

# POSTCODE JUSTICE

Rural and Regional Disadvantage in the  
Administration of the Law in Victoria



**DEAKIN**  
UNIVERSITY AUSTRALIA

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# **Postcode Justice - Rural and Regional Disadvantage in the Administration of the Law in Victoria**

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# Contents

<b>Executive Summary</b>	<b>9</b>
<b>Recommendations</b>	<b>11</b>
<b>Highlighted Survey Findings</b>	<b>13</b>
<b>Chapter 1 - Objectives and Method</b>	<b>15</b>
Research Objectives	16
Method	17
Literature Review	17
Interviews and surveys	18
Interviews	18
Surveys	19
Reference Group	20
Research Ethics Approval	20
Defining Rural, Regional and Remote Areas	20
<b>Chapter 2 - Past Research and State of the Country</b>	<b>23</b>
Access to Justice in Regional Communities	23
State of the Country	26
Recent population change in regional communities	26
<i>Income</i>	28
<i>Industry restructuring</i>	28
<i>Agriculture</i>	29
<i>The extent of regional disadvantage and inequity</i>	30
<i>State of the country: Conclusions</i>	31
<b>Chapter 3 - Research Findings: The Courts</b>	<b>33</b>
Victoria's Regional Courts - An Historical Perspective	33
<i>The Magistrates' Court</i>	33
<i>The County Court</i>	34
<i>The Federal Magistrates' Court of Australia</i>	34
<i>The Supreme Court</i>	34
<i>The Victorian Civil and Administrative Tribunal (VCAT)</i>	35
The Courts and Associated Processes, Programs, Facilities and Services	35
<i>Magistrates' Court</i>	35
Court buildings	46

<i>County Court</i>	49
<i>Victorian Civil and Administrative Tribunal (VCAT)</i>	58
<i>The Supreme Court of Victoria</i>	60
<b>Chapter 4 - Research Findings: Variation in Penalties and Sentencing</b>	<b>62</b>
Custodial and Community Based Sentences	62
Community Orders	63
How the Data Compares	64
Equity of Penalties	65
<i>Mandatory loss of licence</i>	66
<i>Shared Parenting</i>	66
<i>Home Detention</i>	67
<i>Bail and Remand</i>	67
<i>Penalties and sentencing of Indigenous offenders</i>	68
<i>Young people penalties and sentencing</i>	69
A Note on the Availability of Data	72
<b>Chapter 5 - Research Findings: Regional Services</b>	<b>73</b>
Community-Based Programs and Services	73
Distance to Courts and Related Services	75
<i>Lack of public transport</i>	77
<i>Cost to regional human service agencies</i>	77
Health Services	78
<i>Medico-Legal Court Reports and assessments</i>	78
<i>Psychiatric services in regional areas</i>	79
<i>Shortfall in regional medical services</i>	81
<b>Chapter 6 - Research Findings: Legal Practitioner Issues</b>	<b>83</b>
Conflict of Interest	85
Generalist Regional Practices	88
Professional development for regional lawyers	90
The impact of regional media	91
<b>Chapter 7 - Research Findings: Cross-Border Issues</b>	<b>93</b>
Indigenous communities and State borders	94
<b>Chapter 8 - Research Findings: Regional Engagement in Laws, Policies and Programs</b>	<b>97</b>
Legislative review and policy and law reform	97
Establishing and independent voice	99

<b>Appendix 1 - List of Interviewee Organisation Categories</b>	<b>103</b>
<b>Appendix 2 – Lawyers' Survey</b>	<b>105</b>
<b>Appendix 3 – Human Services Survey</b>	<b>109</b>
<b>Appendix 4 – Survey Design Limitations</b>	<b>113</b>
Testing Interviewee Statements	113
Focus on Disadvantage	113
Distinction Between Perceptions and Knowledge	113
<b>Appendix 5 – Reference Group</b>	<b>115</b>
<b>Appendix 6 - Sample Letter of Invitation to Participate (Survey)</b>	<b>117</b>
<b>Appendix 7 - An Analysis of Survey Findings</b>	<b>119</b>
Respondent Locations	119
Participants' Background	119
<i>Lawyers</i>	119
<i>Human Service Agencies</i>	120
General Observation: Responses from the Two Survey Groups	120
Summary: Survey Findings	121
<i>Lawyers' survey</i>	121
<i>Human service organisations surveys</i>	123
<i>Combined survey responses</i>	125
<i>Court processes, programs and outcomes</i>	125
<b>Appendix 8 - Magistrates' Court: Selected Court Programs</b>	<b>153</b>
Court Integrated Services Program (CISP)	153
CREDIT Bail Support Program	153
Mental Health Court Liaison Service	154
<b>Appendix 9 - Magistrates' Court of Victoria: Specialist Courts</b>	<b>155</b>
Drug Court	155
Family Violence Court Division	155
Koori Court	156
Neighbourhood Justice Centre	156
Sexual Offences List	156
Children's Court	156

Industrial Division	157
WorkCover Division	157
Assessment and Referral Court (ARC) List	157

## **Bibliography** **159**

### **Figures**

Figure 1	Victoria’s Population Distribution (2006)	26
Figure 2	Average annual rural population growth rate	27
Figure 3	Population change of Towns and Cities in Victoria 1996 – 2006	28
Figure 4	Geographical spread - farm cash income 2008–09	29
Figure 5	Distribution of social disadvantage in Victoria, 2006 (Vinson 2007)	31
Figure 6	Limited Local Access to Court Programs: Combined Responses	36
Figure 7	Limited Local Access to Specialist Magistrate Courts: Combined Responses	40
Figure 8	Lower Level of Judicial Skill: Lawyers’ Survey	43
Figure 9	Physical amenity: Combined Responses	45
Figure 10	Location by Position on Courts Physical Amenity: Combined Responses	45
Figure 11	Longer Hearing Delays: Combined Responses	53
Figure 12	Fewer Penalty Options for Rural Regional Clients: Lawyers’ Survey	65
Figure 13	Orders/Penalties Do Not Reflect Rural Regional Circumstances: Combined Responses	65
Figure 14	Lack of Local Services and Programs Impacting on Justice System Outcomes	73
Figure 15	Location by Position on Impact of Limited Local Services and Programs: Combined Responses	74
Figure 16	Travel Distance to Court: Combined Responses	75
Figure 17	Lack of Local Court Related Assessment and Reporting Services: Combined Responses	78
Figure 18	Location by Position on Court Related Reporting/Assessment Services – Combined Responses	79
Figure 19	Issues Impacting on Ability to Provide Services to Regional Clients: Lawyers’ Survey	85
Figure 20	Independent Authority Needed: Combined Responses	102

