnaround time.

Effect of Court Closures on the Region

Until June 2000 the Ballarat and Geelong regions were combined into a region called Western District region. The overlap in regions resulted in the Committee receiving further evidence on the impact of the closure of Camperdown Court that was seen as the most significant court closure in the region in the last 15 years. Smaller courts such as Queenscliff and Winchelsea had operated out of town halls but are now closed. The legal community in the region understands the reasoning behind the closure of some of the smaller courts but nevertheless believes it has led to a perception that justice is not as accessible for regional and rural Victorians. Closures seem to have occurred without much thought about how the public will access courts in the larger regional centres:

I can see why the government has done it: it is inefficient to have so many little courts everywhere. However, I was always taught that one of the bases of British justice was going to the people. Governments both federal and state seem to be abandoning that. When you centralise and abolish a court in Camperdown and people have to go to Warrnambool or Colac it is all right for families with nice modern cars, but it is very hard on people who are either disabled or have to use public transport, which is almost non-existent in some of those areas.¹⁹

The Committee notes the view of the Senior Registrar of the Geelong Magistrates' Court, who suggested that a visiting registrar service might address some of the gaps in legal service delivery in the region:

¹⁸ P. McCann, *Minutes of Evidence*, 29 June 2000, p. 511.

¹⁹ R Wallmann, *Minutes of Evidence*, 29 June 2000, p. 505.

If court figures alone were the criteria for the closure of that court, then the decision was justified. However, given the role that court registrars can potentially play in providing valuable services to the community of Camperdown and other such towns throughout Victoria, I feel that the decision lacked some merit and foresight.²⁰

The introduction of a visiting registrar service is discussed in detail below.

Bendigo

The Bendigo region encompasses courts in Castlemaine, Echuca, Kerang, Kyneton, Ouyen, Mildura, Robinvale and Swan Hill with the headquarters court in Bendigo. There are four magistrates including a senior magistrate who attend to the courts' needs in the region. The court in Bendigo sits daily and operates 2 courts. The Mildura court sits daily one week in every two, with the second being dedicated to servicing courts in Robinvale and Swan Hill from Tuesday to Thursday. Kyneton court sits every Monday while Echuca sits every Tuesday with additional days being fixed for contested hearings on each Thursday at Kyneton and every Wednesday and Thursday at Echuca. Kerang and Castlemaine courts sit fortnightly on alternate Wednesdays and one Thursday every month is set aside for contested hearings in Kerang. The Ouyen court is visited on a Friday once every two months.

Facilities

Courts in this large region have varying levels of functionality. The court in most need of urgent attention is the Mildura Magistrates' Court. As the registrar of the Court said:

[W]e would be able to provide a much better service to the community if we had the facility to do it. Our biggest difficulty is that we physically do not have the room or the ability to do it. The Supreme and County courts building which we are operating in now has no handicapped access. We are unable to heat the building and we cannot sufficiently cool it. It does not even have hot water. The building is completely insufficient.²¹

The Committee was concerned at the serious inadequacies of the Mildura court facilities. As a representative of the North West Law Association commented:

[W]e would say that the biggest drawback to the provision of legal services in the area is the lack of infrastructure. I have been here since 1980. In March 1988 the Mildura court complex was identified as being in the top three court buildings in need of replacement or major upgrade. An amount of \$2.3 million was allocated in 1988 to upgrade and link the two existing buildings. That money was not spent. Since then, 13 court buildings in Victoria have either been totally rebuilt or had major upgrades. The Mildura court complex has had no

²⁰ P McCann, *Minutes of Evidence*, 29 June 2000, p. 510.

²¹ G Chirgwin, *Minutes of Evidence*, 18 July 2000, p. 567.

maintenance. The buildings are riddled with white ants. Lawyers are forced to interview their clients on the footpath in the face of passing members of the public.²²

The Committee notes that the State Government has committed \$8.9 million to the construction of a new court house.

The Committee visited Mildura in July 2000 and at that stage it appeared that a recommendation from a local steering committee on the appropriate site for the new court was accepted by the Attorney-General. However, the Attorney-General has recently announced that the Department will be looking at alternative sites as the preferred CBD Deakin Avenue site was proving too difficult and costly to secure.

Effect of Court Closures on the Region

Several small courts were closed in this large region in the 1980s. They include Red Cliffs, Merbein, Manangatang, Murrayville, Sea Lake, Walpeup, Rushworth, Tatura, Euroa, Numurkah, Rochester and Kyabram. While most witnesses agreed that it was not efficient to reopen small courts, the decrease in access to courts for rural and regional Victorians was apparent and the need for some service to smaller communities acknowledged.²³

I do not suggest that it would be feasible or even economical to reopen courts in some of those (Red Cliffs, Sea Lake) areas. However, we should be able to provide a service to them, albeit not a physical court. Under the current situation, if you are apprehended driving a vehicle between Mildura and Bendigo, you have the option of having the case dealt with at Mildura, or Ouyen if you live close enough, or Bendigo. They are the next two courts. That is a 430-kilometre difference. That is a large area, particularly if a civil matter requires attention.

The Committee did receive a strong submission from the Goulburn Valley Law Association, endorsed by the Law Institute of Victoria, to reopen Kyabram court. Kyabram court was closed 10 years ago and prior to that sat as a Magistrates' Court and Children's Court once a fortnight. The Association believes that the court was closed not because of insufficient need but 'that computerisation of the courts couldn't justify Kyabram at one day per fortnight'.²⁴ The Association identified a number of ways in which it believes the closure has caused disadvantage to residents of Kyabram. These included the fact that justice can no longer be 'seen' to be done in the local community and hence a deterrent effect has been lost; the lack of suitable public transport from Kyabram to Echuca or Shepparton; the fact that travel out of town requires additional family support that is not always available; and the additional

²² P Maloney, *Minutes of Evidence*, 18 July 2000, p. 578.

²³ G Chirgwin, *Minutes of Evidence*, 18 July 2000, p. 572.

²⁴ Stephen Bubb, Goulburn Valley Law Association, Submission no 52, Attachment 1, p. 2.

expense of proceedings out of town.²⁵ The Association believes that there is sufficient workload to justify a fortnightly court date in Kyabram and the Kyabram police support the reopening of the court. They believe that the closure of the court has had a significant impact on the community:

The people of Kyabram feel that their basic right to have access to the judicial system has been taken away. The closure occurred about the same time that other services such as the SEC, Gas & Fuel, Department of Social Security and the Commonwealth Employment Services were also closed. This left the people with a feeling of alienation and despair... There is a feeling of social, economic and geographic alienation and people see the provision of a court service as a basic right, to which they should have reasonable access to in their community.²⁶

The Committee notes these arguments, which were reflected in a number of other submissions received. The question for the Committee has been whether there are any unique characteristics that make Kyabram different from other small country towns that have lost the physical presence of essential services. The Committee believes that more investigation is needed before any decision is taken to reopen a court.

Recommendation 110

That the Department of Justice examine the need to reopen the Kyabram Court and report to the Attorney-General within three months..

Shepparton

The Shepparton region includes courts in Benalla, Cobram, Corryong, Mansfield, Myrtleford, Seymour, Wangaratta, and Wodonga with the headquarters court in Shepparton. The Shepparton court sits daily with two Magistrates sitting on Mondays and every Friday. Wodonga sits two days per week except for the fourth week of every month where it sits for three days. Wangaratta sits every Monday, every fourth Wednesday and thirty-six Thursdays per year. Seymour sits every Friday while Benalla sits every Tuesday. The courts in Mansfield and Cobram sit alternate Wednesdays with Myrtleford sitting every second Friday. The court in Corryong sits four times a year.²⁷

²⁵ Stephen Bubb, *ibid.*

²⁶ *ibid.*, pp. 4–5.

²⁷ John Murphy, Senior Magistrate, Upper Murray Region, Submission no. 26, p. 2.

Facilities and the Effect of Court Closures

There is a new court complex being built in Wodonga with a budget of \$11.9 million. The complex will consist of four courtrooms capable of multi-jurisdictional sittings, a 24-hour police station, sheriff's office and community corrections facility. Design and development of the project has been finalised and the court complex is due for completion in November 2001.

The Committee did not receive any strong complaints about facilities or court closures in the region. There was some suggestion that the resources were being stretched to offer court services. The Senior Magistrate in the region told the Committee:

When I did the law calender for this year...I took 9 sitting days from Wodonga and gave them to Wangaratta, and gave 4 days to Myrtleford; we lost 13 sitting days from Wodonga. Today I adjourned at 3.40pm to appear here, but I still have 17 matters to be called. Usually I would sit through until about 5.30pm to finish them. It is a busy court.²⁸

The Magistrate also suggested that one way to alleviate some of the difficulties that country Victorians have in accessing courts following court closures is to publicise the fact that people can have their cases moved. The Magistrate obtained a copy of the charge and summons form forwarded to each defendant which has a small reference on the back of a four-page document related to moving cases to another court. As the Magistrate said:

I always ask defendants who travel to the country if they have read the document, and invariably they tell me, 'No, I did not, it is too long'. On that form the only reference to appearing at court states: 'Court cases — you may be able to have your case moved to a different date and possibly another court.'

I would like to see something simple, as I said in my submission, on the summons itself, such as: 'If you wish to plead guilty you may have your case heard at the court nearest your place of residence or employment upon contact with the registrar.'

That can happen, but obviously defendants do not know about it. It would certainly save members of the public a lot of inconvenience.²⁹

The Committee believes that this is a good suggestion that may go some way towards addressing difficulties rural and regional Victorians face in accessing courts.

Recommendation 111

²⁸ J Murphy, *Minutes of Evidence*, 13 June 2000, p. 301.

²⁹ J Murphy, *Minutes of Evidence*, 13 June 2000, p. 298.

That the Magistrates' Court revises its summons form to include words to the following effect: 'If you are pleading guilty and you wish to have your case heard at the court nearest your place of residence or employment, contact the court registrar'.

Gippsland

The Magistrates' Court in Gippsland sits in Bairnsdale, Korumburra, Moe, Omeo, Orbost, Sale and Wonthaggi. The Magistrates' Court in Bairnsdale sits two days a week with an additional 5-6 sittings per annum. The Court also services the Orbost Court once a month and the Omeo Court three to four days a year. Until 12 months ago, the Court also sat at Lakes Entrance one day a month at the Council Chambers. The Moe Court sits daily with two Magistrates and obtains additional assistance from Magistrates in Melbourne or Dandenong approximately 4 days a month. The Court at Korumburra sits one day a week and the registrar visits the Wonthaggi Court two days a week where the Court sits on average a day in every three weeks.

Facilities and the Effect of Court Closures on the Region

The court buildings in the region vary greatly from the majestic, ingeniously designed 19th century courthouse in Bairnsdale to the 'dysfunctional' 30-year-old court in Moe. The Committee was impressed with the outstanding design features of the Bairnsdale Court. On the other hand, the Moe Court is best described by the Senior Registrar:

[The Moe Magistrates' Court] is only 30 years old but it has become very dysfunctional. The holding cell there is the old cleaner's cupboard area. If you put a prisoner in there you have to walk him or her across the court foyer. People can then see the prisoner; if he or she wants to play up, as they occasionally do, the area is not soundproofed and everybody hears. Sometimes a prisoner may be displeased about a decision made against him or her, and everybody in the courtroom can hear his or her views about the decision through the prisoner banging against the walls, setting up a verbal barrage, and so on. Sometimes you may have children in the court on crimes family violence matters; the available area is inappropriate because there are no areas in which a party can be isolated.³⁰

In the Latrobe Valley, the Morwell Court now sits exclusively as a County Court while still carrying out administrative functions for the Moe Magistrates' Court. For example, the Morwell Court can receive fine payments from the Magistrates' Court, issue Magistrates' Court summonses and conduct Magistrates' Court pre-hearing conferences and oral examination of debtors. The Chief Justice of the County Court, Justice Glen Waldron QC noted in his evidence to the Committee some of the problems with the Morwell Court.

³⁰ M Bourke, *Minutes of Evidence*, 13 September 2000, p. 883.

Down the years, certainly down the more recent years, Morwell and Warrnambool have been particular trouble spots so far as the civil list is concerned. As our submission indicates, the lack of adequate court facilities in those two locations has exacerbated that problem. We have tried to overcome it by sitting civil Morwell circuits at Sale... We try to be as flexible as we can. But we have, if you like, the irony of not sufficient court space in certain locations, particularly Morwell and Warrnambool, and yet, if you like, more than enough in other locations.³¹

The Courts at Morwell and Moe are 15 kilometres apart and this 'sharing' of administrative functions causes confusion among court users who are often unsure of where to attend court.³² This combined with the extremely busy schedules at these courts and resultant strain on staffing and resources has led the legal community to advocate for a court complex in the region. The Senior Registrar of the Moe Magistrates' Court also saw the need for a regionalised model of court service delivery:

My view is that there should be a single complex in the valley — where that complex should be located is for others to determine.

The building of a Department of Justice complex, which would incorporate the two Courts, Police, Victoria Legal Aid and Community Corrections would provide an efficient, and high level, service to each of the agencies' users.³³

Moe Magistrates Court is currently the tenth busiest Magistrates' Court in Victoria while the Morwell County Court is the busiest court outside Melbourne. In light of the workloads of these courts and the fact that populations are projected to grow in the Latrobe and South Gippsland LGAs, the Committee believes that there is a need for a central court complex in the region. As the towns in the Latrobe Valley are connected by transport, the Committee agrees with the Senior Registrar that any three of the major towns would provide the appropriate location for the complex:

There are three trains of thought, depending on who you speak to in the three main towns of Moe, Morwell or Traralgon. The arguments put forward for each location are attractive, whilst at the same time it will cause some difficulties. Many of the local solicitors say it should be in Moe because the main court is there and their offices are there, so they would see that as a bonus. Morwell is seen as attractive for those looking for a whole-of-justice precinct which can incorporate the police, community corrections, Victoria Legal Aid, and the court. The police see having it there as an advantage because it is in the centre of the valley and a central spot for them. Traralgon is also seen as an attractive location, because it is seen as the go-ahead town and seems to be the more progressive town of the three... I think it is about 15 kilometres from Moe to Morwell and about that again from Morwell to Traralgon. That is not a great distance in a country environment. From a personal perspective it does not really concern me which location it is at. My main concern is that it is near public transport, because a lot of people who come before the court travel there on public transport. If there is to be a

³¹ G Waldron QC, *Minutes of Evidence*, 16 May 2000, p. 173.

³² M Bourke, Moe Magistrates' Court, Submission no. 61, para 31.

³³ M Bourke, *Minutes of Evidence*, 13 September 2000, p. 881.

new complex it has to be near such a utility. I am not too sure about the likelihood of there being such a complex, but I believe it should be given high priority in terms of technology.³⁴

The Committee believes that the Department of Justice should thoroughly investigate the construction of an easily accessible court complex in the Latrobe Valley that incorporates the Magistrates' Courts and County Court in the region. Such a complex should be a multi-purpose facility that also incorporates the needs of professional and support services within the court system.

Recommendation 112

That the Department of Justice investigates the construction of an easily accessible court complex in the Latrobe Valley that incorporates the Magistrates', County and Supreme Courts in the region.

The Committee heard concerns from the legal community over the closure of the Lakes Entrance court.³⁵ The registrar in Bairnsdale and the Senior Registrar for the region contend that the court has not been formally closed but is rather not operational due to a lack of facilities. The Court used to sit in the Council Chambers which are no longer available. The Senior Registrar for the region articulated the reasons for the facility being no longer available:

[The Court] was sitting in the council offices, and with the amalgamations the council wanted it to stop sitting immediately. I suppose it was uncomfortable with the people involved with the court process coming into contact with people seeing council officers on council business. We encouraged the council to keep the court going for a period of time. The council was then sitting at Lakes Entrance; it moved to Bairnsdale and put the council offices at Lakes Entrance on the market. At that stage we were told we would not be able to use the building any more, for obvious reasons. We looked around at a number of alternative venues — 'we' being myself and the then registrar at Bairnsdale — but we found no facilities that were suitable for the court. Basically that is where it is at the moment.³⁶

At present there is no Magistrate rostered to Lakes Entrance which is as yet not officially closed. The local Law Association and the Law Institute of Victoria have expressed concern at the lack of facilities in Lakes Entrance. The Committee also notes that the projection for population growth is large in the immediate region³⁷ and therefore believes that a local court should service the people of Lakes Entrance.

The Committee views the conjoint development of Council Chambers and court facilities as an effective use of resources. The Committee recognises that there are

³⁴ M Bourke, *Minutes of Evidence*, 13 September 2000, p. 881.

³⁵ P Murphy, *Minutes of Evidence*, 12 September 2000, p. 861.

³⁶ M Bourke, *Minutes of Evidence*, 13 September 2000, p. 890.

³⁷ Department of Infrastructure, *Victoria in Future — Overview: Victorian Population Growth Projections 1999–2021*, Department of Infrastructure, Melbourne, 2000, p. 33-34.

security issues and issues related to the holding and transporting of prisoners that need to be resolved in using Council facilities. The Committee, however, did see a good model of a court operating out of Council offices in Echuca. While the Committee has heard that the use of Council facilities may require legislative intervention and can be expensive,³⁸ the Committee believes that these issues can be resolved. The Committee believes that the Department should re-enter negotiations with the Council for the use of facilities in Lakes Entrance if the building is still available. If the building is no longer available, the Department should investigate the availability of alternative sites in Lakes Entrance to ensure that the court is operational. In the intervening period, the Committee believes that the registrar from Bairnsdale should provide visiting services to the Lakes Entrance Community.

Recommendation 113

That the Department investigates the availability of appropriate court facilities in Lakes Entrance.

Effect of Court Closures in the Region

In the last 15 years courts closed in the region include Leongatha, Traralgon, Yarram and Warragul. In addition, as mentioned above, the court in Morwell no longer sits as a Magistrates' Court and the Lakes Entrance court is not in operation. The registrars and legal community acknowledge that some efficiencies have been apparent in the closure of smaller courts located in close proximity to each other. However, as in other parts of regional and rural Victoria, it is clear that the closures have impacted adversely on public access to court and associated services. As the Senior Registrar of the region submitted to the Committee:

[Since] the closure of many court buildings from the mid-1980s, many people who have to attend court now travel further distances than would have been the situation in the past... The closure of the Traralgon and Warragul Courts, and the ceasing of the Morwell Court to sit as a Magistrates' Court have had a significant impact on the Moe Court. The cases that would normally have been dealt with by each of the now closed courts are determined at Moe. Other than for an increase in distance travelled, this has resulted, in my opinion, [in] an improved service.³⁹

³⁸ 'Yes, [the Echuca Court] is similar to the court at Yea; Yea used to be like that as well. For Yea a specific act of Parliament was brought in to establish that grouping with the council. Having said that, I point out that what we pay for the privilege at Echuca is astronomical in terms of dollars.' M Bourke, *Minutes of Evidence*, 13 September 2000, p. 890.

³⁹ M Bourke, Moe Magistrates' Court, Submission no 61, paras 8 and 24.

It is noted that the Latrobe Valley is well connected by the public rail system. In contrast, the Committee was told that the closure of Yarram Court has caused problems in that area because of the lack of transport between Yarram and Sale.⁴⁰

The Magistrate in East Gippsland appears to address gaps in service delivery by taking the court to areas where problems arise. The Committee was impressed with this flexible notion of ‘outreach services’ and the provision of services on a local level. The registrar of the Bairnsdale Court explained the services provided:

The senior magistrate has given us the ability to list at any town where we feel there is a need. We have had sittings of the court at Mallacoota, which is 3 hours drive from here. That means the Orbost court sits at Mallacoota. There is no courthouse there; we go to a public building, set up the court and hear cases. We have gone to Bendoc, which is about 3 hours away in the hills. Orbost court has sat at Bendoc. The senior magistrate said, ‘If you are able to find sufficient cases, if sufficient cases are generated by an area at a particular time, I will sit there or I will provide a magistrate to sit there’. I do not know whether that happens in any other areas of the state.⁴¹

In light of the importance of justice being seen to be done within local communities, the Committee commends the Senior Magistrate of the Gippsland region for his approach. The Committee believes that such policies can assist in maintaining confidence in the court system and in filling the gaps in court service delivery in other parts of Victoria.

