

Recruitment and Retention of Lawyers in Rural, Regional and Remote NSW

A Literature Review

Written By Trish Mundy for the Northern Rivers Community Legal Centre

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Northern Rivers
Community Legal Centre



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Executive Summary

While much attention has been given to attracting and retaining professionals in rural areas generally (particularly doctors and allied health professionals), there has been very little research undertaken in Australia which looks specifically at the problems of recruitment and retention of lawyers in rural, regional and remote (RRR) areas and the factors which contribute to it.

This literature review has reviewed the available information and materials as it exists in NSW and other Australian jurisdictions. It considers the extent of the recruitment and retention problem, the potential factors which contribute to it and identifies a range of existing strategies that have been adopted to address the issue in rural areas.

Since 1988 there has been a steady decline in the proportion of solicitors practising in RRR areas of NSW. There are indications that RRR solicitors are generally older and that many will retire in the next 10 years or so, leaving a concern about who will take their place. Despite this continued downward trend, conservative projections suggest that the distribution of the profession is likely to remain fairly steady at least over the next several years.

The findings of a recent 'mapping project' indicate that over the past decade there has been a significant movement of private solicitors away from inland areas of NSW towards coastal areas of the state. Further, those private solicitors who continue to be located outside of city and suburban areas have become more concentrated in the larger regional centres. This has meant that for many in the smaller and more inland communities, access to lawyers is made particularly difficult. There is also concern that, despite the coastal trend, there is insufficient lawyers to service those communities experiencing rapid population growth.

The key factors influencing recruitment and retention of lawyers in RRR areas include: family issues (ties to community, employment opportunities for one's partner, availability of social and support networks for family and educational opportunities for children), lifestyle perceptions, lack of career development opportunities and professional isolation, salary, the changing employment patterns of younger lawyers and the changing demographics within the profession.

One of the key factors identified concerns the link between one's exposure to life and practice in a RRR area and one's increased likelihood of engaging in rural practice. A graduate with family ties to a particular area, or a graduate who undertakes their law degree at a regional university, is more likely to return to that RRR area to practice than a person who has not had that experience. In view of this, governments, universities and professional bodies must consider what more can be done to attract and support RRR students in the study of law (by way of scholarship and subsidy schemes) and whether more resources need to be targeted to regional universities offering programs in law.

There is also a need to create opportunities within the undergraduate and PLT programs for rural clinical placements to allow students to experience what it is like to live and work in a RRR area. This may help to dispel many myths and misconceptions about life in the country and help lawyers decide to practice in a RRR area.

When making a decision about whether to move from the city to a RRR area, a person's perceptions about the relative lifestyle attributes of a particular area will be central to their decision. In this way, 'lifestyle' considerations are subjective and so will differ from person to person. It is likely that 'lifestyle factors' will be considered together as a cost/benefit package with other factors such as salary and professional/career development being important. For younger lawyers salary seems less likely to be the deciding factor and more consideration is given to their perceptions of how best to achieve work/life balance and career satisfaction.

There also appears to be some very damaging perceptions that practice in a RRR area is somehow of lesser professional value and RRR practitioners are 'second rate'. It is essential that these myths be dispelled as they can affect the desire to work and remain in a RRR area.

The decline in RRR practitioners is, in part, attributable to the generational change facing the legal sector and changing employment patterns more generally. It is estimated that most country practitioners are aged 45 and over and as many as one third will retire in the next 10 years or so. The sector is faced with managing the very different job demands/desires of younger lawyers (Generations 'X' and 'Y') who are increasingly mobile, do not see the practice of law as a lifetime career in the way that lawyers in previous generations did and are less willing to go to a RRR area.

It is also suggested that women practitioners are not attracted to rural practice or otherwise have incompatible family commitments which keep them in the city. Women lawyers have grown by 369% over the last decade and now make up 43.7% of the practising profession. While there are indications that the proportion of women practising in RRR areas is increasing, they remain significantly under-represented. By 2015, it is estimated that women will make up the majority of the profession. It is essential that we increase our understanding about the influence of gender on practice intentions and perceptions of rural practice. If women do find rural practice less attractive, then it is important to understand why this is so as well as understanding the extent to which rural practice may be alienating for women.

The recruitment and retention of lawyers in the private sector has arguably been affected by the application of competition policy to the legal profession along with a reduction in resources to legal aid and the overall effects of 'rural decline' in many areas. These factors have impacted on the continued viability of rural practice. This is because rural practices are more reliant on work in key areas which face substantial competitive pressures, such as conveyancing, wills and estates and family law. In addition, Legal Aid is no longer available in areas it once was and so is no longer a source of income for many practices. Added to these factors are the increased costs associated with rural practice, such as travel and disbursements. There is some evidence that the size and number of firms in country areas are falling.

Community Legal Centres face a number of particular problems in attracting and retaining staff in RRR centres. It appears that these problems are mainly due to the inability to offer competitive salaries and 'healthy' working conditions, such that lawyers are willing to relocate from the city or leave their positions in other parts of the legal sector. It is suggested that this is directly attributable to inadequate funding levels which must be addressed in order to reduce burnout and the 'exploitative' working conditions faced by CLC workers. Salaries comparable to those offered in the government and private sectors must be forthcoming. It is likely that these systemic issues can only be meaningfully addressed through a review of the funding allocation model.

Similar issues concerning high workloads and relative levels of remuneration when compared with the private sector have also been identified as relevant factors affecting public sector recruitment and retention.

This review has identified several important strategies that have been introduced in recent years in an attempt to address, at least in part, recruitment and retention problems in RRR areas. Key strategies include the 'Regional/Rural Solicitor Schemes' (RSS) established by the legal aid bodies in Queensland, NSW and WA which involve the provision of financial incentives as an 'access to justice' measure.

The first RSS began in Queensland in 2004. The scheme places new graduates into private firms located in areas of unmet legal aid need and offers a wage subsidy to the firm in return for undertaking an agreed amount of legal aid work. Firms are also eligible for payment of professional fees for legal aid services delivered. Evaluations indicate that the program is addressing 'immediate supply difficulties' faced by LAQ, is helping to build goodwill between LAQ and the private sector and is increasing the likelihood that at least some of the young solicitors will stay in regional Queensland. These are positive outcomes.

A 'Regional Solicitor Program' similar to that offered by LAQ, was initiated in 2007 by the NSW Legal Aid Commission. We currently await the scheme's evaluation following its first twelve months of operation. The main difference between the two models appears to be the 'brokerage' role undertaken by LAQ, which actively recruits the young lawyers through Queensland universities.

Western Australia introduced the 'Country Lawyers Graduate Program' in 2007. It is a joint initiative between Legal Aid, CLCs, Aboriginal Legal Services and the WA Law Society. The graduate is employed for 3 years and is rotated amongst the various regional legal service providers identified above. Bonuses and incentives

payments are also provided, including salary packaging and housing subsidies. It will be valuable to observe the overall impact of these schemes, their uptake and medium to long-term retention rates.

Another financial incentive currently available includes a 'zone tax offset' rebate for eligible taxpayers who have lived or worked in a remote area for a certain qualifying period. The amount of rebate offered is quite small and has been widely criticised as failing to provide a meaningful incentive for people to live and work in remote areas. It has been suggested that eligibility for the rebate should be extended to include residence in 'country' areas.

A waiver of the Higher Education Contributions Scheme (HECS) Fees has also been identified as an important strategy to encourage new law graduates to work in RRR areas. Such a scheme is currently in place in medicine. Given that an average law student will accrue around \$33,996.00 in HECS fees, it is suggested that the level of HECS debt it is a very real consideration for new graduates when making practice choices. The need to reconsider a fairer balance between public and private contributions to legal education has also been identified.

The opportunity for clinical placement in a RRR area has also been identified as a very effective recruitment and retention strategy. Two initiatives have been trialled in the community legal sector, both of which target undergraduate and Practical Legal Training students through clinical placement opportunities. By providing students with a positive experience in a RRR area, research findings show that they will be more likely to return to a RRR area to practice. It is probable that most RRR placements are taken up within the context of undergraduate studies in regional universities. However, city and metropolitan-based law schools should be encouraged to promote and provide student placements opportunities in RRR areas as part of a clinical program.

This review has identified a range of initiatives which are offered to medical and allied health professionals as a means of encouraging them to practice in a rural or remote area. These include scholarships, relocation grants, incentive payment schemes and clinical placement support. It may be appropriate for Phase 2 of this project to canvass the public policy questions concerning the extent to which similar tax and other financial incentives for lawyers, especially private sector lawyers, are 'justifiable'.

Finally, there is a very real need to address the recruitment and retention issues faced by community legal centres. Without addressing fundamental pay equity issues and unsafe working conditions in CLCs through systemic change to the funding formulae, CLCs will continue to be left to address these issues in a mostly ad hoc and ineffective way. This review has identified the need to immediately implement the recommendations contained in the 2006 *NSW Review of the Community Legal Centre Funding Program* and to follow the lead of Victorian CLCs, who have successfully negotiated a funding arrangement inclusive of portable long service leave across centres and more broadly across the community sector.

This literature review is the first step to helping identify and summarise existing literature on the extent of the recruitment and retention problem in RRR areas and the factors which contribute to it. A more detailed study is needed which considers a holistic approach to the problem. Identifying and developing a range of strategies that target key pathways in the lawyer's 'lifecycle' is likely to be most effective. For example, there is a need to consider:

- ways to increase RRR participation in law studies,
- the provision of more effective scholarship and subsidy support to help RRR students remain in law studies;
- ways to create more opportunities for clinical placements in RRR areas as part of the undergraduate and PLT experience,
- financial and/or tax incentives to the private sector
- tax incentives generally
- addressing salary levels and working conditions within CLCs
- increasing our understanding of the demographic changes facing the profession and how these impact practice choices.
- increased commitment of public funding to legal service provision (eg, increased CLCs and legal aid commission offices in RRR areas).

Background

This review was initiated by the Northern Rivers Community Legal Centre (NRCLC) and made possible through small grant funding received from the Law and Justice Foundation of NSW.¹ The project was motivated by an increasing concern about the recruitment and retention of lawyers in rural, regional and remote (RRR) communities in NSW.

Anecdotal evidence across the legal sector suggests that there is a significant shortage of solicitors willing to work in RRR areas, resulting in difficulties in filling vacancies within the government, non-government and private sectors.² Surveys conducted by the NSW Law Society show increasing evidence that the number of lawyers in RRR areas is falling, particularly in the last decade.³ This trend appears to be replicated in other states and territories.

The 2004 *Legal Aid and Access to Justice Report* concluded that in many areas outside of urban centres there simply are no private lawyers⁴, and in many others, there is a lack of lawyers with specialist expertise in certain areas of law.⁵

The first stage consultations held for the *NSW Access to Justice and Legal Needs Project* noted the diminishing number of private solicitors in rural and regional areas and the shortage of solicitors who are willing to undertake legal aid work, particularly in family law.⁶ The *Access to Justice Roundtable* identified the difficulties of recruiting lawyers (along with many other allied professionals) to the more remote areas such as Far Western NSW.⁷

Similar problems exist in the recruitment and retention of staff in the community legal sector where RRR Centres face considerable difficulties in drawing lawyers away from the city and other parts of the legal sector.⁸

Evidence given before the Victorian Law Reform Committee in 2000 in the course of its inquiry into legal services in rural Victoria, noted that “[o]ne of the key struggles...for most rural parts of Victoria if not Australia...is the recruitment of qualified and competent people.”⁹

The importance of addressing recruitment and retention issues

The need to address these recruitment and retention issues are important for two reasons. First, attracting and retaining professional people to live and work within RRR areas is essential to sustainable, healthy communities.¹⁰ Second, concerns the negative impact this decline has on access to justice for people living in RRR communities.

It is well documented that RRR communities already face a relative lack of access to legal services.¹¹ Some argue that people living in RRR areas are not able to exercise their legal rights in the same way as those living in metropolitan areas due to “the smaller number of private firms, lack of readily accessible legal aid offices,

1 NRCLC is a community legal centre based in Lismore on the Far North Coast of NSW. NRCLC has engaged Ms Trish Mundy to undertake this project. Trish has been involved with the community legal sector for over 18 years with a primary focus on the delivery of legal services in and to rural, regional and remote communities. She is currently a full-time Associate Lecturer with the Griffith University Law School on the Gold Coast.

2 See for example: Ferguson G, ‘Bush lawyers – the problem facing regional and rural Queensland’, *Proctor*, December 2004; Legal Aid Commission of NSW, *Review of the NSW Community Legal Centres Funding Program Final Report*, June 2006; Law Society of NSW, *Law society warns of lawyers shortage in rural areas*, ABC Regional News, 18 February 2002.