### **Tables**

Table 1	Regional and Metropolitan Principal Sentence 2006 – 2009	64
Table 2	Prisoners on Remand in Victoria - June 2009	68
Table 3	Personal association with opposing parties adversely impacts on capacity to provide a service	88

### **Graphs**

Graph 1	Location Remoteness – Combined Responses	119
Graph 2	Location Remoteness – Lawyers’ respondents	122
Graph 3	Principal Practice Areas – Lawyers’ Survey	122
Graph 4	Frequency of Court Representations – Lawyers’ Survey	123

Graph 5	Frequency of Melbourne Court Appearances by Participating Lawyers	123
Graph 6	Location Remoteness – Human Services Survey	124
Graph 7	Principal Practice Areas – Humans Services Survey	124
Graph 8	Limited Local Access to Specialist Magistrates’ Courts: Combined Reponses	125
Graph 9	Limited Local Access to Specialist Magistrates’ Courts – Lawyers’ Survey	126
Graph 10	Limited Local Access to Specialist Magistrates’ Courts – Human Services Survey	126
Graph 11	Location by Position on Availability of Specialist Magistrates’ Courts – Combined Responses	127
Graph 12	Limited Local Access to Magistrates’ Court Programs: Combined Responses	127
Graph 13	Limited Local Access to Magistrates’ Court Programs – Lawyers’ Survey	128
Graph 14	Limited Local Access to Magistrates’ Court Programs – Human Services Survey	128
Graph 15	Location by Position on Access to Court Programs – Combined Responses	129
Graph 16	Limited Local Availability of Services Impacting on Justice System Outcomes – Combined Responses	130
Graph 17	Limited Local Availability of Services Impacting on Justice System Outcomes – Lawyers’ Survey	130
Graph 18	Limited Local Availability of Services Impacting on Justice System Outcomes – Human Services Survey	130
Graph 19	Location by Position on Limited Local Availability of Services Impacting on Justice System Outcomes – Combined Responses	131
Graph 20	Lack of Local Court Related Assessment and Reporting Services – Combined Responses	132
Graph 21	Lack of Local Court Related Assessment and Reporting Services – Lawyers’ Survey	132
Graph 22	Lack of Local Court Related Assessment and Reporting Services – Human Services Survey	133
Graph 23	Location by Position on Court Related Reporting/Assessment Services – Combined Responses	133
Graph 24	Longer Hearing Delays – Combined Responses	134
Graph 25	Longer Hearing Delays – Lawyers’s Survey	134
Graph 26	Longer Hearing Delays – Human Services Survey	135
Graph 27	Location by Position on Hearing Delays – Combined Responses	135
Graph 28	Unsatisfactory Pre-Hearing Settlements Because of Delays – Combined Responses	136
Graph 29	Unsatisfactory Pre-Hearing Settlement Because of Delays – Lawyers’ Survey	136
Graph 30	Unsatisfactory Pre-Hearing Settlement Because of Delays – Human Services Survey	137
Graph 31	Location by Position on Unsatisfactory Pre-hearing Settlement – Combined Responses	137
Graph 32	Orders/Penalties Do Not Reflect Circumstances of Rural Clients – Combined Responses	138
Graph 33	Orders/Penalties Do Not Reflect Circumstances of Rural Clients – Lawyers’ Survey	138
Graph 34	Order/Penalties Do Not Reflect Circumstances of Rural Clients – Human Services Survey	138
Graph 35	Location by Position Held on Relevance of Penalties – Combined Responses	139

Graph 36	Distance Required to be Travelled to Court – Combined Responses	140
Graph 37	Distance Required to be Travelled to Court – Lawyers’ Survey	140
Graph 38	Distance Required to be Travelled to Court – Human Services Survey	140
Graph 39	Location by Position on Distance Required to be Travelled to Court – Combined Responses	141
Graph 40	Poor Physical Amenity – Combined Responses	142
Graph 41	Poor Physical Amenity – Lawyers’ Survey	142
Graph 42	Poor Physical Amenity – Human Services Survey	143
Graph 43	Location by Position on Courts Physical Amenity: Combined Responses	143
Graph 44	Legislation Developed Without Due Consideration for Rural/Regional Communities – Combined Response	144
Graph 45	Legislation Developed Without Due Consideration for Rural/Regional Communities – Lawyers’ Survey	144
Graph 46	Legislation Developed Without Due Consideration for Rural/Regional Communities – Human Services Survey	145
Graph 47	Location by Position on Legislation Developed Centrally – Combined Responses	145
Graph 48	Independent Authority Needed – Combined Responses	145
Graph 49	Independent Authority Needed – Lawyers’ Survey	146
Graph 50	Independent Authority Needed – Human Services Survey	146
Graph 51	Availability of Advice Services – Human Services Survey	147
Graph 52	Availability of Advice Services – Lawyers’ Survey	147
Graph 53	Lower Level of Judicial Skill: Lawyer’s Survey	150
Graph 54	Fewer Penalty Options for Rural Regional Clients: Lawyers’ Survey	151
Graph 55	Location by Position on Disadvantage by Distance to Correctional Facilities – Lawyers Survey	151

## Executive Summary

Much of the hallmark Australian research undertaken over the past two decades around 'Access to Justice' has focussed on access to public and private legal services for socio-economic disadvantaged groups. However, there has been little research that looks at equity in the administration of the law in regional communities, through courts and tribunals and associated services.

Postcode Justice,<sup>1</sup> a research project undertaken by Deakin University School of Law, responds to this gap and asks the question: Are regional communities disadvantaged in the administration of the law, compared with their metropolitan counterparts? Following 62 interviews and 117 survey responses drawing on the views of regional services and organisations participating in the justice system, together with an examination of relevant literature and research, the answer is strongly in the affirmative.

'Administration of justice' refers to the justice system services established to administer both criminal and civil laws, largely courts and tribunals, and associated services, programs and legal processes. This research examined and tested issues raised by interviewees. Topics discussed under each of the chapters, including courts, penalties, regional services, practitioner and cross-border issues, and regional engagement, deserve further consideration in their own right. There are also many other issues and factors relating to the administration of justice in regional Victoria not included within the scope of this report, which are deserving of further exploration.

*Postcode Justice* identifies a myriad of factors and combinations of factors that create disadvantage for people living in rural and regional Victoria when using justice system services. These factors are not universal but will vary across geographic areas, with smaller and more remote population centres generally experiencing greater disadvantage.

Despite improvements to technologies and transportation over the last half century, distance from courts and related services continues to raise a 'natural barrier' for many justice system service users and prospective users in Victoria, causing both financial cost and personal hardship. Government response has been inconsistent, creating a form of 'postcode justice', where outcomes are determined by the vagaries of where you live, in conjunction with the level of justice system services and programs present in your location. This report identifies issues relating to the physical amenity of regional courts which affects outcomes for users and the likelihood of their attendance, particularly given security, video-conferencing facilities, waiting areas and confidential interview areas are unavailable at many regional and 'satellite' courts.