Common Themes

Facilities

The Committee noted a state-wide lack of appropriate waiting areas, interview rooms, disabled access and other accommodation for support services within courts. This lack of accommodation impacts on the quality of service delivery by the profession, support services and the courts. The Committee has repeatedly heard that this lack of adequate facilities exacerbates the trauma experienced by victims of crime, especially children.

The Committee believes that where possible, the Department should invest in minor improvements such as soundproofing to ensure confidentiality. The Committee recognises that such changes require additional resources and that the prioritising of limited resources for the maintenance and construction of court facilities is a difficult

⁴⁰ *ibid*, para. 7.

⁴¹ D West, *Minutes of Evidence*, 12 September 2000, p. 856.

task. However, courts in country Victoria should provide the necessary accommodation for associated services and appropriate waiting areas to ensure adequate service delivery.

The Committee strongly believes that there is a need for wider public consultation in the design of new buildings to enable the structure to serve as a community resource. The Committee believes that courts should operate as multi-purpose venues that can be utilised by local residents for a range of community activities. This would ensure that the court is a relevant structure and will assist in educating communities about the legal system and process.

The evidence received by the Committee suggests that in planning new courts, especially in regional and rural areas, thought should be given to how court buildings fit within the community. The Committee has surmised that it is important to look not only at how the buildings can cater better for the varied needs of court users, but also how the actual premises relate to other community services and how they can be utilised by the broader community. For instance, it has been suggested that it would be useful for community organisations to be able to utilise the court building for after-hours meetings or advice sessions. The Committee believes that the multi-purpose facility used in Echuca provides a good model for regional and rural courts. The Committee has heard that ultimately these issues could be resolved if there was wider community consultation (by the relevant Department) in the design phase so optimum use can be made of courts while ensuring that the needs of individual court-users are met.

Recommendation 114

That, in designing and building new court houses, the Department of Justice examines the needs of the legal profession and court support services as well as investigates, in consultation with the local community, the multiple purposes that the complex could serve for the people of the area.

Recommendation 115

That the Department of Justice reviews the adequacy of soundproofing in rural and regional courthouses, and upgrades soundproofing in interview rooms on a prioritised basis where there is no likelihood of the immediate provision of a new court complex.

Role of Registrars

Registrars of courts are experienced persons who are well trained in legal administration and management, whose absolute priority is to provide assistance and service to the judiciary in the community. With appropriate support, there is much more that they can and will do, given the opportunity.⁴²

You become an all-rounder in the country; you are the coroner's clerk, the Children's Court clerk, you do probates, you are the registrar of marriages, you perform marriages, you are the registrar of the County Court, you issue miners' rights, you are the deputy sheriff for the summoning of jurors, and so on. You perform a function in the community as the poor man's solicitor; they come to you for advice.⁴³

Registrars in regional and rural Victorian Courts play an important role as the first point of call for most legal issues. Unlike registrars in metropolitan courts, they do not work in one jurisdiction but are expected to understand and administer several jurisdictions. Particularly in rural Victoria, the registrar often administers and provides information on the Magistrates Court, County Court, Supreme Court, VCAT, Children's Court and Coroner's Court jurisdictions. The Committee was impressed with the breadth of knowledge and experience of country registrars and the commitment they demonstrated in serving the needs of their local communities.

Despite the good services provided by registrars, there was a general consensus among court staff and the legal profession that courts are under-resourced and understaffed.⁴⁴ The Clerk of Courts Group, a professional association representing the interests of registrars, strongly contended that the lack of services in regional and rural Victoria can be addressed by better resourcing courts with personnel and recognising the services provided by registrars, while expanding their role.⁴⁵ In its submission, the Clerk of Court group asserts:

There has been a reduction in the numbers of registrars throughout regional Victoria and there is growing pressure on those that are left to provide more with less. Through the continual reduction and on-going Melbourne centric philosophy, many registrars believe that the rural courts are losing their ability to provide true local service. The court is an integral and central outlet for justice services but in rural Victoria many people believe they are treated as being part of an outpost or backwater from Melbourne. This philosophy not only reduces the rural community access, it also costs them financially in terms of time, travel and accommodation expenses. The registrars strongly contend that there are many opportunities to restore the balance of vital services to regional and rural Victoria without great cost.

The Group believes that increases in Crimes Family Violence and Bench Clerk duties and increased case management responsibilities within a context of reductions in

⁴² J Dinsdale, *Minutes of Evidence*, 16 May 2000, p. 115.

⁴³ D West, *Minutes of Evidence*, 12 September 2000, p. 853.

⁴⁴ David Faram, Law Institute of Victoria, Submission no 4, p. 5.

⁴⁵ John Dinsdale, Clerk of Courts Group, Submission no 31, p. 1.

personnel and increasing budgetary constraints have impacted on the adequacy and accessibility of service delivery.⁴⁶ It believes that given the opportunity and with additional resourcing of 10–12 registrars across regional and rural Victoria, a range of services and improvements could be offered.

Travelling Shop Front

I see no difficulty in basically establishing shopfronts in any country town. With the use of a laptop computer and a modem, we can access our court facilities and provide any facility you need. You no longer need the traditional old courthouse infrastructure... I am talking about providing front-line assistance to the members of the public on a personal basis. Our role as registrars does not involve just courts. On a daily basis we would have upward of 30 people per day bringing documents in for signature and other things like that that have no relation to courts as such... Traditionally we're still — for want of a better term — a poor man's solicitor. A lot of people come to us initially seeking advice before they go to a solicitor's office... Nine times out of ten, people will come to us first if they have no legal knowledge, hoping we can assist them.⁴⁷

Similar views to those above were expressed during public consultations across regional and rural Victoria. Lawyers, community groups and the public all saw value in having court services delivered to areas where courts and other services have been closed. The fact that country registrars are often the first port of call for a whole range of legal issues supports the theory that such a service would be beneficial in those towns that do not have courts. The Committee believes that with additional resources and appropriate technological support, registrars can service outlying communities that cannot access legal services with ease.

While the submissions and evidence were almost entirely positive in relation to the establishment of travelling shopfronts, the registrars in Gippsland were not supportive of the idea. The Senior Registrar explained to the Committee that the shopfront idea had been trialed in the region but was unsuccessful:

I have two experiences. One was when I was stationed at St Arnaud in the mid-1980s at the time of the closure of a number of courts. I attempted to establish a shopfront at places such as Donald and the like, approx. 60 kilometres from St Arnaud. I had fairly extensive local newspaper coverage about the days I would be visiting there. I went there for three or four months, but did not get one visitor. About two or three years ago we attempted something similar at Orbost. Dale West, the registrar at Bairnsdale, suggested that during the fortnight between sittings he would go there for a morning and would do any administrative work there. We tried that for some months, but he ended up ringing me to say, 'It's not working'.⁴⁸

⁴⁶ *ibid*, p. 2.

⁴⁷ G Chirgwin, *Minutes of Evidence*, 18 July 2000, p. 150.

⁴⁸ M Bourke, *Minutes of Evidence*, 13 September 2000, p. 888.

However, this evidence was repudiated by a solicitor in the area, Mr Mark Woods. When the Committee suggested that the visiting registrar service had been unsuccessfully trialed, Mr Woods stated:

Frankly, I do not agree with what they say. The only difference between Gippsland and the other major centres such as Geelong, Bendigo, Shepparton, Ballarat and Mildura is that we do not have a dominant town that is the centre of a particular region. The proposition that a registrar who travels to a city such as Traralgon, with 22,000 residents, cannot do business there is nonsense. To my knowledge it has not been trialed, and if it had been trialed and I did not know about it I am not surprised there were no customers at the door.⁴⁹

In relation to the outreach services in Orbost, Mr Woods gave a possible reason for the lack of interest:

I am surprised that he would say that. I do not know what he said about how much business he expected to transact, but it is possible to go to a town such as Orbost, sit there for a day and have only three people come in...

Orbost people may have got used to going to Bairnsdale because they have been bereft of those services for so long. Certainly if one looks at the police statistics for those areas and corresponds that with the number of court users as a starting point or the number of intervention orders issued for people with those postcodes, there is no question that there is sufficient business for the registrars to be kept busy for a day or two a week.⁵⁰

The Committee is unsure of exactly why the outreach services in Orbost did not succeed. However, it does not believe that this lack of success with one scheme will necessarily translate across regional and rural Victoria. Judging by the enthusiasm displayed by most registrars and by the legal profession, the Committee believes that shopfront registrar services should be trialed in rural Victoria. The Committee received evidence on potential locations for such services from the Clerk of Courts Group, which suggested that towns that needed such services included Alexandra, Bright, Beechworth, Camperdown, Casterton, Euroa, Kilmore, Kyabram, Lorne, Numurkah, Warracknabeal, Yarrawonga and Yarram.⁵¹ The Committee also heard from the Registrar of the Mildura Magistrates' Court, who suggested an expansion in Robinvale, Ouyen and Murrayville.⁵²

The Committee believes that the decision as to where such services are to be offered should be left under the control of the regional headquarters court in each region.

Recommendation 116

⁴⁹ M Woods, *Minutes of Evidence*, 13 September 2000, p. 945.

⁵⁰ M Woods, *Minutes of Evidence*, 13 September 2000, p. 945.

⁵¹ John Dinsdale, Clerk of Courts Group, Submission no 31, p. 2.

⁵² G Chirgwin, *Minutes of Evidence*, 18 July 2000, p. 561.

That the Magistrates' Court of Victoria undertakes a pilot program of the provision of outreach registrar services to rural and remote communities.

The Clerk of Courts Group believes that registrars can provide a range of additional services including the following:

- Supreme Court Registries in regional Victoria could expand probate services delivered locally. Registrars currently provide service in small estates by preparing the case for granting by Melbourne and this could be extended above the small estate limit. The registrar in Supreme Court locations would be given authority to grant probate and would essentially act as Deputy Registrar of Probate.
- Registrars have powers to issue warrants but not interim intervention orders. The Group suggests the power to make interim orders in certain circumstances. The Group acknowledges that there is an urgent need for planning and training to ensure a commonality of approach by court staff to crimes family violence.
- The centralisation of the Victims of Crime Administrative Tribunal to Melbourne has restricted local service delivery by registrars. Similarly, the Coroner's Court is becoming increasingly centralised resulting in 'a substantial loss'⁵³ for local communities.
- The administration of VCAT is undertaken in Melbourne. Registrars believe that they can provide many of the administrative support functions for VCAT in the local court.⁵⁴
- The appointment of registrars as 'ex-officio' Justices of the Peace.
- Additional services in conjunction with community legal centres and VLA.

The Committee believes that there is scope for registrars to expand their role. The Committee formed an impression of registrars as dedicated, enthusiastic members of their community who are striving to provide a wide range of services within available resources. The Committee notes the important contribution to the justice system made by registrars and in particular, their contribution in regional and rural areas.

Recommendation 117

That the Department of Justice and the Magistrates' Court investigate the expansion of the role of court registrars.

⁵³ John Dinsdale, Clerk of Courts Group, Submission no.31, p. 4.

⁵⁴ This issue is discussed in the next chapter.

Technology

IT will be the foundation of the court system in the near future and now is the time that it should be seen to be receiving attention at the highest levels.⁵⁵

Ten years ago, the Magistrates' Court launched a case management system called 'Courtlink', which was revolutionary because it was the only instance in the world where magistrates would input their findings on the bench at the time of their decision. The Courtlink system is located in 57 court locations across Victoria. It is a stand-alone system, with the data on the system being the only record of the court.⁵⁶

While Courtlink has served the Magistrates' Court well, it is now an old system and as of September 2000 there is 'no replacement and no contract for the system if it breaks down'.⁵⁷ There is now a very urgent need for a new case management system, with hopes for such a system being tied in with the Criminal Justice Enhancement Program (CJEP). CJEP is best described by the Manager of the project. Mr Philip Hind:

CJEP is about improving access, quality and efficiency in the criminal justice system. It involves a comprehensive series of change initiatives based around process redesign, information systems development and related cultural change initiatives among a range of key stakeholders. The program had its origins in Project Pathfinder, which delivered its final report in 1998 and was accepted by the then Attorney-General and Minister for Police and Emergency Services. It was supported as a sound basis for the implementation of change. At that point an initial budget of \$14.5 million was made available for implementation. In January 1999 the project was renamed the Criminal Justice Enhancement Program in recognition of the fact that it had now been given a specific set of high priority initiatives to implement. They were selected on the basis of their providing the widest possible benefit across the criminal justice system with the money available.

We then established five distinct but related projects that fell under the CJEP banner. The first was called the Accused Management project. It is aimed at providing authorised persons in the criminal justice agencies with up-to-date information about an accused person over the life cycle of that person's involvement in the criminal justice system. It is a cradle-to-grave information retrieval and access system accessed by people in Victoria Police, Corrections and the Office of Public Prosecutions.

The second major project is the Electronic Brief and Progressive Disclosure project. That is aimed at creating a streamlined electronic brief of evidence, including charges, and relevant matters to go before the court. It involves the timely sharing of that electronic brief with defendants' legal representatives and simultaneously provides incentives for the early

⁵⁵ Woolf of Barnes, Harry Kenneth Woolf, (United Kingdom), *Access to Justice—Final Report to the Lord Chancellor on the Civil Justice System in England and Wales*, HMSO, London, 1996, p. 284.

⁵⁶ This feature has meant that there has been reluctance to allow Magistrates and their staff access to the internet. As Courtlink represents the only record of the Court, the previous Chief Magistrate felt that internet access could compromise the integrity of the court's record.

⁵⁷ P Armstrong, *Minutes of Evidence*, 16 May 2000, p. 185.

involvement of parties so issues of case direction can be addressed more readily, and matters can come before the court more promptly and with greater certainty.

The third project area is Case Flow Improvement and centres around the Magistrates' Court. It has two major aspects. The first provides greater time certainty in relation to the case-listing process so people are aware of the time the case will be heard and can attend the court with a great deal of certainty that the case will be heard within an hour of that time. The second aspect is about creating diversion options for eligible defendants so there is a streaming away from traditional or conventional systems for particular types of cases, thereby freeing courts for other matters.

The fourth project area is Case Listing and Management and centres around the County Court. It is about facilitating the judicial supervision of cases and providing more advanced listing case management tools for the County Court. The final project is called the Justice Knowledge Exchange. That is all about providing a gateway for controlling and authorising information exchange and access among the systems and projects I have referred to. It is not a general gateway and access mechanism, but is being built to provide a pathway by which authorised users of the applications can access relevant information in the department's systems and for that to be handled in a controlled and highly secure manner.⁵⁸

The Committee in its report *Technology and Law* (May 1999) found that one of the largest obstacles to the effective use of IT in the court system was that each level of court jurisdiction saw itself as unique and therefore requiring a unique IT system. The lack of commonality of platforms combined with attitudinal issues impeded the use of technology. The Committee believes that CJEP represents the right direction as it aims to integrate the various court systems and the IT systems of the police, corrections and VLA. Such integration would ensure better communication between agencies and would provide efficiencies.

The Committee believes that country courts will particularly benefit from CJEP as they are, by and large, multijurisdictional and yet do not have access to the IT systems of any other agency apart from the Magistrates' Court system. This lack of access to other IT systems severely impedes registrars in carrying out their role. The CJEP team believes that the project offers the following benefits to regional and rural court officials, police and the profession:

There are approximately 8000 staff in police corrections and courts who will, through the implementation of the new applications, be able to participate much more effectively in the management tasks they have, whether they be in relation to the accused, the preparation of briefs, the management of case matters or listing management rather than having to rely on some of the centralised management systems that have been in use in the past.⁵⁹

In line with the need for common platforms, the Committee also commends the Department of Justice's courts and tribunals common operating environment

⁵⁸ P Hind, *Minutes of Evidence*, 8 September 2000, p. 826.

⁵⁹ *ibid* p. 832

(CATCOE).⁶⁰ At this stage it is directed at the Magistrates' Court, where a program to replace some of the old technology has commenced. It is intended that old hardware is replaced with modern networking technology and PCs, which will give those in the Magistrates' Courts access to email and Windows-type applications. CATCOE will once again be of great benefit to rural and regional courts as all the various court systems will eventually be available using the same operating system and PC.

Electronic Lodgement

With increasing numbers of solicitors in rural areas utilising technology, electronic lodgement of documents can improve efficiency and decrease the pressure on busy country practitioners. The Law Institute recognised the opportunities that electronic lodgement can deliver:

[W]e see electronic lodgement as being hugely important. The development of information technology, the development of video-conferencing links and the provision of internet services, particularly the electronic lodgement of documents, would be a significant advance for outlying areas. There is no question about that.⁶¹

While Courtlink uses antiquated technology in today's context, it is still one of the only systems that enables electronic lodgement of documents. Electronic lodgement has been operating in the Magistrates' Court for a number of years and more than 35 per cent of civil complaints (about 1000 per month) are filed electronically by approximately 135 law firms. However, as the Courtlink system is a stand-alone system and as electronic lodgement is available through a third party provider rather than the internet, the cost for country practitioners has been prohibitive. As the Mildura Magistrates' Court Registrar explained:

We have found that it is far too cost prohibitive to be used by local practitioners in Mildura. They are still probably in the unique situation where they can have a member of their office deliver the material to the court and have it back an hour or 2 hours later. That is probably a luxury of being in a small country town.⁶²

The CEO of the Magistrates' Court informed the Committee that the fees for electronic lodgement were to be reduced in an effort to encourage its use. While the current costs may be prohibitive for some firms, the Committee believes that there are benefits in the system especially in large volume transactions such as debt collection. The Senior Registrar for the Ballarat Court made an innovative suggestion to promote the use of electronic lodgement:

⁶⁰ C Formica, *Minutes of Evidence*, 25 September 2000, p. 968.

⁶¹ D Faram, *Minutes of Evidence*, 15 May 2000, p. 103.

⁶² G Chirgwin, *Minutes of Evidence*, 19 July 2000, p. 565.

[If electronic lodgement were mandated,] it would reduce my staff workload by a number of hours per day. All of us in courts these days are very tight on staff — my numbers are down to seven here where I used to have 13 staff members. There is a facility at the court. A debt collector could come in and hire out our computer terminal. We have spare terminals. He or she could simply sit down and bulk process the work there, input the cases. We wouldn't have to do that.⁶³

The Committee notes that some Australian courts now utilise electronic lodgement systems over the internet.⁶⁴ However, concerns over the security of internet sites continues to be an issue which has affected the development of electronic lodgement.

The Committee hopes that with the implementation of CJEP, the Magistrates Court will be able to deliver its electronic lodgement system over the internet thereby increasing its utility for the profession and public.

Video-conferencing

The benefits of video-conferencing are many. For the litigants and parties to proceedings obviously it is cheaper in many cases, but probably the big winner, especially in rural Victoria, is access. At many rural locations you do not have a resident magistrate, and you certainly do not have a resident judge. Video-conferencing provides access to a judge or magistrate on any day of the week, so it really addresses that service equity issue. It is always a challenge to provide service equity in rural locations and video-conferencing provides one of the keys.⁶⁵

Australia, and Victoria in particular, is internationally recognised for the effective use of video-conferencing in legal processes.⁶⁶ The Australian Institute of Judicial Administration's Technology for Justice review indicated that now 'a mature and manageable technology' is utilised extensively in the Australian legal system.⁶⁷ Australia's lead in this area probably stems from the vast geographic distances involved, which have forced courts to be inventive with their use of technology.

There are many advantages to be gained from the use of video-conferencing technologies. In the context of criminal law, where it has been used for a range of preliminary hearings while the prisoner is in custody, the advantages include:

- (a) the reduction of inmate transportation costs;
- (b) the elimination of security problems in prisoner transportation;
- (c) a reduction in the number of jail personnel needed for inmate movement;

⁶³ S Merbach, *Minutes of Evidence*, 27 April 2000, p. 31

⁶⁴ Best practice electronic lodgement systems include the VCAT system for estate agents and the Federal Court system.

⁶⁵ M Francis, *Minutes of Evidence*, 25 September 2000, p. 1020.

⁶⁶ Several papers at the AIJA Technology for Justice Conference noted Australia's effective use of video-conferencing.

⁶⁷ J Leeuwenberg and A Wallace, *Technology For Justice Report*, AIJA, 1999.