3 Urbis Keys Young, 2007 *Profile of the Solicitors of NSW*, The Law Society of New South Wales, December 2007, p12

4 Legal and Constitutional References Committee, *Legal Aid and Access to Justice*, June 2004, pp115-116

5 Ibid. p117

6 Schetzer L & Henderson J, *Access to Justice and Legal Needs, a Project to Identify Legal Needs, Pathways and Barriers for People in NSW. Stage 1: Public Consultations*, Law and Justice Foundation of NSW, Sydney, 2003 at 2.281.

7 *Access to Justice Roundtable: proceedings of a workshop*, July 2002, Law and Justice Foundation of NSW, Sydney, 2003: www.lawfoundation.net.au/report/roundtable (accessed 2.5.08)

8 Australian Government Attorney-General's Department, *Federal Civil Justice System Strategy Paper*, December 2003, p90

9 Duvergiere B, Executive Director of Community Connections, *Inquiry into Legal Services in Rural Victoria*, Victoria Law Reform Committee, Melbourne, 15 May 2000. Viewed at: www.parliament.vic.gov.au/lawreform/Legal_Services_Inquiry/Community%20Legal%20Centres.htm (accessed 6/2/08)

10 Standing Committee on Regional Development, *Attracting and Retaining Skilled People in Regional Australia: A Practitioner's Guide*, Perth, February 2004, p1.

11 See for example key reports such as *Legal Aid and Access to Justice*, above at pp 113-136 and references to submission therein; Schetzer & Henderson, *Access to Justice and Legal Needs*, above.

lack of community legal centres and the increased costs associated with accessing these services.”¹²

The Co-operative Legal Services Delivery Model (CLSDM)¹³ was introduced in NSW in an attempt to maximise legal service delivery to people living in disadvantaged communities, particularly those in rural, regional and remote areas. While it may well have achieved this, barriers to access to justice and the problems associated with a shortage of lawyers in RRR communities cannot be overcome through co-ordination alone.

CLCs are unable to meet the level of demand for their services and legal aid eligibility is heavily restricted.¹⁴ NRCLC, located in a region which is experiencing rapid population growth, reports difficulties in finding private lawyers who practice in particular specialist areas such as employment or family law or who are willing to take on legal aid work. Western NSW CLC, located in the more remote town of Broken Hill, is experiencing a population decline and is also facing the reality of fewer private referral options along with an acute legal need due to the impact of drought¹⁵ and other economic pressures commonly found in the bush.

The lack of publicly funded legal services and the decline in private solicitors in RRR areas means there are fewer options for legal assistance and representation which inevitably leads to increased numbers of self-represented litigants and a greater reliance on telephone and intermittent outreach services to meet legal need. As President of the Law Council of Australia, Bob Gotterson QC, speaking in relation to the findings of a 2004 Council report, *Erosion of Legal Representation in the Australian Justice System*, noted “...when legal representation is not available to...a litigant, the integrity of the justice system is challenged.”¹⁶

The delivery of legal services in NSW is achieved through a partnership of government, community and private sector providers. Therefore, addressing the above problems requires consideration of recruitment and retention issues facing not only community and government sectors (which reveal a more obvious connection to ‘access to justice’ for marginalised and disadvantaged people) but also private sector lawyers who have “both [a] public and private role”¹⁷ and whose direct and indirect contributions to the community are also vital to advanced economic prosperity and social welfare generally.¹⁸

In view of the compelling anecdotal and statistical evidence of decline, there is an urgent need to more fully understand the extent of the problem so that strategies can be adopted to stem the decline and thereby address access to justice in RRR communities.

Scope of the project

The broad objective of this project is to gather much needed empirical evidence on this issue, so that any policy recommendations and actions to address it are appropriately formed and provided strategically. This literature review has reviewed the available information and materials on the issue as it exists in NSW and other Australian jurisdictions and is the first stage to achieving these aims. It examines the following 3 major questions:

- 1 What is the extent of the problem affecting recruitment and retention of lawyers in RRR areas, in NSW in particular?
- 2 What are the potential factors contributing to this problem?
- 3 What existing strategies have been adopted to address recruitment and retention of professionals?

This review will help identify and summarise existing literature on questions 1 and 2. Once completed, it is envisaged a more detailed research study would follow on from the findings of this literature review in relation to questions 1 and 2 but particularly question 3.

¹² Law Council of Australia, *Erosion of Legal Representation in the Australian Justice System*, February 2004, p6.

¹³ The CLSDM is a “service delivery initiative” which aims to improve the range of legal services available to disadvantaged communities. It does this through a regional partnerships approach which focuses on the coordination of legal services provided by government, community and private sector. For more information see Hitter, M, *Cooperative Legal Services Delivery Model*, Legal Aid Commission of NSW, Sydney, May 2004. Viewed at: www.lacextra.legalaid.nsw.gov.au/publications/docs/ImprintFile261.pdf (accessed 16.06.08)

¹⁴ See Legal Aid Commission of NSW’s eligibility guidelines: www.legalaid.nsw.gov.au/asp/index.asp?pgid=746.

¹⁵ Combined Community Legal Centres Group NSW Inc, *Community Legal Centres NSW: An Investment Worth Protecting*, Budget Submission to the NSW Government 2008/2009, Sydney, p7

¹⁶ Gotterson, B, *Erosion of Legal Representation Harming the Justice System*, Law Council of Australia: www.lawcouncil.asn.au/read/2004/2391403457.html (accessed 18 June 2008)

¹⁷ Ferguson G, ‘Bush lawyers – the problem facing regional and rural Queensland’, above at p8.

¹⁸ Spigelman JJ Hon, AC Chief Justice of NSW, *Access to Justice and Access to Lawyers – Address to the 25th Australian Legal Convention*, Sydney, 24 March 2007

Methodology

The literature review was conducted by undertaking a thorough exploration of the material held by databases, including AGIS plus and Casebase (journal articles, research reports, conference and seminar papers), ProQuest (multi-disciplinary database), Factiva (newspaper articles) and a general catalogue search. The materials were found through using the database and library resources of the Griffith University on the Gold Coast.

In addition to these databases, information and reports were drawn from a number of government, non-government and industry websites. A complete list of the literature considered in this review can be found at Appendix A. The following research literature, reports and articles have been particularly useful to this review:

- Regional population statistics compiled by the Australian Bureau of Statistics from the 2006 census data.
- 2007 Statistical profile of NSW solicitors compiled by Urbis Keys Young for the Law Society of NSW.
- The National Competition Policy Discussion Paper commissioned by the Law Society of NSW in 2001.

Articles contained in *Proctor*, the Queensland Law Society journal (2002-2004).

Research project undertaken in 2004 by Miles R L Prof, Marshall C, Rolfe J and Noonan S, *Attraction and Retention of Professionals to Regional Areas*.

- Evaluation Reports of the 'Regional Solicitor's Program', Queensland Legal Aid (2004 and 2007).
- Law Council of Australia, 2010: *A discussion paper, Challenges for the Legal Profession*, September 2001
- The websites of the National Association of Community Legal Centres and the NSW Combined Community Legal Centres Group
- The 2006 Report on the Review of the Community Legal Centres Funding Program.

Literature Review

Introduction

The question of how to recruit and retain professional people in rural, regional and remote parts of Australia has received a lot of attention in recent years, mainly in relation to doctors and allied health professionals, and has been the focus of debate among governments, the community and professional bodies.

Despite this attention, there has been very little research undertaken in Australia which has looked specifically at the problems of recruitment and retention of legal practitioners in RRR areas and the factors which contribute to it. The literature that does exist is largely anecdotal in nature and seeks to identify the problem.

There are, however, two projects currently on foot: the first is a working paper produced by The Law Institute of Victoria (LIV) which identifies a range of strategies to address the problems of attracting and retaining lawyers in regional Victoria.¹⁹ LIV advise that the working paper is not yet publicly available and is currently being considered by the Law Council of Australia. The second is a 'mapping' project undertaken by Associate Professor Simon Rice of the Australian National University. Rice, through access to the 'raw data' collected by the NSW Law Society, and with the assistance of a human geographer, has mapped the movement and gender distribution of private sector lawyers in rural and regional NSW over the past decade. Some reference is made to this study below.

Despite the limited 'legal' literature, it is clear that professional people generally, "...are increasingly either choosing to remain in city and coastal regions, or are moving from rural, regional and remote areas. This demographic shift is on-going and many...areas are struggling to attract and keep their professional services."²⁰

¹⁹ Referred to as a *Working Paper: Attraction and Retention of Legal Practitioners to Rural and Regional Areas Strategy*, 2008.

²⁰ Miles R L Prof, Marshall C, Rolfe J and Noonan S, *Attraction and Retention of Professionals to Regional Areas*, produced for Queensland Department of State Development and Innovation, 2004, p2

‘Professional’ literature has generally identified the following key reasons for this demographic shift:

- Lifestyle perceptions
- Limited career/ professional development opportunities / professional isolation
- Infrastructure (transport, housing, telecommunications)
- Health services
- Education and Training
- Salary
- Lack of job opportunities for partners
- High workloads and difficulties in finding relieving staff

Many of these factors are relevant to the legal profession and are canvassed in this review. However, ‘legal’ literature has tended to frame these issues differently so that factors such as ‘job opportunities for partners’ and ‘difficulties finding relief staff’ are reflected in ‘family issues’ and ‘lifestyle’ considerations. The legal literature also reveals additional factors which impact on the legal profession and more specifically on private sector lawyers (for example, the effect of the application of competition policy and the policies relating to the outsourcing of legal aid services) and community legal sector lawyers (for example, the disparity in salary levels paid to community lawyers compared to government and private sector lawyers).

To begin, this review will seek to understand the nature and extent of the problem by developing, as far as possible, a statistical profile of RRR practice and practitioners. It will do this by using data collected by the NSW Law Society and regional population trends as reported by the ABS.

The review then offers an analysis of the literature concerning the factors affecting recruitment and retention of lawyers in RRR areas. Those of broad relevance across the sectors are considered first, followed by those relevant to the private sector, community legal centres and the public sector respectively.

Finally, the review will identify several initiatives that have been implemented in an effort to address the rural solicitor shortage and, in particular, the shortage of solicitors willing and/or available to undertake legal aid work in RRR areas. This review will then conclude by offering some tentative recommendations for future research.

Part 1: What is the extent of the problem affecting recruitment and retention of lawyers in rural, regional and remote areas of NSW.

In order to more fully understand the nature and extent of the recruitment and retention problems in rural, regional and remote (RRR) NSW, it is helpful to draw together a statistical profile of RRR practice and practitioners. Answers to key questions about the makeup and characteristics of lawyers in RRR areas and the size, type and nature of rural practice will not only provide a fuller understanding of the problems but will also help to identify appropriate and strategic responses to them.

This review has drawn on statistical data published by the NSW Law Society. However, there are limitations with the data which prevent a comprehensive analysis. While the NSW Law Society’s *Annual Profile of the Solicitors of NSW* (‘Annual Profile’) identify member lawyers’ country of birth, practice location, gender and indigenous status, etc the profiles do not offer information about important cross-variables such as a breakdown of gender by location of practice or age by location of practice. This information could offer valuable insight into the extent to which gender and generational change are impacting on contemporary rural practice.

Similarly, the profiles do not contain a regional breakdown of practitioner numbers. This information would be helpful in identifying whether the decline in lawyers is occurring more generally across NSW or is concentrated in certain regions, and whether the decline reflects overall population trends as evidenced in the ABS statistics (see discussion below). However, the ‘mapping’ project undertaken by Rice (referred to at page 12 above) does address some of these limitations, at least in relation to private practitioners. Further reference is made to this below.

Finally, it should be noted that a more comprehensive review and analysis beyond the published data was not possible due to the time, budgetary and methodological constraints of this project.

A. A statistical profile of rural practice and practitioners

As at 2 October 2007, 13.3% of the solicitors were practising in rural areas, compared to 53.2% within the Sydney CBD and 29.3% in suburban areas. Since 1988 there has been a steady decline in the proportion of solicitors practising in rural areas, down from 16.7% to the current figure of 13.3%.²¹

YEAR	CITY (NO.)	CITY (%)	SUBURBAN (NO.)	SUBURBAN (%)	RURAL (NO.)	RURAL (%)
1988	4682	49.9	2583	26.5	1631	16.7
1989	5277	50.8	2632	25.3	1704	16.4
1990	5480	50.8	2772	25.7	1718	15.9
1991	5691	50.7	2879	25.6	1827	16.3
1992	5596	48.1	3072	26.4	1878	16.1
1993	5788	48.4	3328	27.8	1925	16.1
1994	6002	48.9	3426	27.9	1946	15.8
1995	6279	49.1	3534	27.6	1992	15.6
1996	6558	49.7	3640	27.6	2031	15.4
1997	6815	50.8	3766	28.1	2064	15.4
1998	7281	52.5	3930	28.3	2134	15.4
1999	7775	53.1	4149	28.3	2195	15
2000	8455	55	4163	27.1	2220	14.4
2001	9036	55.7	4270	26.3	2268	14
2002	9550	55.6	4548	26.5	2313	13.5
2003	9972	55.1	4923	27.2	2474	13.7
2004	10216	54	5358	28.3	2580	13.6
2005	10564	53.3	5693	28.7	2708	13.7
2006	10862	53.4	5929	29.2	2772	13.6
2007	11309	53.2	6220	29.3	2822	13.3

A 2003 report prepared by Urbis Keys Young, which considered the ‘predicted characteristics’ of NSW solicitors in 2015, projects that the proportional breakdown of solicitors working in city, suburban and rural practice is likely to remain fairly steady.²²

Of the 2,822 solicitors working in rural areas²³, the majority (2,428) are employed in private practice.²⁴ Next are solicitors in corporate practice (96)²⁵ followed by government (31).²⁶ Solicitors employed in NSW community legal centres and Aboriginal legal services are statistically reflected within the ‘government’ sector.