The therapeutic jurisprudence (problem solving courts) model embraced by Victorian courts provides a progressive response to applying justice in criminal courts. However, it relies on a level of court based programs, and local support and rehabilitation services, often not available to smaller rural centres. Limited and inconsistent roll-out of programs such as CISP (*Court Integrated Services Program*) and Credit Bail; and Specialist Magistrates' Courts such as the Family Violence Division and the Drug Court, is likely to result in inequitable outcomes for court participants in regional centres not covered by the program. In relation to criminal offences, the sentencing data available provides limited opportunity to examine regional and metropolitan differences. However, it is evident that, where they are available,

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<sup>1</sup> 'Postcode Justice', 'Justice by Postcode' and 'Postcode Lottery' are terms first used by United Kingdom tabloid newspapers, and refers to the variations in outcomes likely to be received when participating in the justice system, depending on the location of the court or offence. See Sean O'Neill, Frances Gibb, and Heather Brooke, 'Justice By Postcode: The Lottery Revealed', *The Times* (online), 23 November 2005 <<http://www.timesonline.co.uk/tol/news/uk/article593173.ece>>.

court programs, local services and specialist courts provide significant benefits to the individual recipients and communities; conversely, those in locations where such programs, services and specialist courts are not available, are disadvantaged.

'Efficiencies' in court management within criminal and civil jurisdictions can result in inequitable procedures and levels of service between rural/regional and metropolitan areas. For example, County Court circuit courts give litigants and their counsel no certainty of a hearing date until only a matter of days prior to their hearing. This system has been designed to ensure the sitting circuit Judge hears a constant flow of cases but it creates an inequity in the ability to prepare and present cases not experienced by participants using the Melbourne County Court.

*Postcode Justice* investigates the impact of legal and related professional services in rural and regional communities. Disadvantage is experienced as a result of the limited availability of senior barristers and senior Crown Counsel at circuit County Courts. A declining ratio of private law firms to regional populations and demands on Legal Aid services is resulting in an increasing frequency of 'conflict of interest' issues. A growing complexity of laws is requiring a greater level of expertise from regional practitioners, who traditionally offer generalist practice services and therefore, are not always able to provide the requisite level of competence to appropriately respond to the specialised assistance required.

The report examines how the lack of local human service agencies in rural and regional areas affects justice system outcomes. Limited availability of mental health services and other human service agencies (such as drug and alcohol services, youth services, disability services, domestic violence services, supervised accommodation services, and counselling services) in rural and regional areas, increases the likelihood of involvement in the criminal justice system, placement in remand and recidivism (re-offending). The research also explores the additional challenges for legal practitioners and local human service agencies based near State borders. Variation in laws and government program policies across borders, compound the difficulties rural and regional services and their clients already face.

Providing an equal level of court and related service to rural and regional communities can be costly and runs contrary to notions of budgetary efficiency. How then do we maintain a balance between cost, on the one hand, and equity of service provision and justice, on the other? The balance must constantly be reviewed. State Governments have introduced measures in response to rural and regional disadvantage but there is little consistency of approach that commits to maintaining mechanisms that recognise and respond to 'spatial disadvantage' within the justice system.

Governments must first acknowledge and address the limitations of centralised decision making. They need to establish structures that build an understanding of the impact of laws and justice system policies and programs on rural and regional communities; and which will have meaningful and ongoing engagement with those communities.

Applying the following Recommendations would go a substantial way in achieving this.

## **Recommendations**

*These recommendations have been presented below in order of perceived priority of the author; they do not appear in this order within the body of the report.*

### **Recommendation 1**

That an independent authority be established whose role will be to review the impact of government policy, services and programs on the equitable provision of justice system services in rural and regional Victoria, and advise government on the outcomes of such reviews. Additionally, that body should be provided with the powers to nominate to the Attorney General or relevant Ministers, new and amended legislation likely to significantly impact upon regional communities and which require a Regulatory Impact Statement review. The body would contribute to such reviews. See page 97.

### **Recommendation 2**

That the State Attorney General commission an independent review of County Court practices and procedures where they impact on users of rural and regional circuit courts. The review is to have particular reference to addressing the current inequity between regional and metropolitan processes for setting hearing dates; the impact of 'circuit counsel'; and strategies for improving the availability of senior barristers, Senior Crown Council and related Office of Public Prosecutions services to regional courts. See pages 49.

### **Recommendation 3**

As per Recommendation One of the 2009 CISP Program review; that the State Attorney General commits to "Establishing a review of court support programs with the aim of developing a general court support service model that provides state-wide services to all Victorian Magistrates' Courts at all its venues and across all specialist lists and divisions." See page 36.

### **Recommendation 4**

That the State Attorney General commits to a rapid expansion to the availability of specialist courts to include all regional Magistrates' Court locations, with consideration given to greater use of information technology services including 'virtual courts' and video conferencing, where appropriate. See page 40.

### **Recommendation 5**

That independent research be undertaken to examine the impact and implications for regional communities of the 'therapeutic jurisprudence' model of justice system service delivery, including its impact on any variations in penalties and sentencing between metropolitan and regional courts. The research is to provide practical strategies to ensure equivalent and equitable outcomes are available to all regional and metropolitan participants. See page 36.

### **Recommendation 6**

That a commitment be given by the State Attorney General to improve facilities and services provided at 'satellite' regional Magistrates' Courts, including security and the provision of

safe, separated waiting areas, video conferencing facilities and soundproofed interview rooms. Greater investment should also be made to the consideration of 'virtual courts' for specialist jurisdictions and satellite courts in regional areas. See page 44.

### **Recommendation 7**

That improved monitoring and data collection systems be established by the Department of Justice and the Courts, which encompasses comparative data relating to courts and tribunal administration, the administration of court programs, civil matter outcomes, bail remand, penalties and sentencing in rural and regional Victoria. See page 71.

### **Recommendation 8**

That independent research be undertaken which examines in detail, gaps in the provision of legal practitioner services to regional communities, and the current and future impact of those gaps on the Social, Human, Institutional and Economic 'Capitals' of those communities. See page 83.

### **Recommendation 9**

That independent research be undertaken which examines and makes recommendations on the implications of 'conflict of interest' protocols on those using the services of regional private practitioners and Legal Aid services, and for those services themselves. See page 85.

### **Recommendation 10**

That improved cross-border protocols be established in relation to the provision of justice system services, the application of court orders and where appropriate, the fostering of parallel legislation between states. See page 93.