- (d) reduction in tension by eliminating inmate movement and waiting in holding cells;
- (e) the ability of inmates to be released more quickly after the court hearing;
- (f) savings in travel time and costs; and
- (g) savings in court time awaiting the arrival of inmates.⁶⁸

In civil cases, the benefits of video-conferencing include the ability to carry out a range of case management hearings in circuit towns and most importantly to increase access to justice. The cost and time benefits of receiving expert evidence by video rather than transporting experts and having them wait in court are also enormous. Video-conferencing can thus aid in overcoming problems associated with distance and communication particularly in rural communities.

In Victoria, the provision and use of video-conferencing in courts is coordinated by the Victorian Government Reporting Service (VGRS). In 1997, VGRS piloted video-conferencing between Melbourne Magistrates' Court, Melbourne County Court, and the Mildura and Moe Magistrates' Court. Following the success of the pilot, video-conferencing facilities were installed in 26 courtrooms in the County Court, in four courtrooms in the Melbourne Magistrates' Court, the Supreme Court, Boards and Tribunals, Children's Court and the Coroner's Court during 1998. The facilities were also rolled out to country courts at Warrnambool, Geelong, Ballarat, Hamilton, Bendigo, Mildura, Shepparton, Wangaratta, Moe, Bairnsdale, Sale and Morwell. It is important to note that all new courts will include video-conferencing facilities.

Despite the few country locations that offer video-conferencing, the rate of use of the facilities is increasing. From 1 June to 31 December 1999, 3377 videolinks were conducted, and 487 — or 14.5 per cent — of those videolinks involved regional courts. From 1 January to 20 July 2000, 4975 matters were heard by videolink, and 893 — or 18 per cent — of those matters were heard in regional courts.⁶⁹

VGRS noted many practical examples of video-conferencing efficiency.

[I]t reduces travel costs of witnesses. Often it is a convenience matter, too, rather than a matter of costs. To give you an example, there have been instances when a surgeon in Melbourne has given evidence at Mildura. He has literally come out of the operating theatre at about midday or thereabouts, come to VGRS, given evidence, and been back at the hospital ready to go back into the operating theatre within an hour.

⁶⁸ Court Technology Advisory Committee, Judicial Council of California, *Report on the Application of Video Technology in the California Courts*, Aug. 1997, p. 11.

⁶⁹ M Francis, *Minutes of Evidence*, 25 September 2000, p. 1021.

We use it a lot for prehearing conferences and the various interlocutory proceedings that take place before an actual trial commences.

In respect of regional community meetings and conferences, we have had situations where people have given evidence to bodies such as this committee by way of video-conferencing. It just provides another medium... It has also been good for court staff in bridging some gaps on training and education...

It is used extensively for people in prisons, for short cases such as remands and the like. There is legislation in place about reverse onus, which means that for certain types of cases people have to show cause why they should come to court, otherwise it is automatically done by video-conferencing...

With uncontested pleas and mentions, there have been situations where at a country location the magistrate has been sick for the day. People have been given the option of either having their case adjourned or a magistrate being made available in Melbourne. It has provided a good option for people in such locations for having their matters dealt with.

It has also been used on an overflow basis where a court in a country location has been caught out on a particular day when a couple of matters have taken a bit longer than usual. Again, rather than having the matter adjourned people have been given the opportunity to have a magistrate deal with it but from another location.

Crimes (family violence) is a very important one. Often a person needs a remedy, and the remedy has to be now. It is no good saying, 'We will have a magistrate here tomorrow or in two or three days'. It gives people in country locations immediate access to a magistrate to whom they can make the necessary applications and who can make the orders.⁷⁰

In Mildura, which was one of the courts chosen as a pilot for video-conferencing use, the Registrar also spoke about the cost savings and convenience.

In criminal matters we use it mainly for prisoners and practitioners. To give you an example of the use of video-conferencing in civil matters, during one recent civil circuit I estimate that we saved in excess of \$15,000 in one morning. In the past, parties bringing medical practitioners or specialists to Mildura were required to either charter private flights or pay for them to travel on commercial flights... With the availability of a video-conferencing facility we now have the option of dialling experts at a given location, and they can produce their reports and go. The savings are astronomical and are passed on to the parties, because they are not outlaying those expenditures.⁷¹

The attitudes to video-conferencing during the Committee's consultations across regional Victoria were extremely positive. In areas where video-conferencing facilities were available, there was widespread support for the facilities. The biggest issue in relation to video-conferencing appeared to be the lack of such facilities especially in remote areas.

⁷⁰ op cit.

⁷¹ G Chirgwin, *Minutes of Evidence*, 18 July 2000, p. 562.

The Magistrates' Court and Police in Swan Hill made a joint submission to the Committee on the desperate need for video-conferencing facilities in their Court.

The major issue for me is the lack of video-linked facilities at the Swan Hill court. We do not have those facilities currently at Swan Hill, and I understand that a large capital cost would be involved to install them. However, I think it would be well justified. Swan Hill is an isolated rural community and suffers from the tyranny of distance, both in travelling time to major centres such as Melbourne or Bendigo, and also locally where people have to travel long distances to access the sorts of services that people living in the metropolitan area would be able to access easily within a short distance of their homes...If video-linked facilities were installed at the Swan Hill court, they would be of benefit to the Victoria Police and its members, and a major benefit to the local community and to persons in custody.

In terms of the benefit to the police, the police are currently spending — especially in the rural districts — a large amount on sending members to court appearances in Melbourne and other areas. It is a significant expense. To send one person to a court appearance in Melbourne normally requires a two-night stay plus travelling expenses and the provision of a car. The court appearance may be for 5 minutes. For a contest mention hearing...an informant may only be required for 5 to 10 minutes, yet he or she is away for two days, takes a car and is required to spend two nights at a motel in Melbourne. It is a significant expense. If we had video-conferencing facilities at the Swan Hill court that could be achieved at no cost to the police and the community would benefit directly from that police member being available to police the local community rather than being taken out for what could be only a 10-minute appearance in Melbourne. It would be of benefit to the local community not only in a criminal court hearing, but also in civil matters. It has been brought to my attention that recently the victim of a crime was required to travel to Melbourne to give evidence in a crimes compensation tribunal matter, when that could have been done, if we had the facilities here, by video-link at virtually no cost or inconvenience.

There have been custody issues at Swan Hill police station for a long time. Foremost in our minds, because we have a significant Aboriginal community and population here at Swan Hill, is the deaths in custody inquiry and the recommendations from that inquiry... If video-link facilities were installed not only would we be able to use our resources better, but it would also be of major benefit to us in the management of prisoners.⁷²

The Portland Magistrates' Court Registrar who felt that the lack of video-conferencing severely impeded the efficiency of the Court expressed similar sentiments.

We were passed over for the biggest technological advance in the courts so far — that is, the video-conferencing system. It is a fantastic system and one that is utilised every day in every other court, for various reasons. It staggers me why it has not been translated into the smaller country courts. I would have thought that is the reason for the development of the system, to give people in regional courts access to quick and easy hearings over great distances. Mildura was a pilot court for video-conferencing. It has been fantastic there, so it was adopted in bigger courts. Warrnambool and Hamilton have it, and it is utilised all the time. The financial argument is fair enough, but the fees recovered in the user-pays system should well and truly cover the cost of installing it in the smaller courts. The court in Portland is 400 kilometres from Melbourne — or 400 kilometres from anywhere — and solicitors have to travel 2, 3 or 4 hours out to prisons for conferences with clients when they could be doing it over a simple

⁷² J Lyons, *Minutes of Evidence*, 19 July 2000, p. 650-1. Evidence was also given by Ms Melanie Graham, Registrar, Magistrates' Court - Swan Hill.

video-link Video-conferencing, which is one of the biggest technological advances, has not been passed on to those who really need it.⁷³

The Committee notes the views expressed by the registrars that video-conferencing should be available in smaller, more remote courts. While the economic benefits may not be there in the short term, such facilities have the potential to facilitate access to a range of services that these communities otherwise lack. The Committee believes that if access to courts and legal services in regional and rural areas is to be taken seriously, video-conferencing must be made available to all regional and rural courts. Such facilities should not attempt to replace local delivery of services but complement the face-to-face delivery of services by courts. The Committee strongly believes that the Department of Justice should prioritise the establishment of video-conferencing facilities in all Magistrates Courts across rural and regional Victoria. While the Committee recognises that such a measure involves budgetary considerations, it believes that in the long term video-conferencing will not only ensure better access for rural communities but will be economically beneficial.

Recommendation 118

That the Department of Justice prioritises the establishment of video-conferencing facilities in all Magistrates' Courts across rural and regional Victoria.

Support Services

The generally held belief that there is a lack of adequate support services in regional and rural areas was confirmed for the Committee during its wide consultations across Victoria. However, the Committee was impressed with the dedication and quality of service delivery of the community and voluntary sector in regional and rural Victoria including such organisations as Court Network and the Salvation Army. Within courts, external agencies provide a range of services to assist and support court users during and after the process.

Court Network

As the Registrar of the Geelong Magistrates' Court stated in relation to Court Network:

Court Network ... provide a terrific service to people at Geelong. Any complex built should provide facilities for Court Network; many country courts do not have suitable facilities. They

⁷³ A Tenni, *Minutes of Evidence*, 20 June 2000, p. 315.

are a volunteer organisation and do a great job in helping people who are overawed when they come to a courthouse. They sit down with people attending court and tell them simple things such as what doors they should enter ... explain the court operations and give them tea or coffee. Court Network volunteers are a great help to us at the Magistrates Court and certainly at the Coroners Court.⁷⁴

Court Network is an organisation of 300 trained volunteers who ‘provide information, personal support and referrals to court users be they victim, witness, defendants, families and friends’.⁷⁵ Established 20 years ago, it operates a generalist program on-site in Magistrates’ Courts, County, Supreme and Coroner’s Court. Programs are also operated in four regional centres: Gippsland, Geelong, Bendigo and Ballarat. In its submission, Court Network summarises its purpose:

Court Network recognises that there are significant barriers to accessing the justice system including:

- Lack of comprehensive, understandable information
- Lack of comprehensive services which recognise the diversity of court users
- The culture and language of the court environment

To redress these barriers Court Network aims to lessen the trauma of going to court; seek to promote the safety of people attending Court; promote and respect the decisions made by court users; recognise the particular needs of court users in rural areas who may be geographically or socially isolated.⁷⁶

Court Network currently also provides an information and referral service through a state-wide 1800 telephone number and utilises a computerised database of community services and resources for its referrals. In its submission, Court Network proposed to retain existing services and to expand services for court users in rural areas. It proposed expansion in the following terms:

Table 9

Region	Towns Currently Serviced	Proposal for Expansion
Gippsland	Moe, Morwell, Traralgon	Sale, Bairnsdale
Geelong	Geelong, Colac	Warrnambool, Hamilton, Portland
Bendigo	Bendigo	Echuca, Castlemaine, Kyneton, Maryborough
Ballarat	Ballarat	Ararat, Stawell, Horsham, Nhill
North-East	Currently unserviced	Shepparton, Benalla, Wangaratta, Myrtleford and Wodonga
North West	Currently unserviced	Mildura, Ouyen, Kerang and Swan Hill

Court Network contends that the expected outcomes of such expansion would include:

⁷⁴ P McCann, *Minutes of Evidence*, 29 June 2000, p. 518.

⁷⁵ Wendy Taylor, Court Network, Bendigo, Submission no. 54, p. 1.

⁷⁶ Wendy Taylor, Court Network, Submission no. 40, p. i.

- Direct service provision to the people in rural areas, not currently resourced by Court Network;
- The recruitment and training of rural Networkers in areas not currently resourced by Court Network;
- The recruitment and training of Networkers from the Koori Community who are in support of the establishment of a court support service that is culturally appropriate
- Well managed and coordinated infrastructure to support rural services;
- All quality assurance mechanisms implemented, maintained and reviewed across new or expanded programs and services;
- Training programs developed, with time frame for piloting and evaluation established; and
- Court user evaluation method researched, developed, piloted and reviewed.⁷⁷

Court Network's budget for 1999–2000 was made up of \$215,640 from the Department of Justice, \$107,000 from the Department of Human Services for intervention order programs conducted in eight metropolitan courts, and \$66,000 from the Commonwealth Attorney-General.

The Executive Director of Court Network, Ms Wendy Taylor, believed that the provision of services at the Echuca Magistrates' Court was a high priority. The Committee did receive evidence from the Echuca Family Violence Reference Group in support of the establishment of a service in Echuca:

[T]he issue of access to court support services has been an ongoing one that we have been trying to address for the past five years. I suppose primarily we see this as an issue of access and equity to justice, and it is our belief that this community should be afforded the same quality of services that is afforded to other members of the Victorian community, particularly in relation to the way they are able to access the justice system. The other major issue of relevance here is that this is primarily a dual community, comprising both indigenous and white European population, and given the high numbers of indigenous people accessing the justice system for one reason or another, if we were successful in being able to establish a court support network here we believe it needs to be developed in a culturally appropriate way otherwise we are denying the needs of a part of the community.

We would like to see the Victorian Court Network system that operates in other courts throughout the state. We see it as the most appropriate body to do this.⁷⁸

⁷⁷ Wendy Taylor, Court Network, Submission no. 40, p. 5.
⁷⁸ P Marwood, *Minutes of Evidence*, 25 July 2000, p. 668.

The Committee was advised by Ms Taylor that the establishment of a service in Echuca would cost approximately \$25,000–\$30,000 with a recurring budget of approximately \$22,000. The Committee supports the establishment of a service in Echuca but also recognises that there are several areas of the State that need court support services. For instance, registrars in Portland, Warrnambool and Mildura told the Committee of the lack of victim services available and the need for an organisation like Court Network to provide such services.

The Committee notes that the Australian Law Reform Commission in its report *Managing Justice*⁷⁹ (January 2000), recommends a national expansion of Court Network. The Committee believes that the Government should provide extra resources to expand Court Network services to regional and rural areas with a long-term view of resourcing such services in all Magistrates' Courts on sitting days. The Committee notes that the model of delivering services through volunteers has meant that set-up costs are minimal in light of the services provided.

Salvation Army Court and Prison Chaplain Service

Another support service offered at a number of Magistrates' Courts is run by the Salvation Army. The court support work includes counselling and supporting people going to court; advising of the court processes and assisting court users to access legal representation; and assisting legal practitioners with rehabilitation assessments prior to a court appearance.

The Service also works in conjunction with Community Corrections to assist clients on community based orders by providing programs of support and counselling. Their programs include a Positive Lifestyle Program, Anger Management and Stress Management programs.

The Committee heard evidence from the Salvation Army Court Support Worker in Horsham and was impressed by the amount of work done there. The Committee heard that the Salvation Army Court and Prison Support Service receives no government funding.⁸⁰

The Committee notes that a number of the services offered by the Court Network and the Salvation Army are similar. The Committee believes that this should be taken into consideration when considering any expansion of services in rural and regional Victoria.

⁷⁹ ALRC Report No 89

⁸⁰ J Blake, *Minutes of Evidence*, 28 September 2000, p. 1065.

Recommendation 119

That the Government provides extra resources to expand Court Network services in regional and rural Victoria.

The Committee also notes that the Coroners Court provides support services such as grief counselling for families and relatives. It understands that such services are limited and that the court is seeking additional funding. The Committee would support appropriate services being available to and accessible from regional and rural areas of Victoria.

Parallel Court Services

In recent years the Magistrates' Court of Victoria has introduced programs to address the needs of specially disadvantaged persons. The particular areas of concern for the court have been:

- persons who are mentally ill.
- persons who have intellectual and other disabilities.
- persons who suffer from drug addiction.
- young offenders, particularly homeless youth.⁸¹

To address these problems the Court has introduced a system of liaison officers located at the Melbourne Magistrates' Court whose function it is to advise the Court on the needs of specially disadvantaged people and to identify services in the community provided either by government funded agencies or by community organisations. The Magistrates' Court currently has a Juvenile Justice Liaison Officer, a Psychiatric Service Liaison Officer, a Disability Coordinator and a Crimes (Family Violence) Support Coordinator.

The Committee received considerable evidence that these services, while extremely valuable, are not readily available in regional and rural Victoria.⁸² The Court is currently taking steps to expand these services to rural and regional Victoria. For example, part-time psychiatric positions have recently been established in Bendigo, Geelong, Moe and Shepparton. The Committee understands that the juvenile justice

⁸¹ Magistrates' Court of Victoria, *Structure and Operations of the Magistrates' Court*, www.magistratescourt.vic.gov.au.

⁸² The Liaison officers can be contacted at Melbourne Magistrates' Court and will provide assistance to other courts. However, accessing these services can prove difficult for courts outside Melbourne. See evidence from all Magistrates Courts.

program is also to be expanded⁸³ but the extension appears likely to be only in metropolitan areas.

The liaison officers work within a number of programs which the Court calls its parallel services. These are:

- Pre-trial Diversion Scheme
- Court Referral and Evaluation for Drugs Intervention and Treatment (C.R.E.D.I.T.) Program
- Disability Coordinator
- Community Forensic Mental Health Court Liaison Service
- Juvenile Justice Court Liaison Service
- After Hours Service
- Bail Advocate

The court also lists its video-conferencing facilities as a parallel service (these have been discussed above), as well as pre-hearing conferences. The latter are discussed in Chapter 17, Alternative Dispute Resolution.

In evidence to the Committee Ms Jelena Popovic commented as follows on their parallel programs:

It is important that we convey to you that we are passionate about our work. We do not rest on our laurels but are constantly looking for ways to improve the courts' access to the community and the facilities that we can offer to the community... [A]ll the parallel services work together... [M]embers of our client group do not present with one problem; they will have multifaceted issues...⁸⁴

These programs are funded from a number of different sources and are not all within the direct control of the Magistrates' Court. The Court saw this as entirely appropriate as long as the Court retains some input into the programs to ensure they remain relevant to it.

[W]hat we want to ensure are available as sentencing or dispositional tools are alternatives...where they can be used to maximise restorative justice, satisfy the community and ultimately protect the community better than a disposition that does not change behaviour...

⁸³ Magistrates' Court of Victoria, Annual Report 1999/2000 p. 45.

⁸⁴ J Popovic, *Minutes of Evidence*, 6 February 2001, p. 1152.

We get people into it through that dispositional door and then it is a matter of funding and management. We may need to have a place on a group, or a committee or a working party...but not manage it.⁸⁵

Pre-trial Diversion Program

Without compromising the rights of victims, diversion offers the opportunity to divert from the criminal justice system those for whom greater harm is caused by the appearance itself, for those who are labouring under some disability and for those for whom early intervention might bring about positive lifestyle changes and thereby reduce the prospects of re-offending.⁸⁶

In January 1997 a pre-trial diversion scheme for minor offences commenced at Broadmeadows Magistrates' Court and was shortly after extended to Mildura Magistrates' Court. The scheme is based on a similar program that has been operating successfully in New Zealand since January 1988. The Victorian program has the support of the magistracy, police, practitioners, community groups and the various treatment agencies to which offenders are referred.

Diversion will only be considered where there is sufficient evidence to support a charge and the offender indicates an intention to plead guilty. The purpose of the scheme is to:

- Prevent re-offending;
- Avoid the first criminal conviction;
- Assist the offender's rehabilitation;
- Utilise community resources for appropriate counselling or treatment; and
- Ensure that appropriate reparation is made to the victim of the offence and where appropriate that an apology is tendered to the victim either by letter or in person.

The court has determined that offences considered suitable for diversion include:

- shop stealing;
- drug offences, such as first offence possession and use of cannabis or heroin;
- minor dishonesty offences;
- wilful or criminal damage;

⁸⁵ I Gray, *Minutes of Evidence*, 12 April 2001, p. 1168.

⁸⁶ Magistrates' Court of Victoria, *Structure and Operations of the Magistrates' Court*, www.magistratescourt.vic.gov.au.

- minor street offences where drunkenness is associated with the commission of the offence; and
- driving offences such as careless driving.

Diversion may be at the instigation of:

- the police informant;
- the police member authorising the brief;
- a police prosecutor;
- the defendant or his/her legal advisers
- the Court;

An offender deemed not suitable by a member of the police force will not be offered diversion.

A diversion program might require an offender to:

- Apologise to the victim by way of a letter or in person;
- Compensate the victim;
- Attend for counselling and treatment;
- Perform community work;
- Abide by a curfew;
- Live at home;
- Not associate with certain persons;
- Make a monetary donation to a charitable organisation;
- Attend a defensive driving course.