NSW Law Society statistics indicate that over the past decade, the number of female solicitors has grown by 369% (from 1,979 in 1988 to 9,281 in 2007). This represents an annual growth rate of 8.5%. The number of male solicitors grew by only 53% (from 7,829 to 11,974) and represents an annual growth rate of 2.3%.²⁷ Statistics also show that women now make up 43.7% of the practising profession in NSW.²⁸

As already noted, there is no published data in relation to the age distribution of solicitors in RRR areas. However, in a 2003 press release issued by Ms Kim Cull, former President of the NSW Law Society, it was reported that “most country solicitors are aged 45 years and over and it appears that one third of those will retire in the next 10 to 15 years, leaving a gap which must be filled by other practitioners.”²⁹ This indicates that rural practitioners are concentrated in the older age bracket and many are likely to have retired in the past 5 years or will retire from legal practice in the next decade.

²¹ Urbis Keys Young, *2007 Profile of the Solicitors of NSW*, The Law Society of New South Wales, 21 December 2007, p13

²² Urbis Keys Young, *The Solicitors of New South Wales in 2015 – Final Report*, The Law Society of New South Wales, Sydney, p 14

²³ Urbis Keys Young, *2007 Profile of the Solicitors of NSW*, above at p13

²⁴ Ibid, p19

²⁵ Ibid, p27

²⁶ Ibid, p25

²⁷ Ibid, p5

²⁸ Ibid, p5

²⁹ Cull, K, *Young rural solicitors in decline: new blood needed in bush*, Law Society of New South Wales, 8 February 2002.

Private Solicitors

As at 2007, there were 2,822 solicitors working in rural areas of NSW, the majority of which (2,428) were employed in private practice.³⁰ The findings of the recent ‘mapping project’ referred to above, indicate that in addition to the overall decline in the proportion of rural practitioners in the last decade, there has been a significant movement of private solicitors away from inland areas of NSW and an influx to coastal areas of the state.³¹ Those solicitors who are located outside of city and suburban areas have become more concentrated in the larger regional centres rather than in smaller rural towns.³²

The gender distribution in relation to the RRR private sector is not ascertainable from the published data, however, 61.1% of private practitioners overall are male.³³ Anecdotal evidence indicates that the large majority of lawyers in RRR areas are male. In Victoria, it has been reported that only 22% of practitioners in country Victoria are female.³⁴ While the thrust of these figures is likely to be similar in NSW, there is evidence that the proportion of females among RRR private solicitors is increasing.³⁵

According to the 2007 Annual Profile of Solicitors, 22.6% of all private law firms were located in rural NSW, compared with 52.6% located in Sydney’s suburbs and just under a quarter (23.7%) in the Sydney CBD. The number of rural firms represents a decrease of 1.3% since 1998.³⁶ Practices located in rural areas are predominately sole or small practices³⁷ and are said to be more “economically reliant on areas such as conveyancing, wills and estate and family law” than are city-based practices.³⁸ Their income levels are also well below that of their Sydney cousins.³⁹

Government Solicitors

Government solicitors comprise lawyers working across a range of government departments and public agencies, including lawyers working within non-government organisations, such as community legal centres and Indigenous legal services. The 2007 Annual Profile of Solicitors indicates that only 31 (1.3%) government lawyers are located in rural NSW. Again, the gender distribution is not known, however, statistics show that women represent 60% of government lawyers overall⁴⁰ and as much as 80% of community legal centre staff.⁴¹

B. Regional Population Trends

The following information has been drawn from 2006 ABS Regional Population Growth Statistics. These statistics indicate that the top 20 Local Government Areas (LGAs) in Australia with the largest population increases are all found in capital cities and its outer suburbs. Conversely, 8 of the top 20 areas with the largest decline are all located in rural and remote areas of NSW, including Moree, Walgett, Broken Hill, Bourke, Warrumbungle Shire, Lachlan and Deniliquin.⁴²

There has been a population growth in all coastal LGAs in the period June 2001 to June 2006. The largest population growth was recorded in the Tweed district on the Far North Coast of NSW (8,400 people). Newcastle LGA, located on the mid-north coast, recorded the next largest population increase (7,000 people). This was closely followed by the Hastings (6,000 people) and Coffs Harbour (5,000 people) LGAs. The fastest coastal growth was also recorded in Tweed (increase of 2.2% per year), followed by Hastings (increase of 1.8%), Coffs Harbour, Eurobodalla and Port Stephens (Hunter), all increasing by 1.5% per year.⁴³

The regional towns of Maitland (8,300 people), Queanbeyan (4,100), Wagga Wagga (3,200) and Albury

30 Urbis Keys Young, *2007 Profile of the Solicitors of NSW*, above at p19

31 Rice, S, *Rural access to private lawyers*, Sydney, April 2008, (unpublished).

32 Ibid.

33 Urbis, Keys, Young, *2007 Profile of the Solicitors of NSW*, above at p19

34 Brown, M, ‘A Country Practice’, *Law Institute Journal*, October 2002, p18

35 Rice, *Rural access to private lawyers*, above.

36 Urbis Keys Young, *2007 Profile of the Solicitors of NSW*, above at p14

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

38 Ibid.

39 Ibid.

40 Urbis, Keys, Young, *2007 Profile of the Solicitors of NSW*, above at p25

41 Legal Aid Commission of NSW, *Review of the NSW Community Legal Centres Funding Program Final Report*, June 2006, p33

42 Australian Bureau of Statistics, *Regional Population Growth Australia 3218.0, 1996 to 2006* at p11

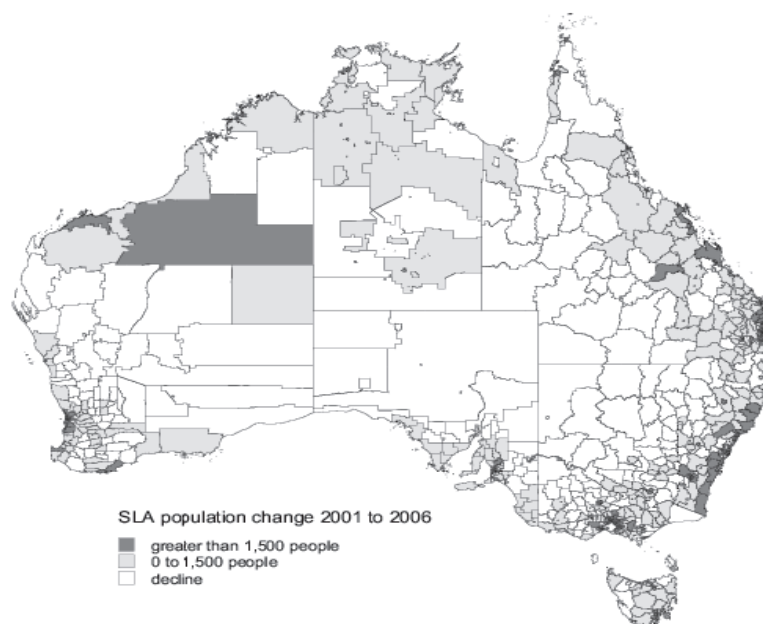
43 Ibid, p14

(3,000) recorded the largest population increases of inland NSW in the period June 2001 to June 2006. The fastest increases were found in Palerang (3.5%), Yass Valley (2.6%) and Queanbeyan (2.3%), Maitland (2.8%) and Murray (1.7%).

The Regional Population Growth statistics show that many inland areas experiencing population decline have been drought affected. Statistics indicate that Moree Plains faced the largest population decline of any NSW inland LGA. The top 5 areas which have experienced the fastest population decline in NSW between June 2001 and June 2006 were: Bourke (4%), Central Darling (3.9%), Walgett and Warren (2.9%) and Carrathool (Murrumbidgee region, 2.6%).⁴⁴

In summary, the ABS statistics indicate a trend toward inland decline in NSW and a significant shift to city and coastal regions. Broadly speaking, this trend is replicated throughout much of Australia, as depicted by the following regional population map produced by the ABS.

Population change, Australia – June 2001 to June 2006⁴⁵



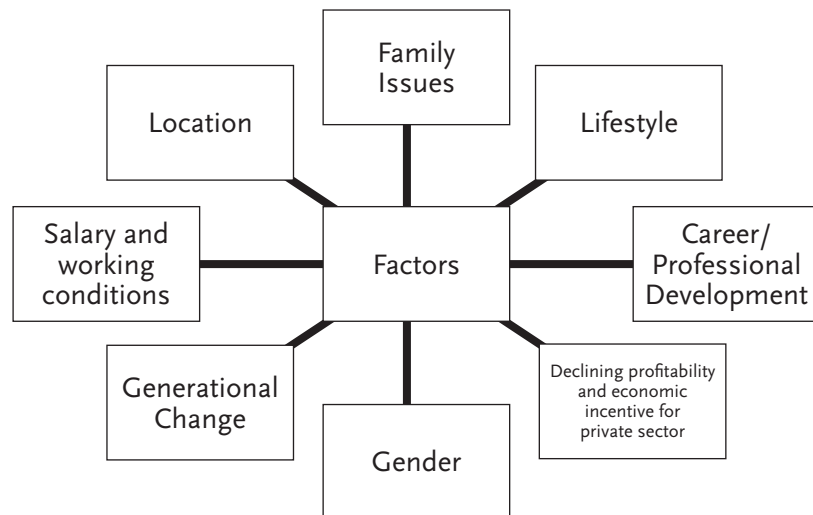
When considering the above statistical data and the findings of Rice’s ‘mapping project’, it is clear that the decline and movement of solicitors in RRR areas of NSW broadly mirrors the overall regional population trends identified above.

44 Ibid, p14

45 Ibid, p4

PART 2: What are the potential factors contributing to the problem?

The literature has identified several key factors applying across the legal sector which influences the recruitment and retention of lawyers in rural, regional and remote areas. These are discussed in section A below. A number of additional factors have also been identified which particularly affect the private and non-government sectors. These are canvassed in sections B and C respectively.



Graph: Pictorial overview of potential factors affecting recruitment and retention

A. Issues relevant across the legal sector

(i) Family

Issues connected with family were cited as significant factors affecting a lawyer's decision to accept a position in a RRR area and their long-term commitment to remain there. Family issues included one's ties to an area, the availability of social and support networks in a community, appropriate job opportunities for one's partner and educational facilities available for children.

If a person was born in a rural, regional or remote area or had family ties to a particular area, there is fairly strong evidence that they were more likely to return to that area after graduating than a person who does not.⁴⁶ This reflects research findings across a range of professional literature (including educational, medical, nursing) which draws "positive associations" between one's earlier experience of a rural lifestyle and their subsequent employment in a rural area.⁴⁷

It is axiomatic that if one's partner and family are not happy, retention of the professional is less likely. Research conducted by Miles, Marshall, Rolfe and Noonan into the problem of attracting and retaining professionals in rural, regional and remote areas of Queensland found that the availability of social and support networks for family members, adequate medical services, appropriate jobs for partners and education for children are key attraction and retention factors.⁴⁸

The educational opportunities available for one's children were shown to be particularly important. The study found that the transition from primary to secondary school was a time in which many professionals chose to leave rural areas for what they perceived to be 'better' regional or city-based educational opportunities.⁴⁹

⁴⁶ Castles R, 'Recruitment and retention of young lawyers in remote, rural and regional Queensland', (2003) 23(3) *Proctor*, 32. Brown, M, 'A Country Practice', *Law Institute Journal*, above.

⁴⁷ Courtney M, Edwards H, Smith S and Finlayson K, (2002) "The impact of a rural clinical placement on student nurses employment intentions", *The Collegian*, 9(1), 12-18, p4.

⁴⁸ Miles, Marshall, Rolfe & Noonan, *Attraction and Retention of Professionals to Regional Areas*, above at p12

⁴⁹ Ibid.