## Highlighted Survey Findings

- 79% of all survey respondents agreed that regional communities are disadvantaged in comparison to metropolitan residents because of the distance they are required to travel to attend court.
- 74% of all survey respondents agreed that an independent authority should be established to provide advice to government on policies and legislation which impacts on rural and regional Victorians.
- 74% of all survey respondents agreed that their clients were disadvantaged compared to their metropolitan counterparts, by a lack of local access to Specialist Magistrates' Courts.
- 69% of regional lawyers surveyed regarded the potential for 'conflict of interest' as an issue which adversely impacted on their ability to provide services to regional clients
- 67% of all survey respondents agreed that legislation tended to be developed centrally without due consideration for its impact on rural regional communities
- 67% of all survey respondents agreed that court orders and penalties do not adequately reflect the differing circumstances of people living in regional areas.
- 66% of all survey respondents agreed that a lack of availability of local services and programs adversely impacted on justice system outcomes for regional clients compared to their metropolitan counterparts.
- 65% of all survey respondents agreed that their clients were disadvantaged compared to their metropolitan counterparts by the lack of local access to Magistrate court programs.
- 60% of all survey respondents agreed that there was a greater difficulty for regional clients to access court related assessment and reporting services.
- 58% of regional lawyers regarded the community's expectation that they will respond to a broader range of legal matters than for their metropolitan counterparts, as an issues impacting on their ability to provide services to regional clients.



*"If we do not maintain Justice, Justice will not maintain us."*

*Sir Francis Bacon - Lord Chancellor of England (1618-1621)*

## **Postcode Justice - Rural and Regional Disadvantage in the Administration of the Law in Victoria**

### **Chapter 1 - Objectives and Method**

This report is founded on the precept that all Australians have a right to a fair and equitable system of justice – a right that is fundamental to a free and civilised society. This position is enshrined in a number of laws impacting on Victoria and Australia and is reflected in international covenants which Australia has ratified or by which it is influenced, and which guide our position on human rights and notions of justice.

While there is no national law or Bill of Rights which spells out these rights, the Victorian *Charter of Human Rights and Responsibilities Act 2006* (later cited as the Victorian Charter), states that, "Every person is equal before the law and is entitled to the equal protection of the law without discrimination".<sup>2</sup> This Act mirrors our international obligations under the Universal Declaration of Human Rights - International Covenant on Civil and Political Rights<sup>3</sup> and the European Convention for the Protection of Human Rights and Fundamental Freedoms.<sup>4</sup> The latter, while not an obligation under Australian jurisdiction, provides guidance in framing within legislation, notions of fairness and equality before the law.

'Equality before the law' and 'equal protection under the law' are not defined in any detail within the Victorian Charter, the Universal Declaration of Human Rights or the European Convention for the Protection of Human Rights and Fundamental Freedoms, however the core elements of fairness and equity when participating in the justice system may be summarised as (but not limited to):

- The right to procedural fairness;
  - adequate notice of proceedings
  - both parties have equal opportunities to put their case
  - competent and unbiased decision making
  - justice seen to be done/public hearings
- The right to a hearing without delay.
- The right to competent, independent legal advice and legal representation.
- Equal access to the courts.
- The right to have the free assistance of an interpreter, if required.

These elements apply to both criminal and civil matters.

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<sup>2</sup> Charter of Human Rights and Responsibilities Act 2006 (Vic) pt II cl 8.

<sup>3</sup> *International Covenant on Civil and Political Rights*, opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976) arts 14 and 26.

<sup>4</sup> *European Convention for the Protection of Human Rights and Fundamental Freedoms*, opened for signature 4 November 1950, 213 UNTS 221 (entered into force 3 September 1953) art 6.

Ensuring equity and fairness within our justice system is the responsibility of all institutions and players participating in the system; from courts and tribunals, politicians and executive government, police, legal practitioners and statutory services; to non-government advocacy, welfare/support agencies and individual citizens.

Constant scrutiny is required to maintain the application of the principles of equity, fairness and accessibility within the systems and processes of our courts and justice system. At the risk of stating the obvious, the groups or sectors of the community that are most often disadvantaged are the economically disadvantaged, and minorities who lack adequate political representation and power. The last few decades have seen governments and policy makers making significant in-roads towards addressing areas of disadvantage, via improvements to legislation and resources for justice related services.

The concepts of 'spatial disadvantage' and the 'great divide' between metropolitan and regional Australia have generated commentary for some time.<sup>5</sup> Often expressed in terms of a lack of resources and services and centralised decision making, the complexity of economic, social and political factors which lead to this disparity continue to influence decisions of government in its legislation, policy and resource allocation.<sup>6</sup>

Our justice system is one of the principal formal processes for redressing inequities and maintaining a fair and just society. However, like other institutions, courts and related justice system services and programs, are not immune to the political and ideological motivations of governments of the day. The balance between economic efficiencies and the notions of public good, fairness and equity, is in a constant state of flux. A rationale which emphasises and principally measures per capita efficiencies in the allocation of resources, disadvantages regional communities. This is evident from research undertaken across other regional services in the health, education and transport sectors. When the rationale which drives spatial disadvantage unduly influences the principles and processes within our justice system, it raises significant challenges and tensions for government, the justice system and society as a whole. This becomes not only an argument about the delivery of services but encompasses fundamental issues around maintaining a justice system which protects rights of *all* citizens equally, whoever they may be and wherever they may live.

## Research Objectives

The primary objective of this research is to determine if members of regional communities experience disadvantage when participating in the justice system, when compared with their metropolitan counterparts. Where disadvantage appears to exist in the administration of the law, the research also investigates the nature and extent to which disadvantage is experienced by those communities.

For this research, the term 'administration of the law' refers to the justice system services established to administer both criminal and civil laws; primarily courts and tribunals; and associated services, programs and legal processes. Variations are compared between regional Victoria and metropolitan Melbourne. The research is limited to an examination of the Victorian jurisdiction, and while reference is given to other courts such as the Family Court, the Federal Court and Federal Magistrates' Court, they are not a focus of the research. The research also examines factors external to the courts, which directly relate the equity of court processes and

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<sup>5</sup> Three excellent publications which discuss spatial disadvantage and social change in rural and regional Australia are: Bill Pritchard and Philip McManus (eds), *Land of Discontent – The Dynamic of Change in Rural and Regional Australia* (UNSW Press, 2000); S Lockie and L Bourke (eds), *Rurality Bites The Social and Environmental Transformation of Rural Australia* (Pluto Press, 2001); and C Cocklin and J Dibden (eds), *Sustainability and Change in Rural Australia* (NSW Press, 2005).