The potential benefits to the offender may include:

- Counselling and treatment;
- Non-conviction disposition;
- No police record;
- An opportunity to make full restitution to the victim;
- An opportunity to give/offer a written/personal apology to the victim.

Diversion programs are part of the Criminal Justice Enhancement Program (CJEP) as explained by the Regional Coordinator of the Magistrates' Court Bendigo region:

Diversion is currently being developed by the criminal justice enhancement project and at this stage they are looking at creating positions for diversion coordinators — seven positions at VPS3 level — that will be initially in the suburban courts, with the intention of sending the scheme out to country locations. Courts such as Bendigo, Shepparton and Mildura will have a

diversion coordinator who will be responsible for coordinating all those services to be involved in that diversion program. When we talk about services to rural Victoria, this is one service that we strongly support being brought to country regions. Initially the seven positions will be in suburban Victoria — Melbourne and outlying courts — but it is also anticipated that if it is successful it will be brought to regional Victoria as well. Apart from just taking those people out of the court system, it also acts as a rehabilitative sentence. Instead of coming before and being dealt with by a court, people get the opportunity to realise the error of their ways and do something community minded about it.⁸⁷

The Status Report of August 1999 on the parallel programs in the Magistrates' Court noted the following responses from users of the pilot diversion programs:

All those interviewed saw advantage in forging links between the criminal justice system and the community. Any such links benefits participants as well as vesting an element of ownership in the local community. It also allows the court to respond to local needs through the flexibility inherent in parallel program conditions.

Of those interviewed, the vast majority saw an extension of potential offences and participants (eg juveniles) for diversion as appropriate. The two consistent responses were that no offence should be automatically included or excluded but that the circumstances of offence and offender should determine eligibility and that the Children's Court is an area where a need existed for parallel programs...

Several offenders and their parents who have participated in the pilot have written letters expressing gratitude for the recognition given to their circumstances and the opportunity for a second chance that resulted from their charges being diverted.⁸⁸

While it is difficult to measure the success of such a program except by a long-term study, statistics relating to completion of diversion program conditions show a high rate of compliance. In the six months from January to June 1999, of 166 matters referred to the diversion program at Broadmeadows, 72 per cent had successfully completed the program with another 23 per cent still undertaking their program. Two per cent had been deemed unsuitable for the program by the Magistrate and 2 per cent had failed to appear at their mention date. One per cent declined the program and opted to plead not guilty.

At Mildura 7 matters were referred, with 6 completed successfully and 1 still being undertaken.

The program expanded to Heidelberg in November 2000, Dandenong and Sunshine in January 2001, and Frankston and Ringwood in March 2001. The Melbourne Magistrates' Court expects to be operating the program from May 2001.

⁸⁷ D Stebbings, *Minutes of Evidence*, 26 July 2000, p. 752.
⁸⁸ p. 6.

In rural areas the programs are due to commence one month after the CREDIT program becomes available. This would mean that they would commence in Moe in September 2001, Ballarat in November 2001, Geelong in July 2002 and Bendigo in November 2002.⁸⁹

The Committee was concerned that the options for magistrates in considering diversion should be as extensive as possible and should include involvement in further education, training, job-skilling and job placement. In response to an inquiry from the Committee about job placement the Deputy Chief Magistrate said:

That is exactly what we are envisaging... Essentially the work of the diversion coordinator at the court is to muster community support, interest and involvement, including potential employers.⁹⁰

The Committee, following its visits to a number of regional towns, was particularly concerned with the reported high level of recidivism among some members of the community, and believes that links can be drawn between individuals' over-representation in the criminal justice process and their lack of an employment skill-base.

The Committee is of the view that the diversion program needs a legislative base, particularly in relation to the provision of diversion options. The Committee notes the comments of the Chief Magistrate in relation to the need for a legislative base:

A strong view is held around the court that we need a legislative framework. Some magistrates feel that the power to divert offenders is either unclear or absent.⁹¹

The Committee commends the Magistrates' Court for its diversion programs and in particular the planned expansion of the programs to regional and rural areas. The Committee also notes the comments of the Chief Magistrate that diversion programs should not be seen as an easy option for offenders.

[T]he diversionary process is often a more rigorous disciplinary process and therefore more positive process than a conventional good behaviour bond or probation... [T]hose who have been diverted are quite often doing so under a quite rigorous set of obligations designed to satisfy everybody, which would not occur if they were simply released on a good behaviour bond. There is a very real unknown element in this kind of equation that needs to be better understood in the community.⁹²

Recommendation 120

⁸⁹ I Gray and J Popovic, *Minutes of Evidence*, 12 April 2001 p. 1171.

⁹⁰ J Popovic, *Minutes of Evidence*, 12 April 2001 p. 1166.

⁹¹ I Gray, *Minutes of Evidence*, 12 April 2001 p. 1163.

⁹² *ibid*, p. 1182

That the Government enacts legislation to provide a framework for the diversion program and in particular to allow for diversion options such as further education, training, job-skilling and job placement.

CREDIT

The Court Referral and Evaluation of Drug Intervention and Treatment (CREDIT) system was introduced in the Melbourne Magistrates' Court in 1998 and was originally a pilot project that has since become fully operational. The program was extended to the Dandenong Magistrates' Court in December 2000, and to the Sunshine Magistrates' Court in February 2001.

An evaluation report of the pilot program completed in November 1999 recommended that the feasibility of extending CREDIT to rural areas through a major regional centre or centres such as Ballarat, Bendigo or Geelong should be investigated as soon as possible.⁹³ The Magistrates' Court gave evidence that the programs are planned to commence at Moe in August 2001, at Ballarat in October 2001, at Geelong in June 2002 and at Bendigo in October 2002.⁹⁴

The CREDIT program arose out of concern that in many cases defendants with substance abuse issues were being released on bail without any conditions which addressed their substance abuse. Consequently many continued to offend while on bail. The aims of the Program are to:

- Provide early treatment when the alleged offender is first arrested.
- Implement drug treatment by way of bail conditions whilst the alleged offender is awaiting disposition of the case.
- Develop a commitment on the part of the alleged offender to rehabilitation by capitalising on the immediacy of the arrest, and confrontation with the impact of the alleged offending at the time of arrest and release on bail.
- Divert substance-abusing offenders from incarceration.
- Reduce the risk of further offending.
- Minimise harm to both the offender and community by addressing the issues related to substance abuse.

⁹³ Turning Point Alcohol and Drug Centre Inc, *Court Referral and Evaluation for Drug Intervention and Treatment (CREDIT): Final Evaluation Report*, Turning Point, Melbourne, November 1999, p. 95.

⁹⁴ I Gray, *Minutes of Evidence*, 12 April 2001, p 1171.

The program is aimed at defendants arrested for non-violent offences who:

- have a demonstrable drug problem.
- are at risk of committing further offences whilst on bail.
- are at risk of harming themselves or others.
- would normally be released on bail.
- are suitable for drug treatment.

Defendants who meet the criteria are bailed to the next Court sitting day where they are assessed by a Court-based drug clinician. The drug clinician identifies and arranges the appropriate treatment. The defendant is bailed to a suitable date with conditions that he/she comply with the requirements of the CREDIT Program. The Magistrate who hears the remand application remains involved in the case until the CREDIT episode is completed.

Since its inception in 1998, the Court has noticed the following emerging trends:

- Significant decrease in reoffending whilst on bail.
- Some offenders are motivated to increase the level of treatment from counselling to withdrawal as their treatment progresses on the program.
- Motivation by some offenders to extend treatment beyond initial recommendation.
- Offenders on the CREDIT program who are placed on Community Based Dispositions have a proven record in treatment. Their orders are of a shorter duration and they are able to continue the treatment regime that has been developed.
- Issues other than substance abuse are being addressed, such as family reunification.
- Several defendants have decreased their substance abuse to the point that they have been able to rejoin the work force.
- Participants have reported a positive interaction with the criminal justice system.
- Links are being forged with specific communities, for example the Indo-Chinese community, as the program becomes known within the communities as effective and culturally appropriate. Vietnamese participants and their families are expressing a sense of empowerment with the assistance provided under the program.

While the benefits of the system are widely recognised, regional and rural Victorians do not enjoy the same level of access to CREDIT as their metropolitan counterparts. As the Senior Magistrate in the Bendigo region stated:

[CREDIT] is not something we have in country Victoria, but I can assure you that the drug problem in country Victoria — whether it be Mildura, Orbost, or Portland — is every bit alive and well as it is in Melbourne. I have been all over the State and it is everywhere.⁹⁵

Similarly Ms Kay Robertson of Victoria Legal Aid pointed out:

Services such as the court referral evaluation and drug intervention and treatment service, known as CREDIT, have been piloted and shown to be very successful but have not been sufficiently resourced to extend beyond metropolitan Melbourne... Figures show that from 70% to 80% of Magistrates' Court crime matters are drug related, so if we can divert right at the start of the court process it would be of great assistance, particularly in places like Bendigo which I understand have a very high drug problem.⁹⁶

The Committee is pleased to see that the Magistrates' Court is extending CREDIT to regional and rural areas.

Disability Coordinator and the Community Forensic Mental Health Court Liaison Service

These programs are discussed in the Chapter 8, People with Disabilities.

Juvenile Justice Court Liaison Service

This program is discussed in Chapter 11, Children and Young People.

After Hours Service

This service ensures a Magistrate and a Registrar are available in the metropolitan area for urgent matters between the hours of 5.00pm and 9.00am on weekdays, and continuously throughout the weekend and on Public Holidays. The Magistrate may issue search warrants and warrants of arrest as well as urgent interim intervention orders under the *Crimes (Family Violence) Act 1987*.

Bail Advocate

This program began operation in early 2001 and is funded through the Office of Corrections. The purpose of the program is

⁹⁵ B Gibb, *Minutes of Evidence*, 26 July 2000, p. 750.

⁹⁶ K Robertson, *Minutes of Evidence*, 15 May 2000, p. 67.

...to facilitate the provision of a range of services and programs that would enable suitable defendants, who might otherwise be regarded as constituting an unacceptable risk, to be bailed, rather than remanded in custody.⁹⁷

The role of the bail advocate is to:

- Satisfy the magistrate that a defendant would receive appropriate support to justify him being bailed rather than remanded in custody;
- Ensure adequate supervision to minimise the chance of a defendant offending whilst on bail; and
- Ensure the defendant meets all his bail obligations, and appears in court at the next scheduled hearing.

Although the program is new, the Deputy Chief Magistrate described it to the Committee as a ‘fantastic service’.⁹⁸

Aboriginal Court

In South Australia the Committee heard about and visited the Aboriginal Court, which operates at the Port Adelaide Magistrates’ Court. Named the Nunga Court by the local community, the court has been operating since June 1999.

The Nunga Court differs from the mainstream court in a number of ways:

- It deals only with Aboriginal people who are pleading guilty.
- The Magistrate sits in the body of the court rather than at the bench, thus being more at eye level with the offender.
- An Aboriginal justice officer or senior Aboriginal person sits beside the Magistrate to advise on cultural and community matters.
- The offender sits at the bar table with his or her lawyer and may have a relative sitting with him/her.
- Once the prosecutor and the defence counsel have spoken, the offender, the family and community members or the victim (if present) have a chance to speak to the Magistrate. The Magistrate may ask them questions to assist in determining sentencing options.
- Family and community members are encouraged to attend.

⁹⁷ Information to Magistrates regarding the Pilot Bail Support Services Program, a paper provided by the Magistrates’ Court and part of Submission no. 91.

⁹⁸ J Popovic, *Minutes of Evidence*, 12 April 2001, p. 1169.

- Aboriginal justice officers and an Aboriginal court orderly work in the court. They can help the offender and family members if they have questions about the court process or outcomes such as the payment of fines or the conditions placed on bonds.

The Committee was impressed with the informal atmosphere of the court and the fact that the many participants in the process appeared able to contribute without being overwhelmed or intimidated by the court environment. The Committee also noted the preparedness of the Magistrate to give considerable time to the process of working out an appropriate sentencing option. While no statistics were available as to whether the approach led to a decrease in recidivism, statistics do show that the attendance rate at the court was over 80 per cent compared to the rate for Aboriginal people in other magistrates' courts of about 50 per cent. This in itself was noted as a significant resource saving as warrants do not need to be issued and police resources expended on locating and arresting those failing to appear.

A second Aboriginal Court was opened in South Australia at Murray Bridge in March 2001. The Committee is aware that a similar scheme is being considered for Victoria and that Shepparton is likely to be the first location trialed.⁹⁹ The Committee notes that there was media coverage in January and February this year of support for the establishment of a Koori Court in Warrnambool.¹⁰⁰ The Committee believes that an Aboriginal Court similar to the South Australian model should be established as a priority and is supportive of the first initiative being located in a regional centre such as Shepparton.

Recommendation 121

That the State Government establishes an Aboriginal court in a regional location as a matter of priority.

⁹⁹ *ibid* p 1175.

¹⁰⁰ ABC News Online, www.abc.net.au, of 31 January 2001 and 1 February 2001.

CHAPTER 16 - CIRCUIT COURTS

The Supreme and County Courts, the Victorian Civil and Administrative Tribunal (VCAT) and the Family Court of Australia conduct circuits in regional and rural Victoria. As discussed in the previous chapter, Magistrates' Courts in regional and rural Victoria provide accommodation and registry support for these jurisdictions.

The terms of reference for this inquiry specifically require the Committee to consider the appropriateness of current circuit arrangements. This chapter will briefly describe the jurisdiction and circuit arrangements for courts and tribunals in regional and rural Victoria. It will also highlight some of the issues that arose in the Committee's consultations in relation to circuit arrangements. Finally it will look at ways in which technology is currently used and how it could be better utilised to improve the management and delivery of circuit court services.

Supreme Court of Victoria

The Supreme Court of Victoria is the superior court of the State. The Court is divided into two divisions — the Trial Division and the Court of Appeal. The Trial Division has nineteen judges and is presided over by the Chief Justice. The Court has jurisdiction in all criminal and civil matters unless specifically excluded by statute. Criminal trials are heard by a judge and jury of twelve people. Civil trials may be heard by a judge alone, or a judge and jury of six. Either the plaintiff, the defendant or the judge may request that a jury be used in some civil cases.

Some examples of the type of case heard in the Trial Division include:

- All cases of treason, murder and attempted murder.
- Personal injury actions involving large or complex claims which are heard by a judge or a judge and jury.
- Causes — civil proceedings that are heard by a judge without a jury.
- Commercial causes — proceedings designed to resolve commercial litigation within the business community.

- Other legal process such as bail applications, probate business and applications for injunctions.

The membership of the Court of Appeal comprises the Chief Justice and nine Judges and is presided over by the President. The Court of Appeal, constituted by two or three and occasionally five Judges, determines appeals against decisions made by a single judge of the Trial Division, all applications for new trials and all appeals from the County Court, in both civil and criminal jurisdictions.

Most Supreme Court cases are heard in Melbourne, however judges visit country locations ('circuit') to hear civil and sometimes criminal cases. Circuit courts visited include Ballarat, Bendigo, Geelong, Hamilton, Horsham, Mildura, Sale, Shepparton, Wangaratta and Warrnambool. The Supreme Court on circuit spends approximately four weeks in each town depending on the amount of business to be carried out.

There has been a decrease in the last few years in the number of applications lodged in the Supreme Court in circuit registries. As the CEO of the Magistrates' Court said:

Indeed, the level of new business on circuit courts, of which there are 10 registries, has declined markedly over the last decade or so. That has largely been due to jurisdictional changes and in particular the change to the common law rights in respect of both motor vehicle and industrial actions.¹

On the whole, the Committee did not receive any negative evidence in relation to the Supreme Court circuits. An inevitable common concern about all circuit courts was the delay involved in getting a matter heard. This criticism was levelled more at the County Court by practitioners, possibly due to the larger number of cases dealt with by that Court:

We do not pretend that there will be a reversal of the program (closure of courts), but we certainly call for no further restrictions in the availability of circuit sittings for the County Court, Supreme Court and tribunals. We see the system working reasonably well, although there have been long-running concerns about the days available on circuit for the hearing of cases.²

¹ B McLean, *Minutes of Evidence*, 16 May 2000, p. 158.

² D Faram, *Minutes of Evidence*, 15 May 2000, p. 99.

The benefits that circuit courts bring were widely recognised. As the Law Institute submitted:

I see it as extremely important that the circuit system not only stays as it is but develops so there is more extensive use of circuits. Clients and/or their local practitioners having to go to Melbourne for hearings comes at an excessive cost. The extra costs incurred and the dislocation that is caused to people and their families by travelling down to Melbourne for four, five or even more days have to be borne by the clients or Victoria Legal Aid, and practitioners moving to Melbourne — in my case, from Shepparton to Melbourne — for four or five days to run cases just adds to the devaluing of the legal dollar, whether it be legally aided or client-funded. There are huge on-costs in moving hearings to Melbourne³.

In relation to the Supreme Court, the strongest praise was reserved for the recent introduction of Court of Appeal Circuit Sittings. The Court of Appeal currently travels on circuit twice a year and it has received enthusiastic support:

You quite rightly identified the fantastic — we think — efforts the Court of Appeal went to last year in taking the court throughout Victoria — wherever it sat... That has been universally rated, by both the local communities and the private professionals, as being a great step forward and a positive indication by the court that it wants to get back to taking the law out to the people rather than getting the people to come to Melbourne⁴.

Concern was expressed by one witness that the Supreme and County Courts not cut back on their circuits:

It may not be necessary to say that circuits for country centres, such as the County Court and Supreme Court circuits, and the Family Court circuit... are critical. I have not addressed the question but I am assuming that there is no way that they would be under threat... [T]hey are a vital part of country life and the system of justice. To cut back on circuits would be a disaster. I am assuming that is not an issue.⁵

The Committee commends the Court of Appeal for its circuit work that has brought the highest form of State judicial determination to country Victoria for the first time. The Committee believes that while Supreme Court circuits appear to be appropriate, the Court may have to do more to assure the profession and the community that it is a service that is not under threat.

Technology in the Supreme Court

When inquiring into technology and the law in 1998, the Committee found that the Supreme Court lagged behind other State and Federal jurisdictions in relation to its

³ D Faram. *Minutes of Evidence*, 15 May 2000, p. 100.

⁴ id.

⁵ T Robinson, *Minutes of Evidence*, 21 June 2000, p. 461.

adoption of new technology. However, the Supreme Court has attempted to address this issue in the last two years. As the CEO of the Supreme Court explained:

Last year the court undertook two key programs. One was known as the administrative review, which was conducted by Andersen Consulting. The second was — and I think this was a first for any superior court in Australia — a self-assessment under the guidelines of the Australian Quality Council. I would think it is fair to say that both of those reviews, in medical terms, diagnosed us as being rather ill. Not only were the people who were working there overtaxed but our systems, that is our computer systems, our processes and a range of other attributes of the court and operations of the court were anachronistic, out of touch with modern demands, and largely the cause of multiplication of effort.

The end result of those two reviews is that the Department of Justice and the council of judges have accepted the recommendations of Andersen Consulting and the recommendations of the staff who were part of the self-assessment team or who comprised the self-assessment team. The net result of it all is that the court has embarked on a re-engineering or redesign of all of its administrative processes.⁶

In terms of re-engineering and redesigning process, the administration of probate has been targeted as a priority. With redesigned processes and a new computer system the Court hopes to reduce the turnaround time to one day.⁷ In technology terms, one of the main initiatives undertaken by the Supreme Court is the Cyber Court Book. The Court is particularly proud of the project as it is ‘a product which can be used in any courtroom or indeed anywhere where there is electricity and a phone’.

The major benefits of the system are that it is an integrated system which relies on internet browsers as its base, which incorporates email, both external and internal, to the courtroom and externally; imaging of documents; video-conferencing; and almost anything else that one can turn one's mind to in terms of the application of technology in a modern court environment...

It is the court's goal to ensure that each and every one of the courtrooms, not only in Melbourne but on circuit, are similarly cabled up and wired. The benefits are that witnesses and indeed country practitioners can utilise the video-conferencing facilities to ensure that there is no real need for them to attend at court. The court's goal is to reduce both delay and costs and at the same time improve and expand its services.