(ii) Lifestyle factors

Closely linked with family issues is the 'lifestyle factor'. Literature suggests that lifestyle considerations, while largely subjective, are particularly influential in determining practice location and whether a person would relocate from the city to a RRR location.

For many, life and practice in the country is perceived in largely negative terms, highlighting its limitations and limited opportunities for "social outlets, work/life balance and a lack of [social] networks."⁵⁰ The extent to which there were few or no specialised doctors, schools, cinemas and other facilities commonly found in the city was seen as key factors in failing to draw lawyers to country practice.⁵¹ In relation to work/life balance, reference was made to the difficulties in maintaining personal boundaries for the rural lawyer. The lawyer in a small rural town is usually high profile and faces considerable community expectations about their role which can impinge on one's personal life.⁵²

For others 'lifestyle' and the 'closeness of rural life' was cited as *the* very reason for choosing to move to and remain in a country area. For these lawyers, the country is where a work/life balance was a real possibility because of a slower pace of life, the close proximity to one's place of work and where a real sense of community connection was possible.⁵³ There was also a belief that country lawyers enjoyed greater respect within the communities in which they lived and worked and this promoted a real sense of satisfaction.⁵⁴

For some, the lower cost of living and being able to spend more quality time with their family were seen as important aspects of the lifestyle choice they were making. For many the lower cost of living mitigated against lower salaries.⁵⁵

For those lawyers in more isolated areas the problem of finding a replacement/ locum solicitor when they wished to take a break and go on holidays was a very real one.⁵⁶ This led to the greater potential for burnout and, by implication, the potential for early retreat from the area. Difficulties in finding relief staff was also identified as a factor across other professional groups.⁵⁷

(iii) Professional Development / Career Advancement

RRR practice affords comparatively fewer opportunities for professional development and career advancement than city practice and both are seen as factors in the recruitment and early departure of lawyers. These were reported as being closely connected with other factors such as pay and lifestyle.⁵⁸

Most lawyers reported a lack of professional development opportunities in the country and the constant struggle to keep up to date with the law, which can be very difficult when you are working in an isolated environment.⁵⁹ It was reported that a CLE had to be 'very relevant...before they would consider going to [the city]' as the travel time and travel costs were prohibitive.⁶⁰

For some lawyers, rural practice was seen as limiting opportunities for professional development and career satisfaction as practice was too 'general' and did not adequately allow for the development of specialist expertise.⁶¹ On the flip side to this, other lawyers believed that country practice could provide a wonderful starting ground for a professional career as it provides young lawyers with an opportunity of gaining a breadth of experience they would not otherwise have.⁶²

It was reported that many country lawyers believed that they were perceived as "second rate" by their city counterparts and reported experiencing "contempt" from city practitioners on a day to day basis.⁶³ There also

50 Castles R, "Recruitment and retention of young lawyers in remote, rural and regional Queensland", above at p32

51 Brown, 'A Country Practice', above at p1

52 Giddings J, Hook B and Nielson J, "Legal Services in Rural Communities: Issues for clients and lawyers", (2001) 26(2) *Alternative Law Journal*, 57

53 Brown, 'A Country Practice', above at p1

54 Ibid.

55 Brown, 'A Country Practice', above.

56 Young Justice PW, "Lawyers in country areas", (2002) 76 *Alternative Law Journal*, 84

57 Miles, Marshall, Rolfe & Noonan, *Attraction and Retention of Professionals to Regional Areas*, above at p7

58 Ibid, p12

59 Ibid, p19

60 Ibid, p13

61 Brown, 'A Country Practice', above at p15

62 Ibid, p16

63 Ibid, p15

appears to be a perception amongst professionals themselves that employment experience in RRR areas is of lesser professional value and that RRR work is detrimental to their careers.⁶⁴

The lack of opportunity for career advancement was also seen as a reason why young lawyers would not take up a position in the country. It was suggested that practice in a RRR area “restricted the portability of a young lawyers skills within the geographical area.” Unlike working in the city, a young person had less opportunity in a RRR area to change employer if a person wished to do so.⁶⁵

Literature also identified the significant impact of dwindling infrastructure in RRR areas⁶⁶, reduced court services, lack of reasonable law libraries, the time and distance it takes to access courts and other relevant services as all contribute to feelings of professional isolation and perceptions of ‘second rate’ lawyering.⁶⁷

(iv) Location of legal education experience

The literature suggests that a person who undertakes their legal studies at a rural/regional university is more likely to return to a rural/regional area than to take up a position in the city.⁶⁸ This link between rural education and rural practice is supported by research findings across the medical and nursing professions and key research literature in the educational realm.⁶⁹

There are 29 Australian universities offering a degree program in law and only 8 are regional universities. NSW fares somewhat better in that it has 10 universities offering a degree program in law, 4 of which are based in regional areas.⁷⁰ This has important implications and raises key questions for the future recruitment and provision of legal education.

A 2002 discussion paper prepared for the Law Society of NSW which considered a range of future challenges facing the profession, noted that the increasing costs of legal education in the form of HECS debts, practical legal training and the availability of significant up front fee positions act as disincentives for members of disadvantaged and lower socio economic groups to complete the course and enter the profession and, due to the practical necessity of having to repay a heavy debt, could well impact on the profile of the legal profession.⁷¹

Access to Justice and other literature identifies the fact that residents of rural, regional and remote communities experience socio-economic⁷² and educational disadvantage.⁷³ In view of this, we may well see more people from RRR areas excluded from studying law.

The Australasian Law Students’ Association (ALSA), the peak representational body of Australian law students, has also identified that people from regional backgrounds may be deterred from entering law school due to the additional educational costs associated with relocation and accommodation and certain ‘shortcomings’ associated with the Commonwealth Scholarship program.⁷⁴

ALSA suggests the shortcomings which must be addressed include: four year time limit for availability of scholarship and the need to review eligibility guidelines for both the ‘Education Costs Scholarship’ and the ‘Accommodation Scholarship’. In particular, ALSA indicates that because some universities will only permit students to obtain one scholarship or the other, it has the potential, when combined with other factors such as

64 Miles, Marshall, Rolfe & Noonan, *Attraction and Retention of Professionals to Regional Areas*, above at p12; Brown, ‘A Country Practice’, above; Castles R, ‘Recruitment and retention of young lawyers in remote, rural and regional Queensland’, above.

65 Castles, ‘Recruitment and retention of young lawyers in remote, rural and regional Queensland’, above at p32

66 Giddings, Hook & Nielson, ‘Legal Services in Rural Communities: Issues for clients and lawyers’, above at p60

67 Ibid; Brown, ‘A Country Practice’, above at p20

68 Castles, ‘Recruitment and retention of young lawyers in remote, rural and regional Queensland’, above at p32

69 Schofield D, Fuller J, Fletcher S, Birden H, Page S, Kostal K, Wagner S and Schultz L, “Decision criteria in health professionals choosing a rural practice setting: development of Careers in Rural health Tracking Survey”, *Rural and Remote Health* 7:666 (Online), July 2007; Also Hacket J, “Outreach should be rewarded”, *The Australian*, Higher Education, Wednesday February 13 2008.

70 Law Council of Australia, 2010: *A discussion paper, Challenges for the Legal Profession*, September 2001, p76. Those universities located in regional areas are: Southern Cross University, Lismore; University of New England, Armidale; Newcastle University; University of Wollongong.

71 Ibid, p90

72 Schetzer L & Henderson J, *Access to justice and legal needs. Stage 1: public consultations*, Law & Justice Foundation of NSW, 2003, Sydney. Viewed at: [www.xml.lawfoundation.net.au/ljf/site/articleIDs/EAoF86973A9B9F35CA257060007D4EA2/\\$file/consultations.html](http://www.xml.lawfoundation.net.au/ljf/site/articleIDs/EAoF86973A9B9F35CA257060007D4EA2/$file/consultations.html) (accessed 28.04.08)

73 Hacket, “Outreach should be rewarded”, above. Note Hacket’s reference to statistics which show that people in regional Australia have a university participation rate of 18% compared to metropolitan participation rates of 28%.

74 Australasian Law Students’ Association (ALSA), *Law Students Call For Scholarship Overhaul*, 28 April 2008: www.lawcouncil.asn.au/article/2451278879.html (accessed 8/5/2008)

the high HECS band⁷⁵, to deter RRR students from undertaking law studies.⁷⁶

(v) Gender

It has also been suggested that the increasing numbers of women entering the profession may help to explain the decline of solicitors in rural, regional and remote areas. This is because women are “...not attracted to country living or else have family commitments [which keep them] in the city.”⁷⁷

NSW Law Society statistics indicate that over the past decade, the number of female solicitors has grown by 369% (from 1,979 in 1988 to 9,281 in 2007). This represents an annual growth rate of 8.5%. At the same time, the number of male solicitors grew by just 53% (from 7,829 to 11,974) representing an annual growth rate of 2.3%.⁷⁸

Despite the fact that women now make up 43.7% of the practising profession in NSW⁷⁹ they represent a significantly smaller percentage of country practitioners.⁸⁰ Statistics also show that, as a percentage, women dominate the government and corporate sectors where positions are overwhelmingly located in city and metropolitan areas and afford greater opportunities for ‘family friendly’ work arrangements.

Whether, and to what extent, family commitments keep women from choosing to practice in a RRR area is not known. A 2002 paper produced by the Law Society of NSW which considered the role and experience of women in the legal profession, found that women continue to earn less than their male counter-parts,⁸¹ were more likely to assume the continuing full-time care of their children and thereby seek part-time or flexible work arrangements⁸² and face cultural resistance to flexible work arrangements in order to meet child care responsibilities.⁸³

There is also some indication that women may give precedence to their partner’s career commitments over their own. A study undertaken by the Law Institute of Victoria, in which a group of women lawyers were surveyed about their reasons for resignation, found that women were almost 4 times more likely than men to leave practice to accommodate their partner’s career commitments.⁸⁴

It is possible that these factors combine to create an environment where women, because of career interruption, ongoing child care responsibilities and the influence of her partner’s career commitments make RRR practice less possible or attractive.

How and to what extent these factors operate to influence decisions about practice location? How do women perceive rural practice; its challenges and opportunities? These are important questions, the answers to which will enable the profession to more fully understand those factors which influence women’s practice decisions.

Another aspect of ‘gender’ is the perception that practice in the country is a ‘male domain’ and is therefore alienating and more difficult for women.⁸⁵ For others it was considered easier for women to achieve partnership status and to accommodate maternity leave and child care responsibilities than it was in the city.

(vi) Changing job demands/employment patterns of Generations X and Y

Current literature suggests that the legal profession is facing major generational change issues and the question of how best to attract and retain younger lawyers is gaining importance.

Younger lawyers are part of ‘Generation X’ and ‘Generation Y’. Gen Xers were born between 1965 and 1979 and Gen Y between 1981 and 1995. They are said to represent a ‘new breed’ of lawyers⁸⁶ who have a different

75 See discussion at page 34 in relation to the amount of HECS fees payable by law students.

76 Australasian Law Students’ Association (ALSA), *Law Students Call For Scholarship Overhaul*, 28 April 2008: www.lawcouncil.asn.au/article/2451278879.html (accessed 8/5/2008)

77 Young, J ‘Lawyers in country areas’, above at p84

78 Urbis Keys Young, *2007 Profile of the Solicitors of NSW*, above at p5

79 Ibid, p5

80 NSW figures are not published on this issue. Rice’s mapping project (referred to above) indicates that the numbers of women in RRR areas are increasing, but continue to be low. The proportion of women rural practitioners in Victoria is around 22%.

81 Law Society of New South Wales, *After Ada: a new precedent for women in law*, 29 October 2002, p8.

82 Ibid, p9

83 Ibid, p10

84 Law Institute of Victoria, Young Lawyers’ Section, ‘Thriving and Surviving’, April 2001, in Law Council of Australia, 2010: *A discussion paper, Challenges for the Legal Profession*, September 2001 at p136

85 Brown, ‘A country practice’, above at p18

86 Borchardt R, ‘The recruiting roundabout’, *Australian Law Management Journal*, Spring 2006

mind-set to older colleagues and do not see the practice of law as a lifetime career.⁸⁷

Generation Xers do not define themselves by their work and favour work-life balance, variety and happiness over career and salary. Gen Y is more likely to move in and out of the law and are said to be more “self-involved” and “money hungry”.⁸⁸ Recruitment literature indicates that ‘happy’ Gen X employees will stay with the same employer for between 2 and 5 years while Gen Y people will “have up to five careers in their lifetime and more than 20 employers” and a job lifespan of around 2 years⁸⁹.