<sup>6</sup> See Rolf Gerritsen, 'The Management of Government and its Consequences for Service Delivery in Regional Australia' in Bill Pritchard and Philip McManus (eds), *Land of Discontent – The Dynamics of Change in Rural and Regional Australia* (UNSW Press, 2000) 51-69, for discussions on the influence of market forces and New Public Management on spatial inequality in rural communities.

outcomes for regional Victorians; for example, accessing legal practitioners and barristers, gaining expert evidence and the local availability of justice system related support and rehabilitation services and programs. The report also touches on processes and mechanisms to better inform legislation, polices and programs which impact on regional communities.

It should also be noted here that when referring to 'regional' communities within this research, unless stated otherwise, the term means non-metropolitan areas including large regional centres, and rural and remote areas.

The research project is exploratory in nature, taking a broad sweep approach, documenting examples of disadvantage raised by participants and, within the limits of the resources available, testing the validity of these on the basis of other literature and making suggestions for improvements and resolution. While the scope of this research is broad, it does not presume to identify all areas of law and its administration in which regional communities may be disadvantaged. For example, rural domestic violence and policing in regional communities are touched on, but are not a principal focus of attention. These, and other topics, are major areas of investigation; some of which have already had detailed research undertaken, while others deserve much greater scrutiny than they have received here or elsewhere.

In focussing on disadvantage, the research does not present perceived advantages experienced by people living in regional Victoria when dealing with the justice system; no doubt there are advantages – though in the opinion of the author these are outweighed by the myriad of issues raised in this report. Also, because of the limitations of this research, it does not present fully the merit of the State and Federal government's regional initiatives, particularly those of the Victorian Department of Justice and Magistrates' Court of Victoria – some of which are groundbreaking and would otherwise deserve greater acknowledgement.

Most importantly, this research is not critical of the individuals involved in regional justice system services, including lawyers, Magistrates and court staff, and those working in related human service programs. Rather, it acknowledges the difficulties they face in their day-to-day work and applauds their commitment to their clients and communities.

To contribute to building further the level of understanding of the investigation and reform necessary to ensure equity of access to the law and justice for regional Victorians, this report will be forwarded to: the Victorian and Federal Governments; State and National Law Reform Commissions; the Law Council of Australia; Law Societies nationally, and relevant academic, research, advocacy and peak representative bodies.

## Method

The project has four main phases, a literature review, interviews, surveys and documentation (in the form of this report). The four phases, in more detail include:

## Literature Review

The literature review examines recent research and other literature undertaken to date on the provision of justice system services<sup>7</sup> in Victoria and more broadly. Documents relating to government policy and programs, including relevant Annual Reports, and court procedural and practice issues in regional Victoria are also examined for this project. Data drawn from

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<sup>7</sup> In this report 'justice system services' refers to courts, tribunals, judicial officers and court and tribunal staff, court and locally based programs and services involved in assisting participants in the justice system, private and public legal practitioners, advocacy and mediation/arbitration/conciliation services.

numerous sources including peak bodies and the Australian Bureau of Statistics website and data made available to this research by the Department of Justice, the Magistrates' Court and the County Court, is also used by the research.

## Interviews and surveys

There exist a broad range of circumstances through which people will have contact with the justice system and a range of perspectives additional to those held by members of the legal profession, which can provide insights into the experiences of people as participants in the justice system in regional communities.

Lawyers working in regional Victoria were seen as primary participants of the interviews and survey. However, it was also important to gain the perspective of others - not all participants or potential participants in the justice system would use the services of a legal practitioner. The perspective of those who work with regional clients within a broader context outside of or parallel to the justice system is also valuable. For these reasons human service organisations who assisted clients in their dealings with the justice system as a part of their broader service role, were also targeted as participants.

## Interviews

Consultations in the form of face to face and telephone interviews were undertaken with 62 individuals and included several small group interviews ranging from 2 to 8 participants. A total of 41 separate interviews were conducted. Some interviewees were followed up with a second interview for further clarification. A list of interviewees' professions and their locations are detailed in **Appendix 1**.

Interviewees included individuals drawn from the legal profession and human service (community/health/welfare) organisations. Participants from the legal profession selected included members of regional law firms, metropolitan and regional Victoria Legal Aid Staff and regional generalist and specialist Community Legal Centres, and barristers. Human service sector organisations interviewed included services across family, youth, mental health, indigenous, domestic violence, disability and consumer agencies. A small number of individuals from peak organisation were also interviewed.

Interviews were conducted both face to face and by telephone. Face to face interviews were conducted at various regional locations and in metropolitan Melbourne. Participants in the interviews were selected on the basis of their location and area of work to ensure a cross section of relevant roles and locations, or were specifically approached as a result of the recommendation of others. Interviewees participated on the basis of their identities remaining anonymous.

Interviews were conducted for the purpose of establishing:

- views on whether regional Victorians experienced greater disadvantage when participating in the justice system than those living in metropolitan Melbourne
- the nature and extent of any perceived disadvantage.

The interviews also provided the basis for questions included in the subsequent surveys. Interviews ranged from 15 minutes to 1 hour 45 minutes.

## Surveys

Drawing on findings from the preliminary literature and interviews, two mail surveys were designed and distributed state-wide. Distribution took place on the 10<sup>th</sup> of May 2010, with returns requested for three weeks later - the 28<sup>th</sup> of May 2010.

**Survey One** was specifically designed for lawyers, barristers and legal advocacy services working with clients in regional Victoria. See **Appendix 2**.

As at June 2008, there were approximately 2650 legal practices in Victoria<sup>8</sup> employing 13,953 practising solicitors, 1167 of whom practice in 'country' Victoria<sup>9</sup>, equating to 8.3% of the total number of Victoria's practising solicitors. Surveys were mailed to 'The Practice Manager' at 231 private law firms drawn randomly from the Law Institute of Victoria web based Directory of Legal Practices.<sup>10</sup> Mailing addresses were selected to ensure a representation of practitioners across Victoria at both small and larger regional centres.

Currently, eight (24%) of Victoria's 33 generalist community legal centres and four (14%) of Victoria's 29 specialist community legal services (one state-wide disability legal service and three Aboriginal Family Violence Legal Services) are based outside metropolitan Melbourne. The survey was distributed to 'The Principal Lawyer' at each of the regional generalist and specialist community legal services.

Victoria Legal Aid has seven metropolitan Melbourne offices and eight regional offices around Victoria, with a total of approximately 240 lawyers employed. Surveys were sent to 'The Managing Lawyer' at each regional Victoria Legal Aid Office.

The support of the Law Institute of Victoria was enlisted to promote the surveys to their members and encourage survey returns. This was undertaken via a brief article in the *Law Institute Journal* some months prior to the survey distribution, and was followed-up by two reminders in the *Friday Facts* newsletter distributed to members throughout Victoria, following survey distribution.

The Australian Law Council also encouraged Victorian lawyers to respond to the survey by including a brief article in their monthly *Précis* magazine during the survey distribution period.