The internet facilities which this system provides mean that if a practitioner, for example, were in Mildura, he or she could communicate by video-conferencing with the judge or within the courtroom. Similarly, if a barrister wished to communicate with his instructing solicitor while in the courtroom, he could do so by simply sending an email to Mildura or wherever he or she may reside.

It is really a pilot system, so from our point of view really the moon is a balloon. We are encouraging all practitioners from both sides and the litigants themselves who are involved in

⁶ B McLean, *Minutes of Evidence*, 16 May 2000, p. 161.

⁷ B McLean, *Minutes of Evidence*, 16 May 2000, p. 162

these proceedings to provide us with feedback and to make suggestions as to how we may improve and expand the system.⁸

The Committee believes that the trialing of the Cyber Court Book is an important initiative that is at the cutting edge of new technologies and has long-term potential. The Committee commends the Supreme Court for its involvement in research and development to assist in increasing access to and the efficiency of the justice system. The availability of video-conferencing links for witnesses and legal practitioners will be of particular benefit to rural and regional communities.

The Committee also notes that the expansion of the Wide Area Network (WAN) in the last few years by the Department of Justice has improved the Court's performance on technology. The WAN has enabled increased communication and email facilities and has provided a conduit for judges and the magistracy to access all the same facilities when on circuit as they would in Melbourne.

County Court of Victoria

[T]he vital thing is to make effective contact between regional Victoria and the court. The judges, of course, are all housed in Melbourne but go on circuit to the circuit courts. There is the physical contact of the judges going on circuit as regularly as we can afford with the number of judges we have. Additional to that, of course, we have got the video-conferencing and the other IT links that enhance the performance.⁹

The County Court is an intermediate Trial Court, its civil and criminal jurisdictions placing it above the Magistrates' Court and below the Supreme Court in the Victorian hierarchy of courts. The County Court can hear matters at first instance and in some circumstances on appeal.

The civil jurisdiction of the County Court covers the following:

- All claims for personal injuries, irrespective of the amount claimed.
- Other personal actions where the amount claimed does not exceed \$200,000 (unless the parties consent in writing to exceeding that limit) and which are not excluded from the County Court by the *County Court Act* or any other Act. If more than \$200,000 is awarded, the plaintiff is entitled to recover the full amount.

⁸ B McLean, *Minutes of Evidence*, 16 May 2000, p. 159; See also www.supremecourt.vic.gov.au/ringtail/cyberc.htm

⁹ Chief Judge G Waldron QC, *Minutes of Evidence*, 16 May 2000, p. 173.

- Claims against municipal councils for loss or injury sustained while upon or using roads, land, buildings, etc, under the control of the council or the municipality.
- Actions where jurisdiction is specifically conferred on the County Court by a statute. The list includes:
 - the Administration and Probate Act
 - the Adoption Act
 - the Cluster Titles Act
 - the Property Law Act
 - the Settled Land Act
 - the Strata Titles Act
 - the Transfer of Land Act
 - the Trustee Act

The County Court has jurisdiction to hear all indictable offences except treason, murder and certain other murder-related offences.¹⁰ Subject to the power of the Supreme Court to order transfer of a matter from the Supreme Court to the County Court, the Director of Public Prosecutions has the initial decision whether to present a person for trial in the County or Supreme Court.¹¹ In practice, the great majority of offences save for treason or murder are heard in the County Court.

Appeals go to the County Court from the Magistrates Court under section 83 of the *Magistrates' Court Act* or Children's Court in respect of criminal and quasi-criminal matters. Appeals are also heard from the Family Division of the Children's Court.

A decision of the County Court in its appellant jurisdiction is generally final. An exception occurs when the County Court substitutes a sentence of imprisonment for a non-custodial sentence. One can then, with the leave of the Supreme Court appeal against the sentence to the Court of Appeal.

The County Court services rural Victoria by conducting circuits in Bairnsdale, Ballarat, Bendigo, Geelong, Hamilton, Horsham, Mildura, Morwell, Sale, Shepparton, Traralgon, Wangaratta and Warrnambool. For administration and listing purposes, these courts are grouped into three regions, namely the Eastern region, the Northern region and the Western region.

¹⁰ s.36A *County Court Act* 1958
¹¹ s.353 *Crimes Act*

The County Court Working Party was seen as a good model for consultation and effective management of circuits:

In the past three years that forum [the working party] has increased the benefits of circuit courts right across country Victoria. That is because we have the confidence of the Chief Judge, and he has our confidence. Every two months we are able to discuss openly with him what is happening at our respective circuit courts, what the demands on those circuit courts are and what will be projected in, for example, 2001...

When I say we are having success in the County Court via the working party with the Chief Judge, it is not necessarily a matter of achieving more resources. For example, when I arrived here we had four circuit courts per year: three County Court circuits and one Supreme Court circuit. Because of the consultation with the Chief Judge, we can put to him the figures...in relation to the backlog, and now at least we have a forum where case management can be discussed.¹²

Some features of the County Court Circuit include:

- The normal duration of each circuit is 4 weeks, although a Judge will in some instances sit longer to conclude a part-heard trial.
- Workcover circuit sittings are for 2 weeks.
- In the 1998–98 financial year, the Court conducted 91 circuits equating to approximately 1820 sitting days. The average cost of a circuit was \$6663.¹³
- Despite its tight budgetary constraints, the Court has been able to provide an additional 5 circuits this year. This was achieved through savings in other areas.
- The ability of the Court to generate savings for additional circuits is severely circumscribed by its tight budgetary situation.¹⁴

To demonstrate the tight budgetary circumstances, the Court provided the Committee with figures that showed that while Victoria had the highest volume of lodgements in intermediate courts in Australia,¹⁵ the number of court staff supporting Judges was the second lowest in Australia.¹⁶ Furthermore, the per capita expenditure on the County Court was the lowest in Australia.¹⁷

¹² G Smart, *Minutes of Evidence*, 21 June 2000, p. 402

¹³ This cost relates solely to travelling and accommodation expenses of judges and staff. As mentioned in the last chapter, the cost of services provided by Magistrates' Court staff is borne by the Magistrates' Court.

¹⁴ B. Evans, Submission no. 1, p. 1–2.

¹⁵ 524.3 per annum — the next closest state was NSW with 274.5.

¹⁶ 4.6 in comparison with 7.0 in NSW.

¹⁷ \$6.82 compared with \$8.95 spent in NSW.

The Court recognises that it generally locates its circuit courts in more populous regional centres. In the larger centres, two judges frequently sit at one time. In the year 2000, further refinements have been made to the allocation of judges to circuit work so that on six occasions during the year two judges have sat in the criminal list at three circuit courts.¹⁸ This joint responsibility for the disposition of the criminal workload was seen as creating greater efficiencies in circuit locations.

In its submission, the Court acknowledged that there is a backlog of cases in Geelong, Morwell and Warrnambool. The inadequate facilities and the resultant difficulties with coping with the workload were cited as the reason for the backlog in Morwell and Warrnambool.¹⁹ While Geelong (like Ballarat and Bendigo) has additional courtrooms for use by the County Court, funding constraints and the lack of sufficient judges prevents the effective use of the facilities.

The Committee heard evidence that the backlog of cases can have a particularly detrimental effect on the child victims of sexual assault.

It is a flaw in our legal system to expect a child as a victim of crime to wait in line for the same time as would an adult. That is a big issue in the area of sexual assault... For instance, if a child is a victim of sexual assault he or she waits in the same queue for the matter to go to trial for the same period as does the adult. We could do better... The average time between incidents being reported to police here and the matter going to trial in Wangaratta is...two to three years.²⁰

The Committee is concerned that this long wait could impede the child victim's ability to deal with, and move on from, such a traumatic event. Whilst the Committee understands that delays are difficult for all victims of crime, it believes that children must be given priority in the system. The Committee notes that the Family Court has developed the Magellan list to deal with difficult cases involving children in recognition of the fact that a quick resolution is beneficial to the child or children. A similar system of identifying cases where the interests of a child would warrant special and immediate attention could be developed by the County Court.

Recommendation 122

That the County Court develops a system of identifying cases that involve child victims of crime as witnesses and expediting their hearings in rural and regional circuit locations.

¹⁸ On one occasion at Ballarat and Bendigo and on four occasions at Geelong.

¹⁹ Chief Judge Glen Waldron, QC et al, County Court of Victoria, Submission no. 6, p. 4.

²⁰ J Muller, *Minutes of Evidence*, 13 June 2000, p. 256.

The Committee notes that most of the concerns about County Court circuits related to the need for more circuits. However, the legal profession and the registrars recognised that the present inadequacies are largely due to budgetary constraints. As the Clerk of Courts Group stated:

The group would like to see more County Court circuits, but understands that the court, due to resource restrictions, is unable to provide more. Circuit courts provide great interest in local justice issues as well as providing a boost to the local economy.²¹

Legal practitioners also expressed the view that while circuit courts are generally working well in regional and rural Victoria, court closures and inadequate facilities in several areas have decreased access to higher courts for local communities and caused frustration for legal practitioners, court staff and the public.²² It was also noted that the frequency, numbers of matters listed and case management processes for circuits is and always should be a matter for continual refinement. Country legal practitioners did feel that there was a serious need to consider the impact of rule changes on regional legal practitioners and their clients.²³

A common concern raised by practitioners was the lack of date and time certainty in County Court circuits. A local practitioner in Geelong made the following comments:

One of the complaints of many local practitioners is the fact that there is no trial date certainty. Practitioners are not given dates for when their court cases will start in the Geelong County Court, and I believe that is the situation throughout rural and regional Victoria. That makes it extremely difficult not just for the practitioners but also for the people going before the courts. Basically, they are told the month in which their cases are likely to come on. For example, they could be given a date of 5 June, which is the commencement date of the month's proceedings. There is usually an order to the cases, but cases get adjourned or resolved and some blow out longer than others, so practitioners basically have to keep their whole month free.

It is very difficult for clients to retain the same barrister. I often have to give the papers to someone else to do the various court appearances. There is usually no real continuity for the clients. They see lots of different faces because we do not have date certainty. That does not happen in Melbourne, where fixed dates are given. For example, a date of 4 June or 5 September could be given for a plea, and the plea will be heard on that date. In the country, practitioners are given a month in which they have to fill the gaps. A letter was sent around to local practitioners saying that during the February sittings our court cases could be listed as late as 2.30p.m. the day before they got on. The accused in those cases are people charged with serious crimes, most of whom are looking at jail sentences, and all of a sudden their cases could come on for hearing the next day. That would not happen at the Melbourne sittings.²⁴

²¹ J Dinsdale, *Minutes of Evidence*, 16 May 2000, p. 116.

²² David Faram, Law Institute of Victoria, Submission no 4, p. 7.

²³ *ibid.*

²⁴ M Brugman, *Minutes of Evidence*, 29 June 2000, p. 535.

To some extent, the Committee has heard that listing problems will be solved with the implementation of the CJEP program:

There will also be significant improvements from the case management processes in the County Court: the expected reduction in average length of cases will be 12 to 15 per cent as a result of the better judicial supervision of cases and other innovations, greater certainty of times for court hearings, reduced stress on parties waiting for cases to proceed, and reduced travel times, which is especially important for country Victorians.²⁵

As discussed in the last chapter, CJEP has a number of sub-programs that are all designed to interrelate with one another and ultimately to enhance by way of rationalisation and appropriate IT support all aspects of the Administration of Criminal Justice from the time of arrest through to sentencing. One of the sub-programs of CJEP is the County Court Case and List Management System (CLMS). The court believes that once IT support for CLMS is provided, the management and listing of cases and the reforms introduced by the *Crimes (Criminal Trials) Act 1999* will be much enhanced.

Technology in the County Court

With the construction of the new County Court building in Melbourne, it is expected that the Court will have a new computerised case management system that will provide state-wide coverage. The aim is to integrate such systems with new systems in the Magistrates' Court and ultimately to have integrated systems across all courts and tribunals through CJEP:

CJEP will introduce a case management or case listing system in the County Court. It will introduce a listing system in the Magistrates Court, using the same application as will be based in the County Court. The magistrates have now set up a project to examine whether the new County Court case management system will support the needs of the Magistrates Court. Depending on the outcome of that review and how much change has to take place, the department will then look at using that County Court application as an extension to replace the Magistrates Court link system.²⁶

The Committee is heartened by the fact that there is increasing evidence of the courts recognising the need for integrated IT systems and encourages more development in this area. The CEO of the County Court provided an example of this greater cooperation:

[W]e do cooperate very much with the Magistrates' Court, certainly in matters of common interest in the technological area. As I speak, the Magistrates' Court is rolling out a new generation of hardware under the banner of the CATCOE system. We took a decision last year

²⁵ P Hind, *Minutes of Evidence*, 11 September 2000, p. 830.

²⁶ C Formica, *Minutes of Evidence*, 25 September 2000, p. 990.

to become involved in that and we have recently rolled out, with the assistance of the Magistrates' Court, on-line facilities for our judges who are on circuit. I think there is a great deal of cooperation between the courts and a great deal of goodwill.²⁷

The Committee commends CJEP and hopes that it can deliver an integrated justice IT system for Victoria.

Video-conferencing

The County Court has led the way in the establishment and use of video-conferencing within courts. Currently, all circuit courts apart from Horsham and Bairnsdale have video-conferencing facilities. The County Court expressed the desire to the Committee that all circuit courts be linked by video.²⁸ The videolink facility is used extensively by the court to conduct pre-trial activities in both civil and criminal jurisdictions, removing the need for all participants to be in one location be that Melbourne or a circuit town. It is also utilised to receive evidence from witnesses from remote locations, intrastate, interstate and internationally.

The Committee believes that it is only a matter of time before all courts have adequate video-conferencing facilities. However, in the interim, it believes that circuit courts should be equipped with videolink facilities and therefore urges the Department of Justice to ensure that such facilities are available in Horsham and Bairnsdale.

Recommendation 123

That the Department of Justice equips all courts with county court circuits in regional and rural Victoria with video-conferencing facilities.

Family Court

In relation to the appropriateness of circuits, the strongest concerns during the consultations were directed to the Family Court. The Committee acknowledges that the Family Court is a Federal jurisdiction but nevertheless hopes that the following information is utilised by the court to improve their circuit work. As one practitioner told the Committee:

In the country we are concerned about the Family Court... In my own place, Mildura, practitioners have fought tooth and nail for a number of years to retain two Family Court circuits a year, about six months apart. There has been a reduction of services from Family Court counsellors where counselling is not ordered by the court. Once upon a time Family

²⁷ J Hartnett, *Minutes of Evidence*, 16 May 2000, p. 179.

²⁸ Chief Judge Glen Waldron, QC et al, County Court of Victoria, Submission no. 6, p. 12.

Court counsellors would come to the town a couple of times a year to assist with matters outstanding in the court. Similarly, Order 24 conferences do not happen as frequently and in my experience in Mildura local practitioners have had difficulty in retaining those two circuits a year. The closest Family Court is in Bendigo which is 400 kilometres away. The alternative is to take your matter to Melbourne which is 550 kilometres away with all the associated difficulties for country people.²⁹

Another practitioner commented:

It is extremely difficult for country people to get the same sort of service that people can get in Melbourne, Dandenong or Geelong where is there a constant Family Court presence — you can get into court down there very quickly. Out here in the country it is almost impossible and from a financial point of view we practitioners hate that system. A lot of them are legal aid cases. We get a limited grant of legal aid — it might be \$700 — to run a case. To do that we have to brief a barrister or solicitor in Melbourne. We have clients who have to get up at 4 o'clock in the morning. They get off the train in Melbourne at 10 o'clock, have their case heard, are back on the train at 6 o'clock in the evening and get back here at 11 o'clock at night. I have had more than one case where the two contending parties have gone down and back on the same train and ended up with police involvement at Spencer Street. I have heard some horror stories about that. It is a real problem that we cannot deal with such interim matters on an urgent basis in the country partly because the magistrates are reluctant to be involved.... It is all too difficult and messy. Besides — and I must give them the benefit of that — we do not have the counselling facilities that they have at the Family Court in Melbourne. Frequently a counsellor can come in at any early stage for confidential counselling which can resolve an issue. We do not have that here. I understand the magistrate is flying by the seat of his pants but it is a real problem at this distance. I do not know if video facilities with the Family Court registrars might be able to overcome it but that is a perceived problem.³⁰

In Victoria, the Family Court provides 14-day judicial Circuits to Mildura, Albury, Ballarat, Bendigo, Geelong, Warrnambool and Hamilton. The court submitted:

Locations for the Court's circuit work, and outreach visits program, are decided in the context of access and equity issues, such as, population demographics, geographical distance/separation from a Registry, and travel and related costs. It is recognised that most clients can access Justice through a local Magistrates' Court or a Family Court Circuit, with complex matters progressing to Judicial Hearings.³¹

While legal practitioners recognised that it was largely due to funding constraints, the overwhelming evidence received by the Committee was that the Court does not sit enough in regional and rural Victoria:

The Family Court, for example, is not serving the community adequately. I realise the problem is lack of funding, but they do not go out to people enough. The people of Hamilton see a sitting of the Family Court once or, at the most, twice a year. Perhaps it sits more often in Warrnambool, but Portland has the court only once or twice a year... It is almost farcical that the government does not give the Family Court the money to go to the people more than it does. I think the court has the desire to do it. We could keep a Family Court judge busy in Geelong non-stop instead of having one come down three or four times a year. All these

²⁹ G Tellefson, *Minutes of Evidence*, 18 July 2000, p. 85.

³⁰ P Howman, *Minutes of Evidence*, 29 June 2000, p. 371.

³¹ Family Court of Australia, Submission no. 67, p. 2.

Western District people who are daunted by having to go up to a hearing or something in Melbourne before a registrar or whatever are much more comfortable coming to Geelong. They can manage Geelong — but it is about money. I am sure the Family Court would establish more frequent circuits if it could. To make people go to the big capital is to deny them their right to have justice come to them. That is just my view.³²

The concerns about the Family Court were not limited to the number of judicial or registrar circuits but were also about the reduction in counselling services. The Committee's consultations seem to indicate that this reduction in facilities is making judicial circuits less efficient and that the lack of counselling services of itself is a matter of serious concern for regional and rural Victorians. The impact of these reductions was explained by the President of the North West Law Association:

Traditionally when the Family Court judge came up to Mildura he would bring two counsellors with him and he would stay for a two-week circuit. The counsellors would traditionally come up for the first week to interview people with respect to reportable counselling, which is where the counsellors speak with the parties, the children, and any ancillary agencies, and then give a report to the judge. That report is then cross-examined upon, et cetera.

The Family Court has now stopped that service. The judge now comes up to deal with the cases without the assistance of court counsellors. In place of that system the counsellors are now coming up intermittently through the year. Currently, we have a backlog of probably 28 days worth of counselling just for reportable counselling in the area. That involves orders for reports that have been made within the past 8 to 12 months and have yet to be serviced by the Family Court.

When Justice Carter comes up — our next circuit is on 2 October for two weeks — she will be furnished at that time with written reports from the counsellors. The counsellors will then go on video link and be cross-examined. The difficulty is that when the counsellors came up with the judge, they dealt with a far larger number of cases, and the judge would hear them on the spot... They would deal with anything up to 16 cases per circuit. Now we are getting to the stage where we can deal with only approximately four cases per circuit. The counsellors came up in May; they are coming up again in August; and I understand there may be some rescheduling of counselling in September, merely because when Justice Carter comes up in October the counselling will not have been completed and all those defended matters will not be in a position to continue. That is unsatisfactory from our position and from the litigants' position in particular. If you are waiting to have an urgent custody case heard and the judge is here but cannot deal with it because counselling has not taken place, it under-utilises the judge's time and it undermines and makes a mockery of the whole system.

They are serious cases that might involve the splitting up of siblings, with some living in one household and others living in another. They might involve serious concerns about health and safety issues for children. It is an undesirable situation.³³

The Court has submitted that the newly established Federal Magistrates Service will alleviate some of these concerns.

³² R Wallman, *Minutes of Evidence*, 29 June 2000, p. 505.

³³ C Toose, *Minutes of Evidence*, 18 July 2000, p. 579.