A research study undertaken by CQU into attracting and retaining professionals in regional Queensland also concluded that young professionals no longer look to a ‘secure for life’ job, that they are increasingly reluctant to commit to one location for an extended period of time (eg, 3 years)⁹⁰ and “will follow development and career opportunities, rather than staying with one employer.”⁹¹ Similar sentiments were expressed in the evaluation report of the Queensland Regional Solicitors Program where it was noted that “...new generation young lawyers [were reluctant] to commit to long term employment arrangements.”⁹²

These changing employment patterns have obvious implications for recruitment and retention of lawyers and the continuing life and viability of rural practice. Who will take over RRR practices in the future? How might rural practice fulfil younger lawyers’ desire for variety, work/life balance and a different style of practice? How will the limited job span impact on rural practice?

(vii) Pay/Salary

Anecdotally⁹³ and statistically,⁹⁴ it would seem that salaries offered in ‘country’ areas are generally lower than those offered in Sydney or the larger metropolitan area. This may be partly explained by the reduced capacity of law practices located outside of capital cities to charge their clientele the same rate of fees which impacts on the salaries that can be offered.⁹⁵

However, it is not clear the extent to which salary affects recruitment and retention. It would seem likely that rural practice is less attractive than city practice because of the lesser salaries it offers.⁹⁶ There is certainly a perception that country firms struggle to match salaries offered by city firms⁹⁷ and that employers must offer a greater starting salary in order to “entice” a practitioner to a RRR area.⁹⁸

However it seems likely that salary, while important, is not the determining factor in the employment decision; rather other factors including lifestyle and whether professional opportunities are available for one’s partner are likely to be more important.⁹⁹ The 2010 *Report* notes that a study on performance pay showed that salary ranked 11th behind such factors as open communication, ability to challenge the status quo and personal growth.¹⁰⁰ This is likely to be especially true for younger lawyers who place greater value on leisure, work/life balance and happiness over salary.

Gender may also influence the importance placed on salary. A study conducted by the Law Institute of Victoria shows that men were almost twice as likely (52:29 respectively) than women to indicate that the level of remuneration was a factor in their decision to leave practice.¹⁰¹

87 Ibid; Law Institute of Victoria and Victorian Women Lawyers, *Bendable or expendable? Practices and attitudes towards flexibility in Victoria’s biggest legal employers*, Melbourne, 2006, p2

88 Borchardt, *The recruiting roundabout*, above at p12;

89 Southam K, *Better managers needed in war for talent*, www.careerone.com.au/jobs/job-search/job-market-insider/pid/544 (accessed 24.4.08)

90 Miles, Marshall, Rolfe & Noonan, *Attraction and Retention of Professionals to Regional Areas*, above at p14

91 Ibid, p14

92 Adams, D, *Review of the Regional Solicitor Scheme*, Legal Aid Queensland, June 2007, p12

93 Castles, “Recruitment and retention of young lawyers in remote, rural and regional Queensland”, above; Brown, ‘A Country Practice’, above.

94 Law Council of Australia, 2010: *A discussion paper, Challenges for the Legal Profession*, above. See also Marks, Martin & Verbeek, *National Competition Policy: A discussion paper*, Law Society of New South Wales, March 2002 at p39, in which it notes that 18.6% of Sydney solicitors earned more than \$150,000 per annum whereas only 8.4% of country practitioners earned above this.

95 Young J, ‘Lawyers in country areas’, above at p84

96 Marks et al, *National Competition Policy: A discussion paper*, above at p42

97 Brown, ‘A Country Practice’, above at p18

98 Ibid.

99 Miles, Marshall, Rolfe & Noonan, *Attraction and Retention of Professionals to Regional Areas*, above at p16

100 Hayes S, “Pros and Cons of Pay for Performance”, *Workforce*, February 1999, 78(2), pp68-73, quoted in Law Council of Australia, 2010: *A discussion paper, Challenges for the Legal Profession*, above.

101 Law Institute of Victoria, Young Lawyers’ Section, ‘Thriving and Surviving’, April 2001, in Law Council of Australia, 2010: *A discussion paper, Challenges for the Legal Profession*, above.

B. Factors particularly affecting the private sector

Several key factors have already been identified which affect recruitment and retention across the legal sector. However, the literature indicates that there are additional factors that have particular relevance for recruitment and retention in the private sector. These include the impact of competition policy, reduction in funding to the legal aid sector and the overall effects of population and economic decline in rural areas. It is likely that these have led to falling profitability of rural practice and a general lack of economic incentive which has affected the continued viability of RRR practice. These factors are considered below.

National Competition Policy (NCP) refers to those laws and regulations which are designed to “enable and encourage competition” in the supply of goods and services.¹⁰² Following the recommendations of the 1993 Hilmer Report into National Competition Policy, all state and territories introduced a number of reforms with the effect that uniform legislation was enacted to apply Part IV of the *Trade Practices Act* 1974 to the professions. These reforms essentially became operative from 21 July 1996.¹⁰³

The rationale for National Competition Policy was based on the desire “to expose more sectors of the Australian economy to the discipline of market competition [and was seen as] the preferred means of improving their efficiency and/or competitiveness and hence the welfare of the community at large.”¹⁰⁴ The immediate effects of the NCP on the legal profession included the removal of the scale of costs.¹⁰⁵ Following further inquiry into the legal profession, additional recommendations were made effecting wide-reaching changes, including opening up the supply of legal services to non-lawyers,¹⁰⁶ most notably in the area of conveyancing.¹⁰⁷

Marks, Martin and Verbeek are the authors of the report *National Competition Policy: A discussion paper* which was commissioned by Law Society of NSW in 2001.¹⁰⁸ The discussion paper considered the impact of national competition policy on the delivery of legal services. The report aimed to ‘kick-start’ discussion about the “second wave of legal reform” in NSW and to highlight a number of strategic issues which impact on the delivery of legal services. It is in the context of ‘service supply’ that the authors discuss patterns of change within the legal profession.

While noting certain limitations with the data¹⁰⁹, the authors’ findings provide some evidence of “changing patterns of activity within the legal services industry in NSW and across Australia...” in relation to the size of practices, practice areas and practice location.¹¹⁰ Given that country practices are predominately sole or small practices, earn less than their city cousins and rely on work in areas of practice that attract considerable competitive pressures (such as conveyancing, wills and estate and family law)¹¹¹ there is concern that these factors, combined with indications of the retirement intentions of country practitioners,¹¹² demonstrate the potential for significant loss of legal practitioners in RRR areas in the coming years.

While the report of Marks et al states that “the effects of competition policy are difficult to distinguish from the effects of other dynamics in the market for legal services”¹¹³ they suggest that “it is possible to conclude that rural practices are falling in profitability through substantial competitive pressures and the overall effects of declining rural economies.”¹¹⁴ Other research supports this view of a “shrinking market of opportunities” due to regional decline while also noting that regional decline alone cannot fully explain the problem, given that statistics show some communities were experiencing population growth or were at least static.¹¹⁵

¹⁰² National Competition Council: www.ncc.gov.au/articleZone.asp?articleZoneID=267#Article-127 (accessed 16.06.08)

¹⁰³ Ibid.

¹⁰⁴ Trade Practices Commission, *The Need for Regulatory Reform*, March 1994 cited in Farmer, J (QC), “The Application of Competition Principles to the Organisation of the Legal Profession”, *UNSW Law Journal*, Vol 17, Issue 1, September 1994, p286

¹⁰⁵ *Law Society Journal (NSW)*, “The Application of Competition Principles To the Organisation of the Legal Profession”, (1995) 33 (7) LSJ 38 at p41

¹⁰⁶ Ibid, p10

¹⁰⁷ Section 14(2)(e) of *Legal Profession Act* 2004.

¹⁰⁸ Marks et al, *National Competition Policy: A discussion paper*, above.

¹⁰⁹ Ibid, see p13

¹¹⁰ Ibid, p13

¹¹¹ Ibid, p39

¹¹² Cull, *Young rural solicitors in decline: new blood needed in bush*, above.

¹¹³ Ibid, p13

¹¹⁴ Ibid, p39

¹¹⁵ Miles, Marshall, Rolfe & Noonan, *Attraction and Retention of Professionals to Regional Areas*, above.

Another key report produced by The Law Council of Australia, 2010: *A Discussion Paper, Challenges for the Legal Profession*, also notes that factors such as “competition, deregulation, specialisation and technological advances” have “transformed” the nature of legal practice and has had a detrimental effect on the working conditions of solicitors, leading to “decreased profit margins, increased pressure and longer hours.”¹¹⁶ These in turn impact on work satisfaction and retention rates generally.

Giddings, Hood and Neilson note that many practitioners who provide legal services in communities in economic decline face the reality that clients will have a reduced capacity to pay for legal services.¹¹⁷

The reduction in the availability of legal aid has also been identified as a contributing factor in the picture of falling profitability of rural practice.¹¹⁸ Legal Aid is no longer available in areas where it once was, such as in family law property disputes and other areas.¹¹⁹ Many legal practitioners are also pulling away from providing legal aid work because of inadequate remuneration for the work undertaken.¹²⁰ There is some evidence of a higher rate of withdrawal by lawyers in rural areas.¹²¹ It is their view that it is no longer worthwhile to engage in work that effectively means they operate at a loss. The move away from legal aid is particularly affecting those requiring the services of family lawyers.¹²²

Marks et al’s report identifies the need for economic incentives for private practitioners to continue to invest in professional activities. This is based on the idea that, over time, “resources follow incentives.” A reduction in profitability means that, for many, the continued viability of RRR practice is not present. This logically means that there will be a shift in resources from those activities which are less financially rewarding to more rewarding uses.¹²³ In relation to the focus of this report, this would mean a move away from ‘poorer communities’ and clients to ‘richer communities’ and clients. As Marks et al notes “...it is implicit in the nature of competition that resources will shift from less to more attractive uses.”¹²⁴ Other factors which make conditions harder in RRR areas include such things as increased travel and disbursements cost.¹²⁵

In January 2007, the Legal Aid Commission of NSW introduced its Rural Client Services Strategy (RCSS). The RCSS identifies several Commission initiatives which may help to address some of the difficulties identified above. In particular, it indicates the Commission’s intention to review aspects of the eligibility guidelines, including:

- Extending the category of ‘special disadvantage’ to include people suffering from geographical isolation; and
- Increasing the assets thresholds to take into account the impact of drought and other natural disasters on a person’s capacity to afford legal representation.¹²⁶

In addition, from 1 July 2007, the Commission has increased the private practitioner fee scale for most State matters and Commonwealth duty matters to a base rate of \$150 per hour.¹²⁷

C. Factors particularly affecting community legal centres and Indigenous legal service providers

The 39 Community Legal Centres (CLCs) operating throughout NSW are primarily funded by Commonwealth and State government departments through the joint NSW/Commonwealth Community Legal Service Program (CLSP). The minimum recurrent funding for CLCs under the CLSP from 1 July 2008 is around

¹¹⁶ Law Council of Australia, 2010: *A discussion paper, Challenges for the Legal Profession*, above at p135

¹¹⁷ Giddings, Hook & Nielson, ‘Legal Services in Rural Communities: Issues for clients and lawyers’, above at p60

¹¹⁸ Dewar J Prof, Giddings J, Parker S Prof, *The Impact of Changes in Legal Aid on Criminal and Family Law Practice in Queensland*, Executive Summary, 1998, p73-74

¹¹⁹ Ibid, p2

¹²⁰ Brown, ‘A Country Practice’, above at p21; Law Council of Australia, *Erosion of Legal Representation in the Australian Justice System*, above.

¹²¹ Law Council of Australia, *Erosion of Legal Representation in the Australian Justice System*, above at p6. This report refers to a 2002 survey of family law practitioners by National Legal Aid which found a higher rate of withdrawal from legal aid work in rural areas (40%) compared to urban areas (21%).

¹²² Law Council of Australia, 2010: *A discussion paper, Challenges for the Legal Profession*, above; Legal and Constitutional References Committee, *Legal Aid and Access to Justice*, above. Dewar, Giddings & Parker, *The Impact of Changes in Legal Aid on Criminal and Family Law Practice in Queensland*, above.

¹²³ The Law Society of New South Wales, *National Competition Policy: A discussion paper*, above at p8.