A total of 250 surveys were distributed to practising lawyers in regional Victoria; 65 completed lawyers surveys were returned, equating to a response rate of 26%.

**Survey Two** was designed to target human service organisations whose work involves supporting clients through the justice system in regional Victoria. See **Appendix 3**. There are approximately 5770 social service organisations operating in Australia, employing 222,000 staff.<sup>11</sup> No accurate data could be found which detailed the number of rural and regionally based social service organisations in Victoria dealing with justice system matters.

Services receiving the survey excluded state and federal government services but included Non Government Organisations and local government services. Human services were broken down into the following areas: indigenous, youth, drug and alcohol, housing, disability, mental health, family, financial/consumer, children's, women's domestic violence services, and general welfare/community services. A list of services was developed from web-based resources to identify relevant services in regional Victoria.

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8 Australian Bureau of Statistics 8667.0 - Legal Services, Australia, 2007-08 <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/8667.02007-08?OpenDocument>>

9 Legal Services Board of Victoria, *Practitioner Statistics* (6 May 2011) Legal Services Board of Victoria <<http://www.lsb.vic.gov.au/PractitionerStatistics.htm>>.

10 Law Institute of Victoria, *Victorian Legal Practices*, Law Institute of Victoria <<http://www.liv.asn.au/LegalPractice.aspx>>.

11 Australian Bureau of Statistics, 8106.0 D0001\_200607 *Not-for-profit Organisations, Australia* (2006-07 (Re-Issue)) 12 June 2009.

Promotion of the survey was undertaken through a small number of relevant sector newsletters.

A total of 250 surveys were distributed to human service organisations which have interactions with justice system services in regional Victoria. A follow up email reminder was sent to organisations encouraging their completion of the survey. A total of 53 completed human service organisation surveys were returned; a response rate of 21%.

A total of 117 completed surveys were received across both the lawyer and human service organisation sample groups; a response rate of 23.4%. Survey responses were anonymous and non-identifiable.

Both surveys were also made available on the Deakin University website, enabling participants to print PDF copies if their originals were mislaid.

As with all design methodologies and surveys, there exist limitations and potential biases. A discussion on the limitations of the survey method and design used in this research is provided in **Appendix 4**.

## Reference Group

A small reference group comprising members of the Deakin University School of Law and the Deakin University School of History, Heritage and Society, a representative of the Federation of Community Legal Centres and a private practitioner member of the Geelong Law Association, oversaw the progress of the project and provided guidance and suggestions as required. A list of Reference Group members is attached in **Appendix 5**.

## Research Ethics Approval

As part of the research ethics requirements of Deakin University, an ethical approval process is required to be implemented for any research involving human participants, prior to commencement.

This research was approved by the Business and Law Faculty Human Ethics Advisory Group (HEAG) and was completed in compliance with the *National Statement on Ethical Conduct in Research Involving Humans* (2007), Reference BL – EC 36/09. As part of the Human Ethics Approval process, a 'Plain Language' letter was required to be sent to interviewees and survey participants. A sample copy of the letter is attached in **Appendix 6**.

## Defining Rural, Regional and Remote Areas

Regional communities have been variously defined. However, it is important that a distinction between the types of communities being referred to in this report is clear, as it is a contention of the report that a spatial dimension to disadvantage exists which will influence the experience of those participating in the justice system. For example, smaller communities are more likely to experience a greater degree of disadvantage than metropolitan and larger regional centres. This will be dealt with in detail later, however for now, two distinctions should be made.

Firstly, all communities are different. Not all population centres of the same size or distance from capital cities will have the same level of resources, social capital, enterprise or cohesion. Some towns and regional centres are more affluent than others; some retain stronger social and human capital reserves, whilst others contain burgeoning industries and positive futures. Other towns and regions will be more affected by drought/floods, climate change, or industry downturns. The larger and usually more resilient regional centres are more likely to continue

to retain a capacity to sustain and build their economic and social infrastructure into the future. All these factors will have a bearing on a community's ability to attract and influence public and private infrastructure, including services and facilities relevant to the delivery of effective and equitable justice system outcomes.

Secondly, this report will draw on a definition of rural, regional and metropolitan communities based on population distribution. There are many definitions and classifications of 'rural', 'regional' and 'metropolitan', based on population figures. The most common are:

- the Rural, Remote and Metropolitan Areas (RRMA) Classification
- the Australian Bureau of Statistics Australian Standard Geographic Classification (ASGC) Remoteness Areas
- the Accessibility/Remoteness Index of Australia (ARIA).

The classification most recently introduced, developed by the Australian Bureau of Statistics and used mainly to measure Australian health and education service, is the Australian Standard Geographic Classification Remoteness Areas (ASGC-RA) devised in 2001.<sup>12</sup>

The ASGC-RA divides areas by 5 levels of remoteness, RA1- Major Cities to RA5 - Very Remote. When examining Victoria however, the criterion used divides Victoria into only 3 categories: RA1 (Major Cities) which includes Melbourne and Geelong, and RA2 Inner Regional and RA3 Outer Regional. This level of population division provides insufficient distinctions between the size of communities for the purposes of this research. For this reason, the Rural, Remote and Metropolitan Areas (RRMA) classification system, which divides Australia into seven areas, is used when comparing variations in survey responses based on the work location of respondents.

The RRMA system was developed in 1994 by the then Federal Department of Primary Industries and Energy, in conjunction with the Department of Human Services and Health. This index of remoteness uses 'distance factors' related to urban centres containing a population of 10,000 persons or more, plus a factor called 'personal distance'. Personal distance relates to population density and indicates the 'remoteness' or average distance of residents from one another.<sup>13</sup>

The RRMA locations are described as:

RRMA 1 - Capital cities

### **Regional Centres**

RRMA 2 - Other metropolitan. Populations >100,000

### **Rural Zones**

RRMA 3 - Large rural centres. Population 25,000-99,999

RRMA 4 - Small rural centres. Population 10,000-24,999

RRMA 5 - Other rural centres. Population < 10,000

### **Remote Zones**

RRMA 6 - Remote centres. Population > 5,000

RRMA 7 - Other remote centres. Population < 5,000

The survey analysis uses a software tool available from the Health Workforce Queensland website, which categorises multiple postcodes into their designated RRMA's.<sup>14</sup>

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<sup>12</sup> See Australian Government – Department of Health and Aging, *Introduction of the Australian Standard Geographical Classification – Remoteness Areas (ASGC-RA) Systems*, DoctorConnect <<http://www.health.gov.au/internet/otd/Publishing.nsf/Content/RA-intro>>.