The Committee believes that the Family Court needs to be adequately resourced to ensure that they can service all Australians regardless of where they reside. The Committee believes that the Court should increase its use of new technologies as a means of increasing its efficiency and decreasing the waiting periods involved for regional and rural clients. The Committee believes that an increased use of video-conferencing may help alleviate some of the concerns expressed by legal practitioners.

Federal Magistrates Service

The Federal Magistrates Service was established by the Commonwealth Parliament at the end of 1999, under the *Federal Magistrates Act 1999*. The first sittings of the Service were on 3 July 2000. The Service was set up to reduce the workload of the Family and Federal Courts and to provide a simpler and quicker means of accessing justice.

The Service can deal with most family law and child support matters including divorce applications, family law property disputes and parenting orders providing for the residence of a child. It also deals with enforcement of orders made by the Service or the Family Court, location and recovery orders relating to children, determination of parentage and other matters arising under the child support legislation.

In addition the Federal Magistrates Service deals with less complex federal law matters including bankruptcy, human rights, administrative law, privacy law and trade practices.

The Federal Magistrates Service is based in Melbourne with Magistrates located around the country. There are six federal magistrates based in New South Wales and the Australian Capital Territory (two in Parramatta, two in Sydney, and one each in Newcastle and Canberra), four in Victoria, three in Queensland, one in Tasmania (based in Launceston), and one in South Australia.

The Service undertakes extensive circuit work and details of circuit dates are posted on its website. The Circuits are for one-week duration and all matters are formally listed for the first day of the circuit with a call-over of the list on the first morning.

Circuit locations in regional Victoria for 2001 are as follows:

- Albury one week
- Bendigo four weeks
- Geelong five weeks

- Gippsland six weeks (5 at Morwell, 1 at Sale)
- Shepparton three weeks
- Warrnambool two weeks (sitting at Hamilton)

The Committee believes the circuit arrangements of the Federal Magistrates Service are an appropriate recognition of the need for these types of services in rural and regional Victoria and hopes that there is scope for further expansion of circuits should the demand be established.

Victorian Civil and Administrative Tribunal

The Victorian Civil and Administrative Tribunal (VCAT) began operations on 1 July 1998. It was established to consolidate the operation of a number of specialist tribunals, which had evolved in Victoria on an *ad hoc* basis. VCAT amalgamated all or part of fourteen former boards or tribunals in an effort to streamline administrative structures and improve flexibility.³⁴ The Tribunal is divided into the Civil and Administrative divisions, each of which has a number of lists which hear particular types of cases.

³⁴ VCAT, *Annual Report 1999–2000*, Melbourne, p. 1.

CIVIL DIVISION

ADMINISTRATIVE DIVISION

Anti-Discrimination List

General List

Civil Claims List

Land Valuation List

Credit List

Planning List

Domestic Building List

Taxation List

Guardianship List

Real Property List

Residential Tenancies List

Retail Tenancies List

VCAT is headed by the President (a Supreme Court Judge) and each division is led by a Vice-President (County Court judge). Each list is managed by a Deputy President (who may manage more than one list) and has a pool of tribunal members to hear the cases. Members may be appointed as full-time, part-time, or sessional.

This section will focus on VCAT's accessibility to rural and regional Victorians, considering circuit arrangements and the use of technology.

VCAT Circuits

In 1999–2000, VCAT increased the number of hearing venues and the frequency of visits to rural Victoria compared to the previous year. It conducted hearings at 114 suburban and rural locations throughout Victoria compared with 108³⁵ in 1998–1999. Circuits of VCAT are discussed and agreed upon with the Chief Magistrate, who gives permission for the Tribunal to use Magistrates' Courts on specified days. Those days are the minimum number of days on which VCAT will visit a particular locality. From time to time, individual lists make their own arrangements to visit on other days and at other venues. The Tribunal emphasises³⁶ that it will sit where demand dictates.

³⁵ This includes 7 locations in the metropolitan area.

³⁶ J Ardlie, *Minutes of Evidence*, 16 May 2000.

The increase in country visits has meant that waiting times in rural and regional areas have improved. Waiting times have also improved due to the establishment of a consolidated Tribunal. Previously, a board or tribunal would not visit a rural venue until there was sufficient business to justify the visit. Since its commencement however, many members have been appointed to sit across a range of lists. This means that one member can visit a region and hear a range of cases, instead of waiting for one particular list to have a sufficient number of matters.

The Tribunal has also appointed a number of rural-based Magistrates as sessional VCAT members. This increases VCAT's presence in the country and means that urgent applications can be made without delay, and without the cost of sending a member to the region. Magistrates are located in Dandenong, Horsham, Shepparton, Bendigo, Sale and Geelong. There are other sessional members (non-Magistrates) at Geelong, Horsham and the Mornington Peninsula.

The Tribunal is flexible in terms of its circuit arrangements and strives to fulfill the needs of all Victorians. It has established User Groups for each list and maintains regular contact with them. The groups comprise a broad cross-section of representatives from community and industry groups as well as the legal profession.³⁷ The President therefore receives feedback directly from the people and organisations regularly using the Tribunal and is able to ensure that the Tribunal remains relevant and accessible to the community. For example, Justice Kellam, the President of VCAT recently responded to requests by a number of tribunal users in Cobram to conduct local hearings in that town. Previously, litigants had to travel to Shepparton. Cobram is now included on the regular circuit list for VCAT.

The Tribunal will also sit at different times, for example early morning, so that on country visits, matters can be heard at towns along the way. Cases are heard at locations convenient to the parties, which often includes hospitals and special accommodation houses. In guardianship matters

[J]ist members hear cases at locations convenient for the represented person. We aim to hear 100 per cent of cases originating in the country at a location closest to where the proposed represented person resides.³⁸

Despite the efforts of VCAT, the Committee heard some dissatisfaction with the number and type of VCAT circuits in rural and regional Victoria. Some lists do not circuit regularly. Others, such as the Residential Tenancies List, circuit regularly;

³⁷ *ibid*, p. 11
³⁸ *ibid*, p. 24

however, some evidence was heard that the circuits for this list are nevertheless not always extensive enough. For example, the Committee heard from the Loddon Mallee region Public Tenants and Advice Service:

We find that our client group have a lot of difficulty in relation to location, travel and expenses in terms of both geographical distance and geographical boundaries. For example, the area I cover as a worker is the Loddon-Campaspe region, and each town that I service is within a 2-hour radius from the central placement in Bendigo. There are 33 towns in that region, of which two only have VCAT hearings on a regular basis. They are Bendigo and Echuca. Sometimes hearings will be listed at Kyneton if there are a lot of cases to be heard around a specific issue, but that is on an irregular basis...Many rural towns do not have a regular public transport system, or if they do they may only have one service that goes per day, which means that often by the time they get to the town where the hearing is listed they may be too late, or they may have to go the day before in order to get there for the time the hearing is listed, which again creates another expense of having to stay overnight in another town.³⁹

The Committee recognises VCAT as having the most extensive circuiting arrangements of the courts and tribunals that undertake circuit work. It is also clear to the Committee that VCAT is willing to adapt its circuiting arrangements to best serve its users. The Committee suggests that more consultations with users in rural and regional Victoria be carried out, in order to ensure the adequacy of circuit sittings. VCAT stated in its evidence to the Committee:

The President has made it perfectly clear to the user groups that we meet with on a frequent basis in each of the lists that we will extend the services where the need for local hearings is demonstrated.⁴⁰

VCAT Use of Technology

There is almost no limit to the legal services that can be provided as internet access becomes standard and high speed.⁴¹

VCAT is at the forefront of technological innovation amongst Victorian courts and tribunals. It is committed to streamlining processes and increasing accessibility through the use of new technologies. This is essential given the increasing workload it faces: in 1999–2000, it dealt with 89,868 applications, reviews and referrals, 21 per cent more than in 1998–99 (74,319). VCAT has implemented initiatives in the use of telecommunications, digital recording of hearings and case management through computer technology.

³⁹ R Ritchie, *Minutes of Evidence*, 26 July 2000, p. 708.

⁴⁰ J Ardlie, *Minutes of Evidence*, 16 May 2000, p. 193.

⁴¹ Peter Anderson, VCAT, Submission no. 78, p. 3.

Video-conferencing

VCAT regularly uses telephone and video-conferencing in the conduct of hearings. The video-conferencing facility at VCAT in Melbourne was used 54 times between March 1999 and August 2000.⁴² Video-conferencing is mainly used to facilitate the testimony of experts and professional witnesses who may be in Melbourne, while VCAT is on circuit. VCAT prefers to visit rural and regional areas on circuit rather than conduct all matters with video-conferences from Melbourne.⁴³ This means that if the parties are located outside Melbourne, VCAT will travel there and not conduct the hearing solely by video-conferencing. It is a matter for the Judge or Member hearing the case to determine if a video-conference is appropriate. The cost of the conferencing is generally paid for by the party who requests it. Video-conferencing is not used to restrict rural access to circuit hearings, rather to enhance the delivery of services to rural hearings by giving access to professional witnesses without the associated expense and time. The advantages are that in several cases witnesses in particular can give evidence without travelling to VCAT or rural venues, which saves their time and also reduces costs for the parties to the cases. The disadvantages are that occasionally there are technical problems, the cost can be high if evidence is given for a long period of time and time zones for international calls can make arrangements difficult overseas.⁴⁴

Telephone conference facilities are also used regularly. During 1999–2000, members conducted on average 12 to 15 hearings by telephone each week.⁴⁵

Case Management Systems

VCAT has also made advances in its case management since commencing operation in 1998. Its Tribunals Management System (TM) focuses on the Residential Tenancies and Guardianship Lists, the highest volume lists of VCAT. Part of this system involved the introduction of VCAT Online, an interactive feature of the VCAT website. Launched in August 2000, VCAT Online presently applies only to the Residential Tenancies List, which heard over 70,000 cases in the 1999–2000 year. The feature currently enables registered users to complete applications and lodge them electronically. Users will receive confirmation of lodgement immediately as well as the hearing date and are then able to print the papers necessary to serve on the respondent. VCAT aims to expand the functionality of the system by allowing

⁴² Peter Anderson, VCAT, Submission no. 78, Part 2, p. 1.

⁴³ *id.*, p. 2.

⁴⁴ Peter Anderson, VCAT, Submission no. 78, p. 3.

⁴⁵ VCAT 1999-2000 Annual Report, p. 10.

members of the public access to online lodgement for the Residential Tenancies List. The aim of VCAT Online is to streamline procedures, reduce costs and improve access to VCAT for its users.

Detailed evaluation of VCAT Online is yet to be undertaken. The Committee is confident that it will prove of significant benefit to country Victorians, especially once the system can be utilised by the public. The registry of VCAT for this list is now accessible 24 hours a day, 7 days per week. With internet access, it is as easily accessible from rural areas as it is from the CBD. VCAT states:

These new services will not only achieve substantial efficiency gains for the high volume Residential Tenancies List of VCAT and increased convenience for our users, but also promise to pave the way towards a 'paperless' registry for some of the other lists.⁴⁶

Currently VCAT is not considering electronic lodgement for other lists unless their volume increases, because the initial establishment costs required are not justified with the present volume of cases. Further, the paperwork in certain types of cases, such as planning and building where various supplementary documents such as photos and plans are required, is not suitable for electronic lodgement with current technology.⁴⁷

Another innovative system targeting the high volume Residential Tenancies List is VCAT's Order Entry System (OES). This allows Members to generate orders using a personal computer in the hearing room. At the completion of the hearing, the Members can hand over a completed and signed order to the parties with no delay. The OES began in Melbourne in April 2000 but will be made available in (initially) 19 rural courts⁴⁸ in 2001. Presently, orders are typed in Melbourne and it can be some weeks before parties receive the orders after their case. The OES will therefore overcome this delay.

The Committee is strongly supportive of the direction being taken by VCAT, in terms of electronic lodgement for some lists and increasing online services, both of which will improve the accessibility of VCAT to all Victorians. The move to electronic lodgement is being done flexibly, with allowance for paper documents to also be lodged. Electronic lodgement may not be appropriate in some cases involving technical documentation. However, while there are practical considerations involved, there is no technical boundary to these cases also being lodged electronically.

⁴⁶ *ibid*, p. 6.

⁴⁷ Peter Anderson, VCAT, Submission no. 78, p. 3.

⁴⁸ J. Ardlie, VCAT, *Minutes of Evidence*, 16 May 2000, p. 198.

Local Court Staff and VCAT

As discussed above, VCAT organises accommodation in local courts with the Magistrates' Court. On the circuits that have been agreed upon and published in the Law Calendar, a member of staff (usually the court registrar) is also made available to VCAT.

The Committee took evidence from a number of registrars around Victoria, as well as from the Clerk of Courts Group. There was some dissatisfaction expressed by their limited role in relation to VCAT matters, and the fact that all applications needed to be lodged centrally.

The Clerk of Courts group submitted that:

While the Tribunal visits regional and rural centres and convenes Tribunal hearings, the administration is conducted from Melbourne. There has been some anecdotal evidence and certainly there is feeling among country registrars that many people do not pursue legitimate 'small' claims because of the process involved. It's perhaps seen as a Melbourne jurisdiction and that's too far away to bother with small disputes. Country courts could provide a full support service to VCAT including registry, cash and case and list management functions".⁴⁹

VCAT does see the benefits to involving local registrars more fully in its procedures and has considered implementing a pilot scheme to effectively enable selected rural and regional courts to operate as sub-registries of VCAT. Applications would then be able to be lodged at a local level and the registrar would be actively involved in managing the VCAT caseflow at the court. The intended courts would mainly be larger regional ones, at the pilot stage.

In order to implement the scheme, VCAT sees the need for a training programme for rural registrars and other court staff. Staffing issues have also been the subject of negotiations. However, there is currently no indication about whether and when this scheme may be implemented. The Committee would strongly support such a scheme and urges VCAT, the Chief Magistrate and the Department of Justice to prioritise this issue, in order to expedite the involvement of local registrars in VCAT procedures.

The Committee found that local registrars are often the focal point for queries on the legal process in rural and regional Victoria. They should therefore be kept fully informed of the procedures in the Tribunal, in order to be able to provide the local community with accurate and useful information.

⁴⁹ John Dinsdale, Clerk of Courts Group, Submission no. 31, p. 4

A submission was also made to the Committee that local registrars could conduct pre-hearing conferences for VCAT, thereby further facilitating procedures. It was noted that:

The registrars could locally convene pre-hearing conferences for small claims and residential tenancy matters. It is our strong opinion that the majority of small claims and residential tenancy matters could be settled by the Registrars through pre-hearing conferences and so enabling the members to use their time more effectively in the disposition of cases that involve a dispute of substance. Registrars possess the relevant knowledge and experience in pre-hearing skills. They currently conduct pre-hearings in Magistrates' Court civil cases up to \$40,000 and currently dispose of over 80% before trial. Some also mediate Children's Court protection applications. Many also deal with complex factual and legal issues as Bail Justices.⁵⁰

One local registrar commented:

While there is a plethora of literature on the uses of the Tribunals, customers want to have practices and procedures explained to them by their local Registrar. But we do not know the workings of the Tribunal. We cannot explain to them what happens to their case after it has been lodged with the Tribunal, how they are listed or what happens in relation to notification times of hearing or orders that are made. If someone inquires on any of these matters they are referred to the Tribunal at Melbourne where once again they are at the mercy of the recorded message.⁵¹

The introduction by VCAT of computer technology at 19 rural courts will be available for the use of registrars. It will link each venue directly with VCAT headquarters in Melbourne, enabling access to the VCAT database. Registrars will be able to find information about cases and make inquiries as to their status. This will be an important step in involving rural and regional registrars in the VCAT processes, and allowing them to better serve their local community. The Committee considers that VCAT should provide regular training for country registrars as a matter of priority.

Recommendation 124

That the Victorian Civil and Administrative Tribunal recognises the role of country registrars in providing information to the community and seeks to ensure that country registrars are fully trained in understanding VCAT procedures and have access to information about cases in their region.

VCAT plans to establish a Mediation Directorate to manage mediation throughout VCAT. Specialised mediators will be appointed to focus on the particular areas of individual lists.⁵² Local registrars could be utilised within this Directorate and the

⁵⁰ id.

⁵¹ Andrew Tenni, Portland Magistrates' Court, Submission no. 21, p. 3.

⁵² VCAT, *Annual Report 1999–2000*, Melbourne, p. 15.

Committee urges the head of the Directorate, once it is operational, to consider such a proposal.

CHAPTER 17 – ALTERNATIVE DISPUTE RESOLUTION

While procedures are primarily the responsibility of the courts, nevertheless, governments have a responsibility to facilitate flexible structures. The judiciary, the profession and the government have the capacity to harness the technological, administrative and jurisprudential advances of recent years to benefit everyone but most importantly to the benefit of the litigants. To do this, it must first be acknowledged that one size cannot fit all in legal dispute resolution. This calls for recognition of the diversity of litigants and the diversity of interests that these litigants represent.¹

Alternative dispute resolution (ADR) is an increasingly popular concept in Australia's legal system as an alternative to litigation. In Australia today, as litigation costs increase, courts are overburdened and the system becomes progressively more complex, ADR is a practical alternative with potentially many benefits. The Committee heard evidence that services for ADR are not well known in rural and regional Victoria.

The features of ADR are that it can be less expensive, it assists in the maintenance of on-going relationships, and it may be more accommodating of the different work routines often found in rural communities. These features may be of particular benefit in rural and regional areas.

The flexibility of ADR might also mean that other accommodations could be made, for example, arranging a mediation to take place at a time and date that takes account of harvesting, milking, shearing or sale-yard commitments.²

What is Alternative Dispute Resolution?

There is a range of ADR practices currently being used in Australia, as well as a range of definitions to describe these. In an effort to develop consistency in the field, the National Alternative Dispute Resolution Advisery Committee (NADRAC) developed

¹ D Williams, 'Changing Roles and Skills for Courts, Tribunals and Practitioners'. In *Beyond the Adversarial System*, 1999, p. 2.

² *ibid*, p. 160.

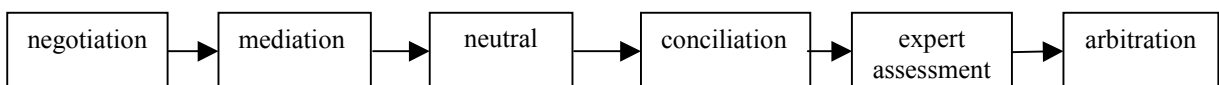
a set of ‘benchmark’ definitions for the key processes.³ It has classified dispute resolution processes as facilitative, advisory or determinative:⁴

Facilitative processes involve a third party, often with no advisory or determinative role, providing assistance in managing the process of dispute resolution. These processes include mediation, conciliation and facilitation.

Advisory processes involve a third party who investigates the dispute and provides advice on the facts and possible outcomes. These procedures include investigation, case appraisal and evaluation, and dispute counselling.

Determinative processes involve a third party investigating the dispute, which may include a formal hearing, and making a determination which is potentially enforceable. These processes include adjudication and arbitration.

Within such processes, the Australian Law Reform Commission (ALRC) notes there are varied practices due in part to the nature of the dispute, the experience of the parties, the role of the lawyers or other advisers and the role of the third party. It may mean that the conduct of the process is more formal in some cases than in others. Bearing this in mind, the ALRC maps the processes on a continuum from the least to the most adjudicative processes as follows:



All of these forms of alternative dispute resolution can offer clients a quicker, less expensive and more informal means of resolving legal disputes than litigation. Under the less adjudicative processes the outcomes are ‘owned’ by the parties as they have agreed on the results themselves and have not had outcomes imposed upon them. Consequently ADR is becoming increasingly significant in matters where ongoing relationships are probable such as in neighbourhood disputes, industrial law and family law (particularly when children are involved).

It must be recognised that alternative dispute resolution is not always appropriate. The formal judicial process offers rules and protection which may be more appropriate where there is clear inequality of bargaining power between the parties. The question of gender imbalances in ADR has been researched with some commentators suggesting that women are likely to compromise their entitlements and thus be

³ NADRAC, *Alternative Dispute Resolution Definitions*, March 1997.