¹²⁴ Ibid, p10

¹²⁵ National Pro Bono Resource Centre, *Regional, Rural and Remote pro bono: models and opportunities*, May 2006, p5

¹²⁶ Legal Aid Commission of New South Wales, *Rural Client Services Strategy*, 9 January 2007 at p9

¹²⁷ www.lacextra.legalaid.nsw.gov.au/feescales/index.htm (accessed 2/7/08)

\$300,000. Some centres receive additional funding from philanthropic organisations and via donations. Of the 39 CLCs, 19 are specialist centres (specialising in a particular class of clients or particular area of law), the other 20 are generalist (ie provide advice to people within a specific geographic catchments). Of the 20 generalist centres, 11 of these are based in rural and regional areas; 1 is located in the remote town of Broken Hill in Far Western NSW.¹²⁸

All of the literature reviewed in relation to recruitment and retention problems within the CLC sector strongly suggests that CLCs experience difficulties in attracting and retaining lawyers in RRR centres because they cannot offer competitive salary and working conditions. It is suggested that RRR centres may suffer most from the effects of low salary because there is no incentive for people to move to RRR areas where the cost of living is higher, including increased housing, petrol, food and communication costs.¹²⁹

Many of these issues have already been succinctly canvassed in the recent *Review of the Community Legal Centres Funding Program*, undertaken in 2006 on behalf of the NSW and Commonwealth Governments.¹³⁰ The *Review* noted that most CLC staff in NSW, including lawyers, are paid according to the Social and Community Services Award (SACS) or under Enterprise Bargaining Agreements which are based on that award. Page 33 of the *Review* contains a useful analysis of the average salaries paid to lawyers working in the community sector compared with lawyers working in the government and private sectors.¹³¹ It found that, even with salary packaging benefits available, there is considerable disparity between CLC salaries and those of Legal Aid Commission employees and salaries offered in the private sector. In short, CLC lawyers are “significantly underpaid.”¹³² These findings are also supported by a Remuneration Report prepared by Mercer Human Resource Consulting for the National Association of Community Legal Centres (NACLC).¹³³

NACLC suggests that the inability to offer competitive salaries means that CLCs are less able to draw lawyers away from the city or else attracts inexperienced lawyers who come to increase their skill level and quickly leave for better salary and working conditions.¹³⁴ NACLC also suggests, however, that recruiting new graduates can be made particularly difficult as many have large HECS debts and wish to pay off these more quickly and so are less willing to accept community legal centre wages.¹³⁵

CLC literature asserts that the inability to pay comparable salaries is directly attributable to inadequate funding levels. Until very recently, other than indexation to pay for increases in the SACS Award in 2002, 2006/07 and 2007/08, funding to CLCs has not increased over the past decade. Any additional funding has been allocated to new programs or new centres rather than directing funding to existing centres to ensure adequate funding levels.

In May 2008, the NSW Public Purposes Fund provided 3 year funding to 15 of the poorest CLCs in NSW for programs dealing mostly with state-law issues. The funding amounts ranged from \$70,000-\$130,000. Although some of these centres may be able to use the funding to slightly improve salaries, it appears most of the money is set aside for new projects or programs.¹³⁶

Also in May 2008, the commonwealth government announced a one-off allocation of \$10 million to the National CLC funding program.¹³⁷ Despite these allocations, CLCs have identified the need to address ongoing funding problems through a review of the CLSP funding model and to consider a funding allocation model based on ‘evidence-based legal needs analysis’.¹³⁸

128 Combined Community Legal Centres Group (NSW) Inc, www.nswclc.org.au/ (accessed 10.6.08)

129 Australian Government Attorney General's Department, *Joint Review of Community Legal Centres (WA)*, September 2003, p57

130 Legal Aid Commission of NSW, *Review of the NSW Community Legal Centres Funding Program Final Report*, June 2006

131 On average, a solicitor employed in a CLC earned \$46,229 (or \$52,300 when ‘grossed up’ with salary packaging benefits). A solicitor at Level 1-III with 5 years experience employed in Legal Aid would earn approximately \$77,000. The Law Council of Australia suggests that the average salary for a ‘moderately experienced’ private sector solicitor in rural, suburban and small CBD practices are \$55,454, \$67,763 and \$65,564 respectively. NACLC reports much higher figures for Sydney solicitors based on positions found in legal recruitment magazine ‘Lawyers Weekly’.

132 Ibid, p33

133 Mercer Human Resource Consulting, *Remuneration Recommendations National Association of Community Legal Centres*, Sydney, October 2006

134 Legal and Constitutional References Committee, *Legal Aid and Access to Justice*, above at p215

135 Ibid, p215

136 NSW Combined Community Legal Centres Group, *On The Record – e-bulletin, Issue 37, June 2008*: www.nswclc.org.au/OTR_2007/OTR_7_June.html#PPF15 (accessed 7.7.08)

137 Ibid.

138 NSW Combined Community legal Centres Group, *Community Legal Centres NSW: An Investment Worth Protecting, Budget Submission to the NSW Government 2008/2009*, p4

In addition to the issue of salary comparability, the literature also notes that because CLCs are significantly under-funded and overwhelmed by the demand for their services, staff work in stressful conditions, undertake significant levels of unpaid overtime and in conditions which have been described as 'exploitative' and 'unsustainable' and likely to lead to worker burnout.¹³⁹ Attracting and retaining staff in this environment is made extremely difficult.

Indigenous legal service providers face many similar issues to those identified above, including low rates of pay in comparison with other legal aid providers, high staff turnover and the considerable loss of experienced and culturally aware staff.¹⁴⁰ Chronic under-funding of Aboriginal and Torres Strait Islander Legal Services (ATSILS) by the Federal Government has been identified as the cause.

D. Factors particularly affecting the public sector

Public sector lawyers are found in a variety of settings, most commonly within the NSW Legal Aid Commission (LAC), NSW Office of the Director of Public Prosecutions (ODPP) and Crown Solicitor's Office (CSO). They are overwhelmingly based in city and metropolitan areas, with the NSW Law Society statistics indicating that 11.6% of 'government'¹⁴¹ practitioners are 'country based'.¹⁴² The Legal Aid Commission of NSW has 10 regional offices and the ODPP has 7 offices in 'country' NSW.

This review has identified minimal literature relating to recruitment and retention of public sector lawyers and none in relation to rural and regional issues. The literature identifies the challenges of the remuneration structure compared with the private sector.¹⁴³ It is also likely that some issues faced by public sector lawyers are similar to those of non-government sector lawyers, particularly in relation to workload levels.

Literature produced by the UK Law Society in relation to legal aid lawyers suggests that young graduates are deterred from pursuing a career in legal aid primarily due to salary and career prospects.¹⁴⁴ The amount of HECS debt accumulated in the course of their law degree relative to the remuneration available has also been identified as relevant to the decision of whether or not take up a position in legal aid.¹⁴⁵

Key issues relating to recruitment and retention of lawyers employed within the Office of the Director of Public Prosecutions (ODPP) in Queensland has recently been canvassed in public discussion. Media reports indicate that the ODPP is experiencing difficulties in attracting and retaining experienced prosecutors. A draft report was commissioned in January 2008 by the Attorney-General and Minister for Justice, Kerry Shine, in order to consider 'recruitment and retention trends' within the ODPP.¹⁴⁶

The report, entitled *Review of Issues Associated with the Recruitment and Retention of Prosecutors in the Queensland ODPP*,¹⁴⁷ was released in May 2008. It found that the office cannot attract suitably qualified prosecutors due to low pay and extremely heavy workloads.¹⁴⁸ These factors have resulted in the appointment of inexperienced prosecutors who are without mentors and which is said to be "eroding the professional base of the practice and heightening the risk for miscarriage of justice."¹⁴⁹ The review recommended the commitment of additional funding to the ODPP and the immediate appointment of 49 prosecutors.¹⁵⁰

While the extent to which these issues are relevant to government sector lawyers in RRR areas of NSW is unknown, it is reasonable to assume that similar issues may well exist.

139 Ibid, p34

140 Boersig, J, *Wage Disparity Between Indigenous and non-Indigenous Legal Service Providers*, [2001] ILB 81.

141 Note: this figure includes CLC and other lawyers in the non-government sector due to the Law Society's classification.

142 Urbis Keys Young, 2007 *Profile of the Solicitors of NSW*, above at p15.

143 Knight I, 'Rich Rewards in Public Sector Law', *Australian Law Management Journal*, Spring 2006, p16.

144 Law Careers.Net, *Legal Aid lawyers, the Next Generation*, www.lawcareers.net/InformationFeatures/Detail.aspx?r=1257 (accessed 3.6.08)

145 Ibid.

146 Honourable Kerry Shine, Attorney-General and Minister for Justice, 'Media Statement', 16 May 2008 www.cabinet.qld.gov.au/MMS/StatementDisplaySingle.aspx?id=58093 (accessed 28.5.08)

147 Office of the Director of Public Prosecutions, *Issues Associated with the Recruitment and Retention of Prosecutors in the Queensland ODPP*, May 2008

148 Kotch T: 'Queensland DPP 'overworked and underpaid'', 17 May 2008: www.theaustralian.news.com.au/story/0,25197,23711575-2702,00.html

149 Moore T, 'Massive overload for prosecutors', 17 May 2008: www.brisbanetimes.com.au/news/queensland/massive-overload-for-prosecutors/2008/05/16/1210765140830.html (accessed 28.5.08)

150 Kotch, 'Queensland DPP 'overworked and underpaid'', above.

PART 3: Strategies to address recruitment and retention problems in RRR Communities

A. Financial incentives to the private sector

Achieving access to justice for rural, regional and remote (RRR) communities has become increasingly challenging in recent years due to the numbers of private lawyers moving away from legal aid work and because in many areas there simply are not enough lawyers. This retreat from legal aid work is largely due to the much lower levels of remuneration paid in comparison to private fee-paying clients.

A number of key reports have recommended the provision of subsidies or other tax incentives as a way of encouraging lawyers to relocate and remain in RRR areas as an 'access to justice' measure. While the scope and mechanics were not canvassed, the *Legal Aid and Access to Justice Report* recommended the following incentives be considered:

- Payment of relocation costs
- Assistance with housing costs
- Subsidised travel costs to attend further education seminars
- Travel, motor vehicle, telecommunication and cultural training allowances
- Payment of travelling costs incurred on a legal aid file¹⁵¹

In response to the problems identified above, three legal aid bodies have established Regional/Rural Solicitor Programs. The first was introduced in Queensland in 2004, later in WA and NSW. These programs, each of which will be discussed below, mark the beginning of financial incentive payments to the private sector as an 'access to justice' measure.

(i) Regional Solicitor Program, Queensland

Legal Aid Queensland (LAQ) introduced a 'Regional Solicitors Program' (RSP) in 2004. The aims of the program are to:

- address the departure of 'preferred suppliers' in regional Queensland due to recruitment and retention difficulties;
- encourage new graduates to work in regional areas;
- address the need for longer term solutions in relation to the availability of preferred suppliers.¹⁵²

The RSP is open to law graduates who have completed, or are about to begin, a Practical Legal Training (PLT) program. It is marketed through Queensland's law schools.¹⁵³ The graduate is placed in a private law firm located in an area of regional Queensland in which there are insufficient preferred legal aid suppliers. LAQ pays the graduate's PLT course fee and up to 75% of a wage subsidy for a period of two years. The wage subsidy is proportional to the amount of legal aid work undertaken by the firm. The remainder is paid by the employer firm. The starting salary for graduates is \$40,000. When operating at full capacity, the average cost of the Program is \$500,000 per year, around \$37,000 per graduate.¹⁵⁴

Two evaluations of the RSP have been conducted; the first by Creative Sparks Pty Ltd in 2005. The evaluation found that the program was meeting its aims by addressing the immediate supply difficulties faced by LAQ¹⁵⁵ and was helping to address the preferred supplier problem into the future by building goodwill and increasing the likelihood that at least some of the young solicitors will stay in regional Queensland.¹⁵⁶

Private law firms indicated a high degree of satisfaction with the program.¹⁵⁷ The evaluation concluded that firms were either breaking even or making a small profit from involvement in the program.¹⁵⁸ Many firms

¹⁵¹ Legal and Constitutional References Committee, *Legal Aid and Access to Justice*, above.

¹⁵² Adams, *Review of the Regional Solicitor Scheme*, above at p8

¹⁵³ Guthrie F and Watters S, *Evaluation of the Regional Solicitor Program*, Legal Aid Queensland, July 2005, p2

¹⁵⁴ Ibid, Executive Summary

¹⁵⁵ Ibid, p 11

¹⁵⁶ Ibid, p12

¹⁵⁷ Ibid, p12

¹⁵⁸ Ibid, p12

also stated that the RSP was the determining factor in whether they would continue to undertake legal aid work or not.¹⁵⁹

The 2005 evaluation showed that LAQ benefited through reduced travel costs associated with the need to source solicitors from other locations (which could add as much as \$400–\$800 in travel costs),¹⁶⁰ reduced costs associated with overtime payments as well as savings associated with reduced administration time in having preferred suppliers on tap in these areas.¹⁶¹

A later evaluation undertaken in 2007 found that the average length of placement was 18.8 months at an average cost of \$50,373.00. It concluded that the “scheme has played a key role in enabling continued service provision in areas prioritised by need.”¹⁶² It recommended that the scheme be permanently funded and an additional allocation of \$250,000 be made in 2007–2008.¹⁶³

The evaluation also recommended that an additional \$5,000 bonus be offered as a financial incentive to the graduate if they remain working at a firm in that local community for a minimum of three years on a continuous basis. This was seen as a way of increasing the chances of the graduate remaining in the regional area. This was introduced following the 2007 evaluation.