<sup>13</sup> For a more detailed description of remoteness classifications, see Australian Government – Australian Institute of Health and Welfare, *Remoteness Classifications*, AIHW <<http://www.aihw.gov.au/ruralhealth/remotenessclassifications/index.cfm>>.

<sup>14</sup> See Health Workforce Queensland, *RRMA/ASGC-RA Town/Postcode Search*, Health Workforce Queensland <[http://www.healthworkforce.com.au/main\\_rrma.asp](http://www.healthworkforce.com.au/main_rrma.asp)>.

The research report also uses the following general categorisations where relevant, to assist in making a distinction between population centre sizes and between the levels of justice system services provided:

*Rural communities* – remote areas, farming communities and small towns with populations up to 5,000. For example: Alexandra, Avoca, Beechworth, Bright, Casterton, Mortlake, Orbost, Ouyen, St Arnaud, Tatura, Warracknabeal, Whittlesea.

*Small regional centres* – communities and towns with populations between 5,001 and 20,000. For example: Bacchus Marsh, Bairnsdale, Colac, Drouin, Echuca, Hamilton, Horsham, Kyabram, Maryborough, Moe, Morwell, Portland and Wangaratta.

*Medium regional centres* - communities and towns with populations between 20,001 and 70,000. For example: Wodonga, Mildura, Shepparton, Warrnambool, Traralgon.

*Large regional centres* - with populations over 70,001. Specifically Bendigo, Ballarat and Geelong.

*Metropolitan* – Melbourne and its suburbs.<sup>15</sup>

It should be noted that these, and the RRMA categorisations, may not align with classifications of 'rural', 'regional' and remote areas drawn from other sources and referred to within this report.

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<sup>15</sup> Department of Primary Industries, *Department of Planning and Community Development Settlement Patterns*  
<[http://www.dpi.vic.gov.au/CA256F310024B628/0/7E807801391784E7CA25751B007B6C99/\\$File/settlement+pattern.pdf](http://www.dpi.vic.gov.au/CA256F310024B628/0/7E807801391784E7CA25751B007B6C99/$File/settlement+pattern.pdf)>.

## Chapter 2 - Past Research and State of the Country

### Access to Justice in Regional Communities

A number of Federal and State Government commissioned inquiries and other publications have been produced, which acknowledge the disadvantage experienced by people living in regional Australia in accessing adequate services and resources. Particular focus over the last two to three decades has been with disadvantage experienced in relation to access to the health, education, telecommunication, banking and transport service sectors. The most recent Victorian review of the broad areas of regional disadvantage was undertaken by the Victorian Government Regional Committee *Inquiry into the Extent and Nature of Disadvantage and Inequity in Regional Victoria*.<sup>16</sup>

The term 'Access to Justice' is applied to narrow notions of legal service needs on the one hand, and to a broad concept of active participation in the justice system and law reform on the other. The seminal Sackville report on *Access to Justice – an Action Plan*, defined the term as involving three key elements:<sup>17</sup>

- equality of access to legal services
- national equity
- equality before the law.

Disadvantage experienced by regional Australians, in comparison to metropolitan dwellers, in accessing justice system services has also been acknowledged in several Federal and State reports. However, most have examined access to legal assistance services with little attention on the impact of administration of justice system services, courts and tribunals, and related programs in regional communities. A recent report, produced by the Senate Inquiry into *Access to Justice, 2009*,<sup>18</sup> the fifth such inquiry since the 1994 Sackville report, focuses its attention on access to and adequacy of funding of legal representation, potential cost efficiencies, alternative forms of delivering justice and indigenous justice issues. Several of its recommendations highlight the plight of rural, regional and remote communities in accessing adequate representation and justice system services, with particular reference to increasing funding to Legal Aid, Community Legal Centres and Aboriginal Legal Centres in rural regional and remote areas.<sup>19</sup> The report also referred to the need for consideration of incentives to encourage lawyers to practice in rural, regional and remote areas.<sup>20</sup> Recommendations of the 2009 Senate *Access to Justice* report, closely reflect those of the 2004 *Legal Aid and Access to Justice* report,<sup>21</sup> which also included a number of similar recommendations in relation to the funding and expansion of services to regional Australia, and included an emphasis of the need for specific services for indigenous communities and women in regional Australia.<sup>22</sup> Other recent reports include, the Federal Attorney General's Department 2009 report, *A Strategic Framework for Access to Justice in the Federal Civil Justice System*, which made recommendations relating to the critical need for improving access to justice system services

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16 Rural and Regional Committee, Parliament of Victoria, *Inquiry into the Extent and Nature of Disadvantage and Inequity in Rural and Regional: Final Report* (October 2010).

17 Access to Justice Advisory Committee, 'Access to Justice - An Action Plan', AGPS, (Canberra 1994).

18 Senate Legal and Constitutional Affairs References Committee, *Access to Justice* (December 2009).

19 Ibid. Recommendations 1, 3 and 6 make specific reference to the need for further research and increased funding of rural regional and remote legal services.

20 Ibid xxii.

21 Senate Legal and Constitutional Affairs Reference Committee, *Legal Aid and Access to Justice Report* (June 2004).

22 Ibid 41, 78.

for regional communities.<sup>23</sup> This report again reiterates the need to “address issues affecting access to services for people living in regional, rural and remote Australia”<sup>24</sup> and compiles a short history of Access to Justice reviews<sup>25</sup> up to the production of that report.

The report’s introductory chapter provides a valuable context for the *Postcode Justice* research by highlighting the relationship between the rule of law and economic prosperity, citing World Bank<sup>26</sup> and the United Nations Development Program<sup>27</sup> reports. This is a position acknowledged by *Postcode Justice*, which encourages an expansion of responsibility for supporting and addressing the shortfall in administration of justice system services in regional communities to include state and federal government departments responsible for regional development. See Chapter 8 *Regional engagement in laws, policies and programs*.

The *Strategic Framework for Access to Justice in the Federal Civil Justice System* report also refers to academic literature that presents the concept of justice reform being delivered in ‘waves’:

- **Wave 1** - Access to justice as equal access to legal services;
- **Wave 2** - Access to justice as correcting structural inequalities within the justice system
- **Wave 3** - Access to justice as an emphasis on informal justice and its importance in preventing disputes
- **Wave 4** - Improving access to justice by focusing on competition policy.<sup>28</sup>

The report further states that its objective is to move “forward from the first four waves of reform towards a broader concept of justice”.<sup>29</sup> In its introductory chapter, the report suggests that it pursues the next wave focussing on informal ‘everyday justice’. The report rightly points out that, “Most disputes are resolved without recourse to formal legal institutions or dispute resolution” and “Reform should focus on everyday justice, not simply the mechanics of legal institutions which people may not understand or be able to afford.”<sup>30</sup> This is an important perspective, however the ways in which formal mechanisms and legal institutions drive or influence informal everyday justice is not examined, and the position does not negate the need to make the current formal mechanisms and institutions accessible and equitable.