⁴ ALRC, *Review of the Adversarial System of Litigation: ADR — Its Role in Federal Dispute Resolution*, Issues Paper 25, June 1998, p. 1.

disadvantaged in processes such as mediation.⁵ There are specific concerns about the participation of women who have been subjected to domestic violence. The Access to Justice Advisory Committee states:

Domestic violence may be present, but undisclosed, in a high proportion of cases in the Family Court and is not always detected by mediators. We would not support an ADR program if it did effect some form of systematic discrimination or disadvantage.⁶

Court and Tribunal Based Dispute Resolution

Most Australian courts have some non-adjudicative dispute resolution process to facilitate agreements concerning the issues in dispute and to explore the possibilities for settlement. Victorian courts have also embraced the notion of mediation. Mediation was the central concept of the Portals Scheme adopted by the courts in the mid-1990s, a scheme which embodied a positive commitment by the courts to mediation as a means of settling many disputes. Mediation is a central concept in the County Court's Order 34A regime. Under that Order each case where a notice of defence is filed must go to a directions hearing unless the court or judge orders otherwise, and mediation will often be encouraged or occasionally ordered by the Court. Judges in the Supreme Court also often refer cases to mediation.

Magistrates' Court

The Magistrates' Court utilises pre-hearing conferences before Registrars in relation to civil cases. The aim of the conference is to bring the parties together and identify or clarify the issue in dispute. It also aims to provide an opportunity for settlement discussion to take place. The Magistrates' Court may also refer disputes to the Dispute Settlement Centre of Victoria, where appropriate (see below). Further, where a claim is less than \$5,000, the Court is required under the *Magistrates Court Act 1989* to refer the matter to arbitration by a Magistrate. The difference between this and a court hearing is that for arbitration, the Court is not bound by the rules of evidence, and matters are thus conducted in an informal and expeditious manner.⁷

⁵ See for example, T Grillo, 'The Mediation Alternative: Process Dangers for Women', *Yale Law Journal* 1545, 1991; H Astor and C M Chinkin, *Dispute Resolution in Australia*, 1992, p. 112.

⁶ Access to Justice Advisory Committee, *Access to Justice: An Action Plan*, 1994, p. 299.

⁷ Magistrates' Court of Victoria, *Annual Report: 1 July 1998 – 30 June 1999*, p. 27. This view expressed in the Magistrates' Court *Annual Report* was disputed by some members of the Committee with legal backgrounds.

Family Court

The Family Court has a number of alternative dispute resolution services that are used before proceedings are filed with the Court.

The philosophy of the *Family Law Act* has always been to encourage the parties themselves to resolve their disputes, with specialist assistance if necessary. Both in financial and children's matters a comprehensive array of interventions is available through the Court, with litigation being seen as very much a last resort and conciliation proceedings being a compulsory precursor to trial, except in urgent and unusual circumstances.⁸

The Court initially introduced the concept of 'primary dispute resolution' (PDR) to emphasise that these processes are a first step to the resolution of matters in dispute. This umbrella term, PDR, somewhat confusingly, has been used to cover the processes of counselling, mediation, conciliation and arbitration. Since 1 January 2000, all Family Court primary dispute resolution services are called 'mediation'. This change is said to have been introduced to avoid confusion for clients accessing the Courts dispute resolution processes. However, the Committee found that in much of the evidence it received the old terminology was still being used by practitioners and comments reproduced from the evidence in this chapter reflect the inconsistency of usage.

All court-ordered mediation is currently provided by the Court. This has implications for waiting times, especially in rural and regional areas where the court circuits are infrequent. For voluntary mediation, a number of agencies are accredited by the Federal Attorney-General's office to provide family and relationship mediation.

The Committee found that rural and regional Victorians were not being offered the Court mediation services available in the metropolitan areas. In its evidence before the Committee, the CEO of the Family Court stated that mediation services in rural and regional areas would not be affected by any budgetary constraints on the Court.⁹ However, the Committee heard in Mildura that:

Traditionally when the Family Court judge came up to Mildura he would bring two counsellors with him and he would stay for a two-week circuit. The counsellors would traditionally come up for the first week to interview people with respect to reportable counselling, which is where the counsellors speak with the parties, the children, and any ancillary agencies, and then give a report to the judge. That report is then cross-examined upon, et cetera. The Family Court has now stopped that service. The judge now comes up to deal with the cases without the assistance of court counsellors. In place of that system the counsellors are now coming up intermittently through the year. Currently, we have a backlog

⁸ Family Court of Australia, *Response of the Family Court of Australia to the Attorney-General's Department Paper on 'Primary Dispute Resolution Services in Family Law'* Melbourne, December 1997, at 2.1.2.

⁹ R Foster, *Minutes of Evidence*, 11 September 2000, p. .812.

of probably 28 days worth of counselling just for reportable counselling in the area. That involves orders for reports that have been made within the past 8 to 12 months and have yet to be serviced by the Family Court.

If you are waiting to have an urgent custody case heard and the judge is here but cannot deal with it because counselling has not taken place, it under-utilises the judge's time and it undermines and makes a mockery of the whole system. They are serious cases that might involve the splitting up of siblings, with some living in one household and others living in another. They might involve serious concerns about health and safety issues for children. It is an undesirable situation.¹⁰

It would appear that in some areas of Victoria counselling backlogs are affecting the speed of legal service delivery in terms of the mediation procedures in the Family Court. The Chief Justice of the Family Court notes in his overview for the 1999/2000 annual report that due to budget cuts

...the Court is being forced to consider reductions in the number of mediators which will have inevitable consequences for the delivery of its voluntary services... [A] concern is the need to provide services to families in non-metropolitan areas. Wherever possible these will be retained, but a rigorous analysis of the associated costs is being undertaken.¹¹

The Committee is of the opinion that cuts to services in the Family Court will be most detrimental to Australians living in rural and regional areas, who already are not provided with the same level of service available in metropolitan areas.

The Court's mediation services are presently being reviewed by external consultants. At the time of writing the review had not yet been completed. The Committee hopes that it will review service delivery in rural and regional areas and make positive suggestions for its improvement.

The Committee supports the focus of the Family Court on mediation processes to avoid litigation or to clarify the issues in dispute. It is of the opinion that such processes play a crucial role especially in disputes involving children and that they should not be jeopardised.

Federal Magistrates' Service

The role of the Federal Magistrates' Service in primary dispute resolution has yet to be seen in practice in Victoria. The Committee heard from the service:

We are in the process of appointing a primary dispute resolution coordinator, whose job will be to put together the arrangements, with non-government organisations, for the delivery of

¹⁰ C Toose, *Minutes of Evidence*, 18 July 2000, p. 579.

¹¹ Family Court of Australia, *Annual Report 1999–2000*, p. 9.

primary dispute resolution services, whether they be conciliation, counselling, mediation, arbitration, or any of the range in that spectrum.

We hope to have the arrangements in place by the end of this calendar year. That is our current target. We intend to use non-government organisations to provide those services rather than the traditional approach of using, especially in the family law area, the Family Court counselling service. That service has a range of financial constraints on it at the moment, apart from a quite clear federal government policy to make far greater use of the community services rather than the Family Court service for the delivery of primary dispute resolutions.¹²

The Service called for tenders for the delivery of PDR services and these closed on 4 April 2001.

Equal Opportunity Commission of Victoria

The Equal Opportunity Commission of Victoria (EOCV) receives and conciliates complaints made under the *Victorian Equal Opportunity Act*. It has a 1800 number for country callers¹³ and staff will travel to country areas to assist people to lodge complaints where that person would find it difficult to travel to Melbourne. Complaint resolution staff hold conciliation conferences in country Victoria or can conduct telephone conferences and negotiations. The staff will also travel to rural and regional locations to inspect buildings and sites where they are an important part of a complaint.

In general, the EOCV identified several areas of difficulty in the delivery of its services to rural and regional Victoria. As the Committee heard from many sources throughout its inquiry, the difficulty of guaranteed confidentiality is a stumbling block for rural people in using available services. Although the EOCV conducts its processes in confidence, the lack of anonymity in a small community makes lodging a complaint a more difficult decision. The Commission noted in its submission that making a complaint is likely also to carry greater risks for rural and regional people, as alternative employment or services may be limited.¹⁴

The Commission considered that delivery of its services is hampered by the difficulty of finding appropriate facilities for holding conciliation conferences. Courthouses can be intimidating places, using solicitors' offices may compromise the Commission's appearance of neutrality, and other venues may compromise confidentiality.

¹² P May, *Minutes of Evidence*, 25 September 2000, p. 997.

¹³ 1800 134 142.

¹⁴ D. Sisley, Equal Opportunity Commission Victoria, Submission no. 10, p. 6.

Dispute Resolution Services

In addition to private mediation services, there are a number of government-funded and profession-based mediation services in Victoria.

Dispute Settlement Centre of Victoria

The Dispute Settlement Centre of Victoria (DSCV) operating out of the Department of Justice provides a free mediation service throughout Victoria. The Centre evolved out of an initiative of the then Legal Aid Commission who in 1987 funded four pilot projects in Victoria to provide mediation as an alternative to the court system. The main focus of the centres was on neighbour disputes. In 1989 the then State Attorney-General's Department assumed responsibility for the program funding another three centres. In 1993 the program was restructured with a centralised administration and services became available throughout the State rather than as previously only at the seven office locations, only three of which were in rural locations.

The Centre employs 144 sessional mediators who are located across the State and mediate in their own local areas. Rural mediators are grouped into six regions which reflect the area where the mediators are prepared to travel. In this way, rural and regional Victorians are ensured rapid access to a local mediator. The regions are as follows:

- Geelong (9 mediators, from the City of Greater Geelong and the Surf Coast Shire)
- Gippsland (14 mediators extending from Foster to Merrimbula)
- Goldfields (8 mediators covering the Bendigo to Hepburn Springs area)
- Mildura (3 mediators, all based in Mildura who cover the State's North East)
- Outer North East (7 mediators cover the Goulburn Valley and the High Country)
- Warrnambool (6 mediators to cover Victoria's South West and Wimmera regions).

In addition, mediators from Melbourne may travel to rural and regional Victoria if necessary. The DSCV offers a free-call 1800 number¹⁵ to its clients from regional areas, and ensures that mediations can be held in local venues. This is a great advantage to country clients, who do not need to travel to a regional centre or to

¹⁵ 1800 658 528

Melbourne in order to access this service. The DSCV commented that this stemmed from a desire to offer a fair service to all Victorians, but also from a recognition of the need to maintain rural mediators' skills.

The DSCV may advise a client to seek legal advice on their rights in relation to the dispute *before* undertaking mediation. It notes that rural and regional Victorians may have difficulties in accessing such advice, due to the scarcity of VLA and CLC offices in the country, the fact that the LIV information service does not have a freecall number, and the problem of conflict of interest in towns with only one or two private firms.

The DSCV advised that in the last financial year 44 per cent of mediations undertaken included a party who lived in regional Victoria. In total 86 mediations were held in venues outside the metropolitan area. This accounted for 52 per cent of those mediations which included a party from a rural or regional location. Many of these sessions included a party who was a Melbourne resident.¹⁶ Where mediation was agreed to and both parties attended the overall rate of agreement reached was 74 per cent and in matters which included at least one party from a regional location, the agreement rate was 84 per cent.¹⁷

In addition, DSCV recorded 198 cases of assisted settlement where the matter was resolved with the assistance of DSCV but without the need for a mediation session. Of these 33 (17%) involved callers who lived in rural or regional Victoria.

The Committee is of the opinion that the DSCV offers an excellent service to all Victorians. However, there was a lack of knowledge about it in rural and regional Victoria. The Centre itself stated to the Committee:

[T]he real difficulty we experience in these areas is not so much a question of accessibility as one of awareness.¹⁸

A practitioner in Portland recounted to the Committee his experience with the DSCV:

I made contact with the people at the centre by telephone, and frankly I was amazed when I spoke to them. They said, 'No worries, we will have a mediator out there within X period'. They did not seem to have any guidelines for people to qualify for the service in economic or financial terms, and those people might have been able to afford private mediation. It was an excellent service, and

¹⁶ Teresa Zerella, Dispute Settlement Centre of Victoria, Submission no. 5, p. 11.

¹⁷ *ibid*, p. 10.

¹⁸ *ibid*, p. 13.

the result was brilliant. However, we just do not know about it down here — we have never heard of it.¹⁹

The DSCV expressed the opinion that a broad advertising campaign would not be effective, as clients do not look for the service until they have a dispute in need of resolution. Further, it does not have the resources to sustain such a campaign. Instead, it focusses its promotional efforts at ‘gate-keepers’, workers in other areas who people in dispute might turn to, such as police, lawyers in CLCs and private practice, municipal councils and community groups.

Law Institute of Victoria

The Law Institute Mediation Services developed during 1995–96 in response to member demands and court programs in Victoria.

LIV runs training courses for mediators and provides a list of mediators who have successfully completed this training. Fees are negotiated directly with the mediator and the parties’ solicitors.

Victorian Bar Dispute Resolution Scheme

The Scheme provides a range of alternative dispute resolution services, including mediation, arbitration, assisted negotiation, conciliation, expert appraisal and case presentation.

The Mediation Centre is a purpose-built facility, opened in 1997. It has two large rooms with seating for up to 18 people and four smaller rooms which can seat up to 10 people. The Centre also has ancillary services such as telephone and photocopying facilities.

Fees are subject to agreement between the parties and the barrister selected to undertake the ADR process.

Conclusion

ADR has achieved wide acceptance in the Australian legal system as a useful supplement to the adjudicative process. The Committee believes the existence of ADR bodies, particularly the Dispute Settlement Centre of Victoria, could be better

¹⁹ P Howman, *Minutes of Evidence*, 20 June 2000, p. 376.

publicised. The Committee notes the comments of the DSCV that people are only likely to take note of publicity about the Centre if they have a current dispute they wish to resolve. The Committee suggests that the website Legalonline is the ideal place for this service and others to be advertised. The Committee is aware that there are links to DSCV on Legalonline but believes that ADR as a whole could be more effectively promoted in the site.

Recommendation 125

That the Dispute Settlement Centre of Victoria and other alternative dispute resolution services be more effectively promoted on the government website Legalonline.

**Adopted by Committee
21 May 2001**

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APPENDIX A

LIST OF SUBMISSIONS

<i>No.</i>	<i>Date of Submission</i>	<i>Name</i>	<i>Affiliation</i>
1	15 April 2000	B. Evans	Private individual
2	27 April 2000	Ms Cora Werenga and Ms Maree Bruhn	Gwen's Place Refuge
3	27 April 2000	Ms Jo Le Cornu	Women's Resource Information and Support Centre (WRISC)
4	13 May 2000	Mr. David Faram	Law Institute of Victoria
5	15 May 2000	Ms Teresa Zerella	Dispute Settlement Centre of Victoria
6	15 May 2000	Chief Judge Glen Waldron, QC Mr. James Hartnett Mr. Findlay McRae	County Court of Victoria
7	15 May 2000	Ms. Robin Dyall	Environment Defenders Office (Vic) Ltd.
8	15 May 2000	Ms Kay Robertson	Victoria Legal Aid
9	15 May 2000	Ms Kate Hamond	Legal Ombudsman
10	15 May 2000	Dr Diane Sisley	Equal Opportunity Commission Victoria
11	15 May 2000	Mr Nigel D'Souza	Victorian Aboriginal Legal Service
12	16 May 2000	Mr. John Ardlie	Victorian Civil and Administrative Tribunal
13	12 May 2000	Ms Patmalar Ambikapathy	Private individual
14	10 May 2000	Mr Lindsay Merritt	Warrnambool City Council
15	16 May 2000	Ms Caitlin English and Ms Samantha Burchell	Public Interest Law Clearing House (PILCH)

<i>No.</i>	<i>Date of Submission</i>	<i>Name</i>	<i>Affiliation</i>
16	16 May 2000	Ms Fiona Seymour	Mental Health Legal Centre
17	22 May 2000	Ms Fiona Hanlon	Department of Justice
18	29 May 2000	Ms Noelene Gration	Voluntas
19	7 June 2000	Mr Louis Schetzer	National Children's & Youth Law Centre
20	7 June 2000	Mr. Paul R Hornbuckle	Victoria Police
21	19 June 2000	Mr. Andrew Tenni	Portland Magistrates' Court
22	13 June 2000	Ms Trish Devlin Ms Helen McGowan	Albury Wodonga Community Legal Centre
23	9 June 2000	Mr Geoff Cornell	Community Corrections Services, Shepparton
24	9 June 2000	Ms Josie Maxwell	Albury Wodonga Multicultural Resource Centre
25	9 June 2000	Mr Richard Gorrie	Barrister
26	8 June 2000	Mr John Murphy	Senior Magistrate, Upper Murray Region
27	13 June 2000	Ms Mara Ronald Ms Elaine Mason	Kosovar Refugee Support Group
28	19 June 2000	Mr Chris Welsh	North East Law Association
29	23 June 2000	Ms Catherine Upcher	Rural Housing Network Ltd.
30	23 June 2000	Mr Kevin Zibell	Child & Family Services
31	26 June 2000	Mr John Dinsdale	Clerk of Courts Group
32	27 June 2000	Mr Noel Wealands	Private individual
33	19 June 2000	Mr Andrew Tenni	Registrar, Portland Magistrates' Court
34	20 June 2000	Mr Peter Hill	Portland & District Community Health Centre
35	20 June 2000	Senior Sgt. Colin Renton	Victoria Police - Portland
36	20 June 2000	Mr Pat Howman	Howman & Harris Solicitors
37	21 June 2000	Mr Bruce de Vergier and Ms Julliet Williams	Community Connections, Warrnambool

<i>No.</i>	<i>Date of Submission</i>	<i>Name</i>	<i>Affiliation</i>
38	21 June 2000	Mr Peter Langley and Mr Gary Smart	Registrars, Warrnambool Magistrates' Court
39	21 June 2000	Ms Helen Wilson	Centre Against Sexual Assault, Warrnambool
40	28 June 2000	Ms Wendy Taylor	Court Network
41	29 June 2000	Ms Elsje van Moorst	Geelong Community Legal Service
42	29 June 2000	Mr Philip Grano	Villamanta Legal Centre
43	29 June 2000	Ms Rebecca Simmervitch	Colac Community Health Service
44	29 June 2000	Mr Michael Brugman	Private Legal Practitioner
45	5 July 2000	Ms Pamela Marwood	Echuca Family Violence Reference Group
46	10 July 2000		Geelong Rape Crisis Centre
47	12 July 2000	Elizabeth McKibbin	Legal Information Access Centre
48	17 July 2000	Mr Nicholas Meagher	Law Society of NSW
49	20 July 2000	Mr Ray Patterson	Victoria Police – Aboriginal Liaison Officer, Bendigo
50	14 July 2000	Ms Michelle Elding	Sunraysia Community Health Service Inc.
51	18 July 2000	Ms Barbara Ellis	Sunraysia Information & Referral Service
52	25 July 2000	Mr Stephen Bubb	Goulburn Valley Law Association
53	26 July 2000	Ms Rachael Ritchie	Public Tenants Advice & Referral Service, Loddon Mallee Region
54	26 July 2000	Ms Wendy Taylor	Court Network, Bendigo
55	26 July 2000	Mr Brendan Money	CORE Central Region Prisons
56	26 July 2000	Ms Marika McMahon	Bendigo Law Association
57	26 July 2000	Mr W. Gibb	Senior Magistrate, Bendigo
58	26 July 2000	Mr Gary Phyland	Aboriginal Liaison Officer, Echuca, Victoria Police
59	27 July 2000	Ms Vivienne Wiles	Job Watch Inc.
60	28 July 2000	Mr C.W. Robertson	Private individual