The evaluation indicates that of the 13 placements made at that time only three placements were continuing. 10 were not longer working with the firm (7 terminated during placement; 3 terminated after placement). The reasons given for termination included: unsatisfactory performance of the graduate, a change in the firm’s “business direction”, dissatisfaction of the graduate with workload, graduate’s feelings of isolation from their family and graduate having accepted a promotional opportunity elsewhere.¹⁶⁴

The evaluation report concluded by summarising several ‘lessons’ learnt from the program. These included the need for greater support for graduates in order to help them adjust to the challenges associated with relocation; (which was seen as the most significant factor in terms of the likelihood of the graduate remaining in the firm); the availability of peer support within the firm or region and clearer expectations of firms concerning graduate workloads, training and supervisory obligations.¹⁶⁵ To this end, the evaluation also recommended that a position at LAQ be funded to manage placements and provide support to applicants and firms participating in the scheme.¹⁶⁶

(ii) Regional Solicitor Program, NSW

The Legal Aid Commission of NSW introduced a Regional Solicitor Program in early 2007 aimed at addressing the “...increasing difficulty in providing services to both the remoter areas of the State where populations and services are declining and those coastal regions experiencing population growth”.¹⁶⁷

The Program is similar to that provided by Legal Aid Queensland in that it offers salary subsidies and other financial incentives to private law firms in targeted regional and rural areas of NSW to employ an additional lawyer in exchange for the lawyer undertaking a certain amount of legal aid work.¹⁶⁸ The law firm also receives payment of professional fees for all legal aid services delivered under the program.

The program provides for an additional private practitioner in the following country locations for a two year period. Currently these locations are: Batemans Bay, Bega, Murwillumbah/Tweed Heads, Cowra, Young, Dubbo, and Taree. It appears that the main differences between the Qld and NSW programs are:

- face to face advice and minor assistance services are available through participating firms where the client has been directly referred by Legal Aid or Law Access NSW.

¹⁵⁹ Ibid, p12

¹⁶⁰ Ibid, p6

¹⁶¹ Ibid, p15

¹⁶² Adams D, *Review of the Regional Solicitor Scheme*, Legal Aid Queensland, June 2007, p12

¹⁶³ Ibid, p6

¹⁶⁴ Ibid, p12

¹⁶⁵ Ibid, pp19–20

¹⁶⁶ Ibid, pp19–20

¹⁶⁷ Legal Aid Commission of New South Wales, *Rural Client Services Strategy*, 9 January 2007, p2 www.legalaid.nsw.gov.au/data/portal/00000005/public/60577001168299957437.pdf (accessed 3.4.08)

¹⁶⁸ Ibid, p2

- LAC (NSW) is not involved in ‘brokering’ the lawyers for ‘placement’.

The Program is funded for a period of 2 years. It is currently being evaluated at its mid-point (April 2008) and will also be evaluated at its conclusion.

(iii) *Country Lawyers Graduate Program, WA*

The Country Lawyers Graduate Program is a combined initiative of the Law Society of WA, Legal Aid WA, Community Legal Centres, WA Aboriginal Legal Services and Family Violence Prevention Services. Commencing in 2007, the scheme is administered by Legal Aid and is aimed at “improving the recruitment and retention and lawyers in regional and remote areas by recruiting, developing and rotating junior solicitors throughout regional WA.”¹⁶⁹

The Graduate Program is part of the Articled Clerkship program. On successful completion of the one year articles program, the graduate is offered a 3 year employment contract. The Graduate spends their first year within Legal Aid WA. Thereafter, the graduate will rotate through various regional legal services including the Aboriginal Legal Service, Community Legal Centres, Family Violence Prevention Legal Service and Legal Aid regional offices.

The graduate commences at \$42,000 per annum, progressively increasing to \$60,000 in their fourth year. Other salary bonuses and incentives are also provided, including:

- Salary packaging
- payment of membership fees to the Law Society of Western Australia
- Regional allowances including access to subsidised housing

The program will be evaluated in the near future.

B. Taxation Incentives

(i) *Zone Tax Offset*

Currently a taxpayer who has lived or worked in a remote area of Australia for a certain qualifying period¹⁷⁰ is entitled to claim a ‘Zone Tax Offset’. The rebate is given in recognition of the isolation and higher costs of living in a remote area compared to other parts of Australia.

The business site of the Northern Territory Government provides a useful summary of the rebate.

The amounts provided under the ‘zone tax offset’ are:

- “\$338, plus 50% allowed for dependents, for residents of Zone A (comprising the Northern Territory and regional areas of northern Queensland and Western Australia); and
- \$57, plus 20% allowed for dependents, for residents of Zone B (regional areas of South Australia, New South Wales, southern Western Australia and Queensland).
- “Special areas” – which are defined as being 250km or more from a population centre of 2 500 or more, also receive \$1173 plus 50% allowed for dependents.”¹⁷¹

The zone rebate has been criticised as extremely inadequate as the amount has not changed in almost 15 years¹⁷² and does not act as an incentive for people to live and work in remote areas of Australia.¹⁷³ Lobbying for changes to the rebate by various state and territory governments and other stakeholders is ongoing.¹⁷⁴

Speaking at a *National Access to Justice and Pro Bono Conference* in Queensland in 2006, Senator Ian MacDonald proposed that the rebate should be extended to those who live and work in ‘country’ areas and might be more effectively offered at 10 times the average wage (which would mean a rebate of approximately \$7,000 per year).¹⁷⁵ He suggests that this would have the effect of encouraging “...not just lawyers, but

¹⁶⁹ Law Society of Western Australia, *Country Lawyers Graduate Program*, www.lawsocietywa.asn.au/index.php?p=1 (accessed 25.3.2008)

¹⁷⁰ www.ato.gov.au/individuals/content.asp?doc=/content/40483.htm (accessed 13.5.08)

¹⁷¹ www.nt.gov.au/business/btr.cfm?btrid=168 (accessed 13.5.08)

¹⁷² Ibid.

¹⁷³ Ibid, Senator Honourable Ian McDonald, *Speech to the National Access to Justice and Pro bono Conference*, www.senatormacdonald.org/speeches9.html (accessed 28.5.08)

¹⁷⁴ www.nt.gov.au/business/btr.cfm?btrid=168 (accessed 14.5.08)

¹⁷⁵ McDonald, *Speech to the National Access to Justice and Pro bono Conference*, above.

engineers, doctors, health professionals, indigenous managers and many other Australians to live in country Australia because it is financially profitable to do [so].”¹⁷⁶

(ii) Higher Education Contribution Scheme (HECS) Rebate

A HECS Reimbursement Scheme is currently in place for doctors who provide medical services in certain rural and remote communities in Australia. The scheme aims to promote careers in rural medicine and increase the number of doctors in rural and regional Australia by allowing one fifth of their HECS fees to be reimbursed for each year of service.¹⁷⁷

An average law student will accrue approximately \$33,996,000 in HECS fees over the course of their undergraduate degree.¹⁷⁸ Some argue strongly that the proportion of HECS contributions made by law students relative to other disciplines is inequitable¹⁷⁹ and a fairer balance between private and public contributions to legal education is needed.¹⁸⁰ Law students currently contribute 80.5% of their course costs compared to Education (37.5%), Science (31.8%) Medicine (30.4%) and Engineering (31.4%) students.

It is suggested that the level of HECS obligations is likely to be a very real consideration for graduates when making practice choices. CLCs suggest that it represents a significant impediment to new graduates choosing to undertake lower paid work in the CLC sector.¹⁸¹ ALSA notes that it is ‘inequitable to assume that all law graduates will earn disproportionately large salaries, and hence charge HECS at the highest rate to all law students.’¹⁸²

It has been proposed that new graduates who take up employment in RRR areas be afforded some concession through a waiver of the Higher Education Contribution Scheme (HECS) Fees. For each year a new graduate remains in a RRR area, they be entitled to a waiver of a certain percentage of their HECS debt.¹⁸³ This would not only encourage new graduates to take up positions but provides added incentive to remain there.

Similar recommendations were proposed at the recent *Australia 2020 Summit* as a strategy to encourage a range of professional people to live and work in rural and remote communities in Australia, thereby helping to build community capacity and sustainable communities.

C. Addressing salary and working conditions in Community Legal Centres

Community Legal Centres have for some time given voice to the difficulties they experience in attracting and retaining legal staff, but nowhere is this more evident than in RRR centres which struggle more than their city and metropolitan counterparts. It was reported that one rural centre advertised for almost 2 years before employing a suitably qualified lawyer while other regional centres report significant delays before successful recruitment.¹⁸⁴

It has been suggested that CLCs manage their recruitment and retention issues by relying on the dedication and altruism of prospective staff; on their willingness to work in an under-resourced service and in an underpaid position because of their commitment to the ‘social justice cause’.¹⁸⁵ CLCs who have charitable status are able to offer some small benefit through FBT ‘salary packaging’ arrangements, but have largely had to rely on targeted advertising, word of mouth and at times internal ‘poaching’ from other CLCs in recruiting staff.

A number of strategies have been proposed to address the problems identified. However, these are mostly predicated on increased funding and, in particular, the need for a comprehensive review of the funding allocation arrangements under the Community Legal Services Program.

¹⁷⁶ Ibid.

¹⁷⁷ www.health.gov.au/internet/main/publishing.nsf/Content/work-pr-hecs-about (accessed 21.4.08)

¹⁷⁸ www.uac.edu.au/mya/uac/costs.html#paytf (accessed 3.6.08)

¹⁷⁹ Australasian Law Students' Association (ALSA), *Submission to The Review of Higher Education Financing and Policy*, April 1998, p3, viewed online: www.dest.gov.au/archive/highered/hereview/submissions/submissions/A/ALSA.htm (accessed 3.6.08)

¹⁸⁰ ALSA, *Submission to The Review of Higher Education Financing and Policy*, above at p3

¹⁸¹ Bishop J, National Association of Community Legal Centres, Evidence given before Senate Committee Inquiry into Legal Aid and Access to Justice, Thursday 13 November 2003. Viewed online at: www.aph.gov.au/hansard/senate/commtee/s7092.pdf (accessed 5.2.08)

¹⁸² ALSA, *Submission to The Review of Higher Education Financing and Policy*, above at p3

¹⁸³ NSW Legal Aid Commission, *Review of the NSW Community Legal Centres Funding Program Final Report*, above.

¹⁸⁴ National Association of Community Legal Centres, *Project Proposal, Law Graduates for CLCs in Regional Areas, March 2008-March 2012, Year One: Feasibility Study*, Sydney, March 2008 at p1

¹⁸⁵ Legal Aid Commission of NSW, *Review of the NSW Community Legal Centres Funding Program Final Report*, above.

(i) Review of the Community Legal Services Program (CLSP)

The 2007 Community Legal Centre Budget Submission noted that the CLSP is significantly under-funded and in urgent need of review. Most centres are overwhelmed by demand for their services and cannot continue to meet their current level of service, let alone meet emerging service gaps.¹⁸⁶

CLCs have called for an urgent review of how funding is allocated under the program. In particular it is suggested that recurrent funding needs to be allocated according to a program-wide funding approach with consideration given to 'evidence-based legal needs analysis'. NSW CCLCG proposes a new approach to the funding allocation model which would assure a minimum baseline level of \$500,000 per centre.¹⁸⁷ Such an approach increases CLCs ability to offer appropriate salary levels and working conditions.

In May 2008, the NSW Public Purposes Fund provided 3 year funding to 15 of the poorest CLCs in NSW for programs dealing mostly with state-law issues. The funding amounts ranged from \$70,000-\$130,000. Although some of these centres may be able to use the funding to slightly improve salaries, mostly the money is set aside for new projects or programs.

Also in May 2008, the commonwealth government announced a one-off allocation of \$10 million to the National CLC funding program. The Commonwealth Attorney-General's Department also released a Report into the National Review of the CLSP which proposed the development of a funding allocation model that would provide a transparent and equitable mechanism to provide future funds to the CLSP. A review of the funding allocation model is still required in order to address the systemic problems raised.

(ii) Financial and other incentives

Should appropriate funding levels be forthcoming, CLCs would be in a far better position to offer more attractive salary packages and working conditions to prospective lawyers. The Review of the CLSP identified several initiatives which, could be consider as a means of encouraging employment in RRR centres and generally building 'sector capacity'. These include:

- Payment of a loading on top of staff salary;
- Supporting people from RRR areas to obtain legal qualifications; provide funding for 'internships' at RRR Centres and consider measures which would support distance education;
- Offering HECS places in postgraduate courses to CLC staff who are on wages below a certain level, which could provide incentives for staff to take up study opportunities;

A scheme of 'secondment sabbaticals', such as that introduced by the Victoria Law Foundation, which would allow for a period of study or research which could improve the capacity of the sector.¹⁸⁸

(iii) 'Portability' of working conditions

It has also been proposed that long service leave, sick leave and other leave entitlements be made "portable" across the community legal sector. Such initiatives may act as significant encouragement for staff to remain in the sector.