<i>No.</i>	<i>Date of Submission</i>	<i>Name</i>	<i>Affiliation</i>
61	4 September 2000	Mr. M. Bourke	Senior Registrar, Moe Magistrates' Court
62	7 September 2000	Mr. Mark Woods	Tyler Tipping & Woods
63	3 August 2000	Commonwealth Attorney-General's Department	
64	31 August 2000	Ms. M. Camilleri	Central Highlands Community Legal Centre
65	4 September 2000	Mr. Bruce De Vergier	Community Connections, Warrnambool
66	5 September 2000	Mr. Julian Knight	Private individual
67	4 September 2000	Family Court of Australia	
68	6 September 2000	Ms Paula O'Brien	Private individual
69	11 September 2000	Ms Pat Lovelock	Coordinator, Gippsland Community Legal Service
70	12 September 2000	Ms Lisa Sinha	Director, Gippsland Migrant Resource Centre
71	12 September 2000	Victoria Legal Aid Gippsland	
72	11 September 2000	Mr Peter Secombe	District Registrar, Federal Court of Australia
73	11 September 2000	Mr Jonathon Goodfellow	Disability Discrimination Law Advocacy Service
74	11 September 2000	Mr Philip Hind	Director, Criminal Justice Enhancement Program, Department of Justice
75	15 September 2000	Ms Louise Glanville	Office of the Public Advocate
76	25 September 2000	Ms Catherine Gow Ms Donna Williamson	Advocacy Program for Women in Prison
77	25 September 2000	Ms Sarah Nicholson	Children and Youth Lawyer, North Melbourne Legal Service
78	25 September 2000	Mr Peter Anderson	IT Coordinator, VCAT
79	25 September 2000	Mrs Marilyn Lambert	Manager, On-line Services, Department of Justice
80	25 September 2000	Mr Peter May	CEO, Federal Magistrates Service
81	25 September 2000	Ms Sue Drakeford	IBM

<i>No.</i>	<i>Date of Submission</i>	<i>Name</i>	<i>Affiliation</i>
82	25 September 2000	Mr Mick Francis	Victorian Government Reporting Service
83	25 September 2000	Major John Poke	Salvation Army, Court and Prison Chaplain Service
84	25 September 2000	Mr Caesar Formica	General Manager, Information Technology, Department of Justice
85	26 September 2000	Ms Janelle Brown, Mr Charles Palmer	Wimmera Law Association
86	22 September 2000	Ms Alison Mathews	Women's Health Grampians Family Violence Outreach Service
87	9 November 2000	Mr Tony Parsons	Victoria Legal Aid Managing Director
88	27 November 2000	Ms Adele Campbell	Wimmera Uniting Care Victims Assistance Program Worker
89	20 December 2000	Mr Michael Brugman	Senior Criminal lawyer Victoria Legal Aid, Geelong
90	20 February 2001	Ms Sharon McLachlan	CREDIT drug clinician Magistrates' Court of Victoria
91	20 February 2001	Ms Anne Condon	Disability Coordinator Magistrates' Court of Victoria
92	17 November 2000		Victorian Aboriginal Legal Service Co-operative Limited

APPENDIX B

LIST OF WITNESSES

No.	Date of Hearing	Witness	Affiliation
1	27 April 2000	Mr. Ronald Saines	President
2	BALLARAT	Ms N. Feeney	Executive Officer
3		Ms A. Rose-Innes	Executive Officer, Ballarat and District Law Association, and case-worker, Central Highlands Community Legal Centre Ballarat and District Law Association
4		Ms P. Ambikapathy	Legal Practitioner
5		Ms Cora Wierenga	Coordinator
6		Ms Maree Bruhn	Family Support Worker Gwen's Place Women's Refuge
7		Mr. Stephen Merbach	Registrar, Ballarat Magistrates' Court
8		Ms Margaret Camilleri	Coordinator, Central Highlands Community Legal Centre
9		Ms Sulaika Dhanapala	NESBLINKS
10		Senior Sergeant Davies	Victoria Police Ballarat
11		Mr. Lester Welton	Director, Ballarat University Centre for Rural and Regional Information
12		Ms Jo Le Cornu	Women's Resource Information and Support Centre (WRISC)
13		15 May 2000	Ms Kay Robertson
14	MELBOURNE	Mr Michael Wighton	General Manager, Regional Offices Victorian Legal Aid
15		Ms Gillian Wilks	Coordinator
16		Ms Margaret Camilleri	Coordinator, Ballarat
17		Mr. Gavin Tellefson	Mildura
18		Mr. Sam Biondo	Fitzroy Legal Service
19		Mr. Bruce du Vergier	Community Connections, Warrnambool Federation of Community Legal Centres
20		Mr. Ian Dunn	CEO
21		Mr. David Faram	Faram, Ritchie & Davies (Shepparton)
22		Mr. John Corcoran	Vice President Law Institute of Victoria

No.	Date of Hearing	Witness	Affiliation
23	15 May 2000	Mr. Mark Derham QC	Senior Vice Chairman Victorian Bar Council
24	MELBOURNE (continued)	Mr. John Dinsdale	President
25		Mr. Ian McPhee	Vice President Clerk of Courts Group
26		Mr. Tom Munro	Principal Legal Officer
27		Mr. Nigel D'Souza	CEO Victorian Aboriginal Legal Service
28		Dr. Diane Sisely	Chief Executive
29		Mr. Mark McPherson	Acting Manager, Information Services Equal Opportunity Commission
30		Ms Kate Hamond	Legal Ombudsman
31		Ms Janet Cohen	Deputy Legal Ombudsman
32		Mr. John McSwiney	Senior Policy Adviser Office of the Legal Ombudsman
33		Ms Teresa Zerella	Manager
34	Mr. David Leonard	Project Officer Dispute Settlement Centre of Victoria	
35	16 May 2000	Mr. Bruce McLean	CEO, Supreme Court of Victoria
36	MELBOURNE	Chief Judge Glenn Waldron, QC	Chief Judge
37		Mr. Findlay McRae	Registrar
38		Mr. James Hartnett	CEO County Court of Victoria
39		Mr. Pat Armstrong	CEO, Magistrates Court of Victoria
40		Mr. John Ardlie	CEO, VCAT
41		Ms Caitlin English	Executive Directors,
42		Ms. Samantha Burchell	Public Interest Law Clearing House
43		Ms Fiona Seymour	Mental Health Legal Centre
44	22 May 2000	Ms Fiona Hanlon	Deputy Secretary, Legal
45	MELBOURNE	Mr. John Lynch	Assistant Director, Court Services
46		Ms Jennifer Shaw	Assistant Director, Corporate Services Department of Justice
47	13 June 2000	Mr Chris Welsh	President, North East Law Association
48	WODONGA	Ms Christine Sweet	Consumer & Tenancy Advice Service
49		Ms Maureen Martin	Albury-Wodonga Women's Refuge
50		Ms Vicky Brown	Outreach Worker, N.E. Victoria
51		Senior Constable Julie Muller	Victoria Police Domestic Violence Committee

No.	Date of Hearing	Witness	Affiliation	
52	13 June 2000	Ms Trish Devlin	Albury Wodonga Community Legal Centre	
53	WODONGA (continued)	Mr Geoff Cornell	Manager	
54		Ms Carol O'Sullivan	Senior Corrections Officer Community Corrections Services (CORE) Shepparton	
55		Ms Mara Ronald	Kosovar Refugee Support Group	
56		Ms Elaine Mason		
57		Ms Josie Maxwell	Co-ordinator, Albury-Wodonga Multicultural Resource Centre	
58		Mr Richard Gorrie	Local Barrister	
59	Mr Louis Schetzer	Director and Principal Solicitor, National Children's & Youth Law Centre, Sydney		
60		Senior Magistrate John Murphy	Senior Magistrate	
61		Mr David Smith	Senior Registrar Magistrates' Court, Upper Murray Region	
62		20 June 2000	Mr Andrew Tenni	Registrar, Portland Magistrates Court
63		PORTLAND	Mr. Peter Hill	Coordinator, Portland and District Community Health Centre
64			Senior Sergeant Renton	Victoria Police, Portland
65			Mr. Tony Brown	Stringer Clarke Solicitors
66	Mr. Pat Howman		Howman & Harris	
67	21 June 2000 WARRNAMBOOL		Mr. Bruce du Vergier	Coordinator
68		Ms Juliet Williams	Lawyer, Community Connections	
69		Mr. Gary Smart	Registrar	
70		Mr. Peter Langley	Deputy Registrar Warrnambool Magistrates' Court	
71		Ms Helen Wilson	Coordinator, South West Centre Against Sexual Assault	
72		Ms Deborah Downes	Child Issues Worker Emma House Domestic Violence Services	
73		Mr. Bobby Cunningham	Juvenile Justice Worker Gunditjmara Aboriginal Cooperative	
74		Mr. Robert Dick	Coordinator Southwest Advocacy Association	

<i>No.</i>	<i>Date of Hearing</i>	<i>Witness</i>	<i>Affiliation</i>
75	21 June 2000 WARRNAMBOOL (continued)	Mr. Tony Robinson	President Western District Law Association
76 77 78	29 June 2000 GEELONG	Ms Elsje van Moorst Mr. Andrew Willis Ms. E. Stokie	Geelong Community Legal Service
79		Mr. Tom White	Geelong Law Association
80		Mr. Philip Grano	Coordinator, Villamanta Legal Centre
81		Mr. Richard Wallman	Solicitor, Victoria Legal Aid - Geelong
82		Ms. M. Cardinal	Private Individual
83		Mr. Peter McCann	Registrar Magistrates' Court - Geelong & Colac
84		Ms. Grazia Shrimpton	Welfare Officer Migrant Resource Centre
85		Ms. Rebecca Simunitsch	Women's Counsellor Colac Community Health Centre
86		Mr T. Edwards	CEO Wathaurong Aboriginal Cooperative
87		Mr. Michael Brugman	Private Legal Practitioner
88	18 July 2000 MILDURA	Mr. Gavan Tellefson	Coordinator Murray Mallee Community Legal Service
89		Mr. Graeme Chirgwin	Registrar, Mildura Magistrates' Court
90		Ms Cynthia Toose	President, North West Law Association
91		Mr. Peter Maloney	Partner, Ryan Maloney Anderson
92		Ms Myra Grinter	Drug and Alcohol Worker Mildura Aboriginal Corporation
93		Ms Barbara Ellis	Sunraysia Information and Referral
94		Mr. W. Treffene	Service (Citizen's Advice Bureau)
95		Ms Sherry Nakalevu	Mildura Aboriginal Health Service
96		Mr. Nicholas Forsberg	Manager
97		Mr. Victor Matotek	Chairman Sunraysia Ethnic Communities Council

No.	Date of Hearing	Witness	Affiliation
98	18 July 2000	Ms Michelle Elding	Coordinator, Victims Assistance Program Sunraysia Community Health Centre
99	MILDURA (continued)	Ms Joanne Sheehan	Mallee Domestic Violence Service
100	19 July 2000	Ms Karen Kelly	Advocate, Council for the Disabled
101	SWAN HILL	Mr Chris Mahon	Solicitor, Dwyer, Mahon & Robertson
102		Senior Constable John Lyons	Prosecutor, Victoria Police
103		Ms Melanie Graham	Registrar, Swan Hill Magistrates' Court
104	25 July 2000	Mr Rick Tomkins	Registrar, Echuca Magistrates' Court
105	ECHUCA	Ms Pamela Marwood	Echuca Family Violence Reference Group
106		Ms Deborah Walsh	
107		Mr Stephen Bubb	President Goulburn Valley Law Association
108		Mr Richard Moore	Private Legal Practitioner
109	26 July 2000	Ms Sue McKenna	Chairwoman, Community Justice Panel Dja Dja Wrung Aboriginal Co-op
110	BENDIGO	Sergeant Ray Patterson	Aboriginal Liaison Officer Victoria Police
111		Mr John Connell	Private individual
112		Ms Rachel Ritchie	Public Tenant Worker
113		Ms Anna Burchell	Coordinator Public Tenants Advice & Referral Service
114		Ms Wendy Taylor	Executive Director
115		Ms Molly Frampton	Vice President and Working Networker
116		Ms Patricia Mullins	Coordinator, Victoria Court Network
117		Mr Brendan Money	General Manager Community Corrections Services (CORE)
118		Mr John Whelan	Member, Bendigo Law Association
119		Mr William Gibb	Senior Magistrate
120		Mr Terry Nihill	Principal Registrar
121		Mr Darren Stebbings	Regional Coordinator Bendigo Magistrates' Court
122		Ms Margie Bourke	Acting Solicitor-in-Charge Victoria Legal Aid, Bendigo Office
123	Mr Brett Flavell	Youth Services Coordinator City of Greater Bendigo	

No.	Date of Hearing	Witness	Affiliation
124	11 September 2000	Mr J Goodfellow	Disability Discrimination Law Advocacy Service
125	MELBOURNE	Mr Mark Herron	Executive Director
126		Ms Noelene Gratton	Project Manager, Victoria Law Foundation
127		Ms Alyson Foster	Law Reform and Media Liaison Officer
128		Ms Gillian Dallwitz	Manager, Women's Legal Service
129		Mr Peter Seccombe	Victoria District Registrar Federal Court of Australia
130		Mr Richard Foster	CEO
131		Mr Mario Cattapan	Area Manager (South) Family Court of Australia
132		Mr Peter Harmsworth	Secretary
133	Mr Phillip Hind	Director, Criminal Justice Enhancement Program Department of Justice	
134	12 September 2000	Ms R Solomon	Manager
135	BAIRNSDALE	Ms T Field	Specialist Children's Worker Bairnsdale Koori Women's Shelter
136		Mr D West	Registrar, Bairnsdale Magistrates' Court
137		Mr P Murphy	Gippsland Law Association
138		Senior Constable Chris Faille	Victoria Police, Bairnsdale
139	13 September 2000	Mr Michael Bourke	Senior Registrar, Moe Magistrates' Court
140	MORWELL	Ms Laura McDonough	Solicitor-in-Charge
141		Mr Ian Michaelson	Deputy Solicitor-in-Charge Victoria Legal Aid, Gippsland
142		Ms Pat Lovelock	Coordinator Gippsland Community Legal Service
143		Ms Julie D'Angelo-Kaik	Manager, Community Services Division
144		Ms Maree McPherson	Regional Manager, Anglicare Gippsland
145		Ms L Sinha	Director Gippsland Migrant Resource Centre

No.	Date of Hearing	Witness	Affiliation
146 147 148 149	13 September 2000 MORWELL (continued)	Mr B O'Kane Mr T McDonald Mr L Marks Mr M Woods	CEO Chairman of Directors and Coordinator of the Community Drug & Alcohol Resource Centre Youth Mental Health Development Officer Central Gippsland Aboriginal Cooperative Partner, Tyler Tipping Woods
150 151 152 153 154 155 156 157 158 159 160 161 162 163	25 September 2000 MELBOURNE	Ms Catherine Gow Ms D Williamson Ms Sarah Nicholson Ms Sally Smith Ms C Gaitan Mr Bruce McLean Mr Caesar Formica Mr A Smout Mr Peter Anderson Mrs Marilyn Lambert Mr P May Ms S Drakeford Mr M Francis Major John M Poke	Prisoners Advocacy Group Youth Solicitor North Melbourne Legal Service Manager Member, Werribee Legal Service CEO Manager, IT Information Technology Manager Supreme Court of Victoria Information Technology Manager, Victorian Civil and Administrative Tribunal Manager, Online Services, Department of Justice CEO, Federal Magistrates' Court Public Safety and Justice, IBM Former Manager, Victorian Government Reporting Service State Director, Victorian Court and Prison Chaplain Service, Salvation Army
164 165 166 167 168 169 170 171 172	28 September 2000 HORSHAM	Mr T Nihill Ms M Morgan Mr A Burns Ms S Baker Mr J Blake Ms J Brown Mr C Palmer Ms L Jelly Ms T Mellings	Registrar, Horsham Magistrates' Court Chairperson, Community Justice Program Vice Chairperson Goolum Goolum Aboriginal Cooperative Court and Prison Support Services Salvation Army President Member, Wimmera Law Association Senior Foster Care Worker Families First Caseworker Wimmera Community Care

<i>No.</i>	<i>Date of Hearing</i>	<i>Witness</i>	<i>Affiliation</i>
173 174 175 176	28 September 2000 HORSHAM (continued)	Ms A Mathews Ms S van den Bosch Ms M Rose Ms S Baker	Family Violence Outreach Worker Family Violence Outreach Worker Family Violence Outreach Worker Family Violence Outreach Team Coordinator Womens' Health Grampians
177		Ms L Gordon	Centre Manager Nhill Neighbourhood House
178 179 180 181 182 183 184	11 November 2000 MELBOURNE	Mr Tony Parsons Ms Kay Robertson Mr Nick Papas Mr Michael Wighton Mr Sam Biondo Ms Elsje van Moorst Mr Bruce du Vergier	Managing Director General Manager, Family and Civil Division Chief Public Defender and General Manager Criminal Law Division General Manager, Regional Offices Victoria Legal Aid Federation of Community Legal Centres
185 186 187 188 189	6 February 2001 MELBOURNE	Ms Jelena Popovic Ms Anne Condon Ms Sharon McLachlan Mr Bill Gibb Mr Sam Biondo	Deputy Chief Magistrate Disability Coordinator CREDIT Clinician Melbourne Magistrates' Court Senior Magistrate Bendigo Magistrates' Court Fitzroy Legal Service
190 191 192	12 April 2001 MELBOURNE	Mr Ian Gray Ms Jelena Popovic Ms Anne Condon	Chief Magistrate Deputy Chief Magistrate Disability Coordinator Melbourne Magistrates' Court

APPENDIX C

LIST OF MEETINGS *

<i>No.</i>	<i>Date of Meeting</i>	<i>Representative</i>	<i>Affiliation</i>
1	18 May 2000 SYDNEY	Mr Terry Murphy, General Manager, Legal Services Group Ms Janet Cohen Mr John McSwiney	NSW Legal Aid Commission
2		Ms Danaë Harvey Ms Leonie Jacques, Director	Combined Community Legal Centres Group (NSW) Inc State Office
3		Mr John North, President Mr Shaun Morgan	Law Society of NSW
4		Ms Elizabeth McKibbon, Director Ms Sue Walden	Legal Information Access Centre in the NSW State Library
5		Ms Sue Scott, Director, Online Legal Access Project Mr Simon Rice, Director Ms Cathryn Lloyd	Law Foundation of NSW
6		Mr Peter Ryan, Acting Director, Local Courts	Attorney General's Department
7	19 July 2000 SWAN HILL	Mr B. Baxter, Chairman Mr R. Bell, Director Mr R. Carter, Director Ms S. Connelly, Director Mr M. Bell, Director Ms S. Lee, Family Services and Human Resources Worker Ms M. Woodburn, Bookkeeper Ms K. Haines, Receptionist	Swan Hill and District Aboriginal Cooperative
8	20 July 2000 ROBINVALE	Ms Marie Pettit, Chairperson Ms. Lil Pettit, CJP and Juvenile Justice Worker Ms Val Tucker, Family Support Coordinator Ms Connie Petit, Home School Liaison Officer Mr Brian Cavanagh, SAAP Worker Mr Richie Kennedy, CDEP Worker	Murray Valley Aboriginal Cooperative

<i>No.</i>	<i>Date of Meeting</i>	<i>Representative</i>	<i>Affiliation</i>
9	25 July 2000 ECHUCA	Mr Des Morgan, CEO Mr Norm Hodge, Director	Njernda Aboriginal Corporation
10	3 August 2000	Dr Don Fleming	University of Canberra
11	CANBERRA	Mr Chris Meaney, Assistant Secretary, Legal Assistance Branch	Federal Attorney-General's Department
12		Ms Jenny Rush	Rush Social Research Consulting (Author of Legal Assistance Needs Project)
13		Ms Karen Fryar, Magistrate, Domestic Violence Program Management Committee Ms Robin Holder Coordinator, Victims of Crime Ms Nicole Munsterman, Public Prosecutor Ms Linda Crebbin, Legal Aid Solicitor	Magistrates' Court
14	20 September 2000 BRISBANE	Mr John Hodgins, Chief Executive Officer Mr Graham Quinlivan Ms Rosemarie van Haeften Ms Elizabeth Shearer Ms Karen Chapman Ms Sharene Bell	Legal Aid Queensland
15		Ms Jo Sherman, Managing Director Ms Leann Webb, Marketing Director	Law Now Limited
16		Mr Tony McMahon, Chief Executive Officer	Queensland Law Society Inc
17		Ms Di Fingleton, Chief Magistrate	Queensland Magistrates' Court
18	21 September 2000 TOOWOOMBA	Mr Chris D'Aquino Lee Nevison, Farm Finance Officer Mr David Seng, Manager Ms Judy Nichols, Coordinator Mr Mark Orchard, Management Committee member	Legal Aid Queensland, Women's Justice Network Legal Aid Queensland Toowoomba Community Legal Service, Rural Women's Outreach Legal Service Toowoomba Children's Contact Centre, Toowoomba Community Access Association

*These Meetings were not recorded by Hansard and do not constitute part of the formal *Minutes of Evidence*.