CLCs in Victoria have negotiated a CLC Multiple Business Agreement which includes portable long service leave across centres and more broadly across the community sector. These agreements are made in a context where the Victorian Premier announced in April 2008 that the Victorian Government would set up a scheme for portable long service leave across the community sector.¹⁸⁹

It has also been suggested that addressing the portability of conditions between centres and the Legal Aid Commission and other publicly funded legal service providers could "...facilitate a career path within Centres and the legal sector more broadly" creating employment incentives.¹⁹⁰

D. Increasing opportunities for clinical placement in law

It is essential that undergraduate law students be given opportunities to be able to experience what it is like

¹⁸⁶ Ibid, p5

¹⁸⁷ NSW Combined Community legal Centres Group, *Community Legal Centres NSW: An Investment Worth Protecting, Budget Submission to the NSW Government 2008/2009*, above at p8

¹⁸⁸ Legal Aid Commission of NSW, *Review of the NSW Community Legal Centres Funding Program Final Report*, above at p175

¹⁸⁹ [www.premier.vic.gov.au/newsroom/\\$13.87-million-plan-to-build-better-community-sector.html](http://www.premier.vic.gov.au/newsroom/$13.87-million-plan-to-build-better-community-sector.html) (accessed 19/6/08)

¹⁹⁰ Legal Aid Commission of NSW, *Review of the NSW Community Legal Centres Funding Program Final Report*, above at p175

in a rural, regional or remote practice setting. Literature supports the need for greater encouragement and availability of “summer vacation work”¹⁹¹ and “summer clerkships”.¹⁹² This is based on the available evidence which shows that the more opportunities one is given to spend time in a rural, regional or remote area as part of one’s training the more likely one might be to choose to work there.

As a recruitment strategy, the provision of rural clinical placement experiences has been shown to have a positive influence on the recruitment of health professionals to rural areas.¹⁹³ It is, therefore, essential that we increase the opportunities available to undergraduate law students to experience what it is like in a rural, regional or remote practice setting.

There have been two interesting initiatives piloted in community legal centres: the Regional Summer Clerkships Project (discussed above) and the *Law Graduates for CLCs in Regional Areas* Project undertaken by the National Association of Community Legal Centres (NACLC). Both of these projects were designed to increase undergraduate opportunities for rural, regional or remote placement in community legal centres.

(i) Regional Summer Clerkships Project (RSCP)

One such program aimed at undergraduate law students is known as the Regional Summer Clerkships Project (RSCP). The RSCP was an initiative of the Albury Wodonga Community Legal Centre and supported by the Victoria Law Foundation and La Trobe University Law School. The Project aimed to provide undergraduate law students with a 3 to 6 month placement in regional law practices with a view to enhancing the recruitment and retention of young lawyers in regional Australia.¹⁹⁴

The project recruited 56 applicants and facilitated a summer work experience focusing on three areas of regional Victoria: Bendigo, Goulburn Valley and North East of Victoria.

The key objectives included:

- improving the employment opportunities available to graduates;
- “expos[ing] students to a positive rural lifestyle experience”;
- Informing students about the diversity of rural/regional legal practice;

Entry into the Clerkship project favoured students who had some pre-existing ties to the country or who expressed a desire to practice in a regional area.¹⁹⁵ Throughout the placement students were supported through regular meetings with other young lawyers or law clerks in their town or region. These were designed to address the isolation of rural/regional practice and help young people integrate into their communities.¹⁹⁶

The evaluation found that for many students, their interest in country practice was reaffirmed.¹⁹⁷ At the same time, students identified the challenge of social isolation which accompanied their practical experience.¹⁹⁸

(ii) Law Graduates for CLCs in Rural, Regional and Remote Areas

In recognition of the difficulties centres faced by RRR centres in attracting and retaining lawyers, the National Association of Community Legal Centres (NACLC) has developed a project which is aimed at encouraging law graduates to work in regional CLCs as part of their Practical Legal Training (PLT) placement.

The project aims to support law graduates who are already living in regional areas with the ultimate aim to “increase the number of law graduates who elect to remain and work as lawyers in regional areas.”¹⁹⁹

This has obvious benefits to the student in that it satisfies the requirements for their PLT placement while offering some meaningful assistance to regional CLCs who often struggle to attract suitable legal staff. Encouraging regional placements also has the advantage of providing students with a positive experience of

¹⁹¹ Brown, ‘A Country Practice’, above at p15.

¹⁹² King P, *The Future of the Legal Profession*, Law Society Bulletin, October 2002, p155

¹⁹³ Courtney, Edwards, Smith & Finlayson, ‘The impact of a rural clinical placement on student nurses’ employment intentions’, above.

¹⁹⁴ McGowan H, *Lawyers Go Bush, Regional Summer Clerkship Project 2005-2006*, Victoria Law Foundation, p4

¹⁹⁵ Ibid, p11

¹⁹⁶ Ibid, p6

¹⁹⁷ Ibid, p11

¹⁹⁸ Ibid, p11

¹⁹⁹ Project Proposal, *Law Graduates for CLCs in Regional Areas*, above.

regional/rural life and thereby encourages more law students to consider regional CLCs as a viable career option.

NACLC has recently received funding for a one year feasibility study into the project.

E. Strategies adopted within the medical and allied health professions

An array of publicly-funded programs and incentive schemes has been available in the medical and allied-health professions for some time. These target the many entry points into rural practise including: encouraging *rural participation* in university studies, the provision of undergraduate and postgraduate *scholarships*, financial support for rural *clinical placement*; financial incentives to encourage doctors and allied health professions to *take up* practice in RRR areas and financial incentives to practitioners to *remain* in certain rural and remote areas for extended periods.

(i) Increasing RRR participation in university studies

The Rural Undergraduate Support and Coordination program is a government funded program operating within 14 medical schools throughout Australia. The program aims to assist medical schools to promote the selection of rural applicants into medicine; develop support system for medical students with an interest in rural medicine; and provide short-term rural placements for all Australian medical students.²⁰⁰

In recognition of the financial barriers which might prevent rural students from taking up tertiary education, (such as the costs of moving away from their family support structure and living in a city), the Rural Allied Health Undergraduate Scholarship, provides financial support to assist rural and remote students to meet the costs of study, such as accommodation, travel, etc. The scholarship is valued at \$10,000 per year payable throughout the student's degree. The scholarship is not bonded. Rather, the person's existing ties to a RRR area are reinforced through a "rural mentorship program." Approximately 100 new scholarships are offered each year, with 550 being maintained at any one time.²⁰¹

There are also commonwealth funded programs which focus on the provision of clinical placement support for health professionals including a rural and remote scholarship program administrated by Services for Australian Rural and Remote Allied Health (SARRAH). The scholarship is designed to assist postgraduate to undertake clinical placements and further study in recognition that there are insufficient opportunities to gain further education and training in rural areas.²⁰²

There is also the Rural Clinical Schools program which is designed to "encourage medical students to take up a career in rural practice by enabling them to undertake extended clinical training placements in rural locations".²⁰³

(ii) Subsidies and other incentives

The availability of subsidies and other financial incentives as a means to encourage medical and allied health professionals to take up positions in rural, regional and remote areas of Australia has been long-standing. For example, in recognition that the cost of moving to a new location can be an impediment to the successful recruitment of general practitioners (GPs) to rural NSW, the NSW Rural Doctors Network offers grants of up to \$18,000 to eligible GPs relocating to rural NSW communities in need of general practice services. The relocation grant comprises a "disruption allowance" of between \$2,000 and \$10,000 plus the actual cost of furniture removal within Australia to a maximum of \$8,000.²⁰⁴ This grants program is offered on the basis that "[t]here is some evidence that support for doctors increases their length of stay in rural communities."²⁰⁵

The Rural Retention Program, introduced in 1999, is designed to help "recognise and retain long-serving GPs" in rural and remote communities by providing financial incentives of up to \$25,000 depending on the length of service, the remoteness of the area and the level of service they provide.²⁰⁶ An evaluation of the

200 www.health.gov.au/internet/main/publishing.nsf/Content/work-st-rusc (accessed 21.4.08)

201 nrha.ruralhealth.org.au/scholarships/?IntCatId=7 (accessed 21.4.08)

202 sarrah.org.au/site/index.cfm?display=74994 (accessed 21.4.08)

203 www.health.gov.au/internet/main/publishing.nsf/Content/work-st-rsc (accessed 21.4.08)

204 NSW Rural Doctors Network, Workforce Incentive programs, www.nswrdsn.com.au/client_images/456206.pdf (accessed 21.4.08)

205 Ibid.

206 www.nswrdsn.com.au (accessed 21.4.08)

program found that it is a relatively effective retention strategy and one that has had a significant impact on rural and remote GP morale.²⁰⁷

Other incentive payment schemes include:

- Registrars Rural Incentive Payments Scheme (RRIPS) which “provides financial incentives for general practice registrars who undertake the majority of their general practice training in rural and remote locations.”²⁰⁸
- The Rural and Remote General Practice program (RRGPP) is funded through the NSW Rural Doctors Network and offers a diverse range of activities and support services aimed at improving the recruitment and retention of GPs in rural and remote areas. The Program acts as a kind of ‘broker’ whereby they are able to assist communities in recruiting a GP, locate rural placements for doctors who want to relocate to a rural area. The Program also has the capacity to assist with the payment of relocation costs and can offer support to the doctor’s family in their new community and help doctors to access the necessary infrastructure, support and training.²⁰⁹
- There are also several schemes established which provide funding to support the continuing professional development and peer support needs of health workers, including: the Support Scheme for Rural Specialists (SSRS) and the Rural Health Support, Education and Training (RHSET) Program.²¹⁰

207 Gibbon P & Hales J, *Review of Rural Retention Program*, Australian Government Department of Health and Aging, St Peters, SA, December 2006 at pg

208 www.health.gov.au/internet/main/publishing.nsf/Content/work-temp-prog-rrips (accessed 21.4.08)

209 www.health.gov.au/internet/main/publishing.nsf/Content/work-pr-rrgpp (accessed 21.4.08)

210 www.health.gov.au/internet/main/publishing.nsf/Content/work-st-rhset (accessed 21.4.08)

PART 4: Where to from here?

This literature review is the first step to helping identify and summarise existing literature on the extent of the recruitment and retention problem in RRR areas and the factors which contribute to it. It is envisaged that a more detailed research study will follow, focusing on expanding our understanding of how these factors operate to influence practice choices and to explore strategies which address them.

Holistic approach needed

It is unlikely that any one strategy will hold the answer to successfully attracting and retaining lawyers in RRR areas. Therefore, adopting a holistic approach by identifying and developing a range of strategies that target key pathways in the lawyer's 'lifecycle' is likely to be most effective. The types of strategies which are recommended include:

Increasing RRR participation in law studies

- Comprehensive research is needed to consider more effective ways in which governments, universities and professional bodies can attract and support RRR students in the study of law and whether more resources need to be targeted to regional universities offering programs in law.

Supporting RRR students through more effective scholarship programs

- There is a need to canvass the availability and effectiveness of existing scholarship programs in law.

More opportunities for RRR clinical placement

- In view of the strong research evidence linking rural placement and rural practice, strategic consideration must be given to incorporating and supporting rural placements within law degrees and practical legal training programs.

Financial and/or tax incentives

- Continuation of the 'Regional/Rural Solicitor Programs' undertaken by the various legal aid bodies in Australia along with continued evaluation of each model to consider their uptake and medium to long-term effects on retention rates of young lawyers.
- Extension of the 'Zone tax offset' rebate as an incentive to encourage more lawyers (and professionals more generally) to relocate and/or remain living and working in rural and regional areas of Australia.
- Introduction of a HECS rebate scheme for lawyers who take up employment in a RRR community legal centre, similarly to that offered in medicine.

Addressing salary levels and working conditions within CLCs

- Immediate implementation of those recommendations contained in the *NSW Review of the Community Legal Centre Funding Program* including the introduction of portable leave conditions, provision of salary loadings to staff taking up positions in RRR areas and comprehensive review of the CLSP funding model.

Responding to demographic change and need

- The need for research which considers those factors which most influence women lawyers in their choice of practice location. Are women lawyers less attracted to practice in a RRR area and, if so, why?
- The need for more specific and comprehensive research into the dimensions of generational change issues facing the legal profession and how these might be best addressed to ensure the continued viability of RRR practice.

Increased commitment of public sector funding to legal service provision

- The provision of additional community legal centres and Legal Aid Commission outlets in poorly serviced RRR areas as a means to address the gaps in legal service provision.

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