While the analogy with ‘waves’ suggests a progression, addressing each aspect followed by the next, the plethora of ‘Access to Justice’ inquiries has not resulted in the improvement outcomes hoped for. As Rice and Townes O’Brien point out in their submission to the *Senate Legal and Constitutional Affairs References Committee Report – Access to Justice*, which shortly followed the 2009 *Access to Justice in the Federal Civil Justice System* inquiry, “Recommendations from parliamentary inquiries such as the Committee’s current inquiry have, as a rule, not been adopted as policy, not been the subject of any implementation plan, not been supported by budgetary allocations, and not been monitored or reported against. As a result, Australian justice policy continues to lack coherence and direction. The consequent dissatisfaction gives rise to periodic inquiries such as the current one.”<sup>31</sup>

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23 Access to Justice Taskforce, Australian Government – Attorney-General’s Department, *A Strategic Framework for Access to Justice in the Federal Civil Justice System* (September 2009) 43.

24 Ibid 139.

25 Ibid 6.

26 World Economic Forum, *Global Competitiveness Report 2008–2009*, Geneva, 2009.

27 United Nations Development Programme, *Millennium Goals Report 2003*.

28 Christine Parker, *Just Lawyers: Regulation and Access to Justice* (Oxford University Press, 1999) 31.

29 Access to Justice Taskforce, Australian Government – Attorney General’s Department, above n 23, 3.

30 Ibid.

31 Simon Rice and Molly Townes O’Brien, Submission No 3 to Senate Standing Committee on Legal and Constitutional Affairs, *Access to Justice Inquiry*, 23 April 2009.

The Rice and Townes O'Brien submission to the Inquiry outlines reports produced over the last 35 years, which address issues relating to access to legal services for disadvantaged groups, commencing with the 1974 Sackville Commissioner for Law and Poverty, *Legal Aid in Australia: discussion paper*. A report produced 20 years later in 1994 by Ronald Sackville, the *Access to Justice: An Action Plan – The Access to Justice Advisory Committee Report*, signalled concerns regarding access for "people in isolated rural communities"<sup>32</sup> to legal services, but did not expand on these concerns.

Reports more recently produced which highlight trends in relation to access to justice system services in regional Australia, include a detailed TNS Social Research report to the Federal Attorney General's Department.<sup>33</sup> This report indicated a growing reliance on the private legal sector to deliver legal aid funded services in regional, rural and remote Australia. Yet at the same time, these areas are faced with a reduction in the number of private legal service providers, "with 3 lawyers per 10,000 residents aged 18+ in remote Australia compared to 10.7 lawyers per 10,000 in capital cities of Australia. The research suggests that providers of legal aid in regional and remote areas are 'keeping the system going' with a small number of lawyers providing significant amounts of legal aid."<sup>34</sup> Concerns regarding the recruitment and retention of lawyers in regional Australia are also raised by three other recent reports; the Law Council of Australia, Law Institute of Victoria *Report into the Rural, Regional and Remote Areas Lawyers Survey*,<sup>35</sup> the Northern Rivers Community Legal Centre *Recruitment and retention of lawyers in rural and regional NSW*,<sup>36</sup> *Professional Development/Career Enhancement*, and most recently, the Law and Justice Foundation of NSW *Recruitment and retention of lawyers in regional, rural and remote New South Wales*, which are all discussed later in this report.<sup>37</sup>

Two Victorian reports relating to access to justice are also noted. The Victorian Law Reform Commission's, 2008 *Civil Justice Review*, while presenting little discussion on specific issues relating to regional communities, does suggest consideration should be given to more effectively supporting self-represented litigants in regional courts,<sup>38</sup> and extending the use of court technologies regionally.<sup>39</sup>

The second Victorian report, the Victorian Parliamentary Law Reform Committee *Review of Legal Services in Rural and Regional Victoria*,<sup>40</sup> reviewed accessibility of Legal Aid, Community Legal Centres, Indigenous Legal Services and the private legal profession, in regional areas. It also highlighted issues relating to the effective administration of the courts and related mechanisms in regional Victoria. "The terms of reference for this review also required the Committee to investigate the adequacy and accessibility of court and tribunal services in regional and rural Victoria."<sup>41</sup> The report, holds significant relevance for *Postcode Justice*, presenting issues relating to the administration of courts and tribunals and the physical state of facilities and services, emphasising the impact of regional Magistrates' Court closures which had occurred on a large scale over a seven year period prior to the report. It also highlights implications for the

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32 Access to Justice Advisory Committee, 'Access to Justice - an Action Plan' (1994) 33.

33 TNS Social Research for Federal Attorney Generals Department, Summary of Conclusions and Implications in Study of the Participation of Private Legal Practitioners in the provision of Legal Aid Services in Australia (December 2006)  
<[http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/%28CFD7369FCAE9B8F32F341DBE097801FF%29-88newLegal+Aid+research+TNS+report+FINAL.pdf](http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/%28CFD7369FCAE9B8F32F341DBE097801FF%29-88newLegal+Aid+research+TNS+report+FINAL.pdf/$file/88newLegal+Aid+research+TNS+report+FINAL.pdf)>.

34 Ibid viii.

35 Law Council of Australia, Law Institute of Victoria, *Report into the Rural, Regional and Remote Areas Lawyers Survey*. July. 2009.

36 Trish Mundy, Recruitment and Retention of Lawyers in Rural, Regional and Remote NSW: A Literature Review (2008) Northern Rivers Community Legal Centre.

37 Suzie Forell, Michael Cain & Abigail Gray, *Recruitment and Retention of Lawyers in Rural, Regional and Remote New South Wales*, (Law and Justice Foundation of NSW, 2010).

38 Victoria Law Reform Commission, *Civil Justice Review*, Report No 14 (2008) 39.

39 Ibid 328.

40 Law Reform Committee, Parliament of Victoria, *Review of Legal Services in Rural and Regional Victoria* (2001).

41 Ibid 289.

delivery of justice system services through circuit courts and Alternative Dispute Resolution processes to regional Victoria, as well as issues experienced by indigenous communities and other disadvantaged groups. The report made 125 recommendations for improving justice system services in regional Victoria.

This *Postcode Justice* report, attempts to expand on the findings of the 2001 Parliamentary Law Reform Committee report relating to factors affecting the administration of justice system services in regional Victoria. *Postcode Justice* combines the relevant discussions and findings of the many other reports noted above and later, which have identified aspects of disadvantage in the administration of justice system services in regional communities. Together with the survey and interview findings, *Postcode Justice* provides a broad picture of the interrelated factors that combine to create the disadvantage experienced by regional communities participating in the justice system.

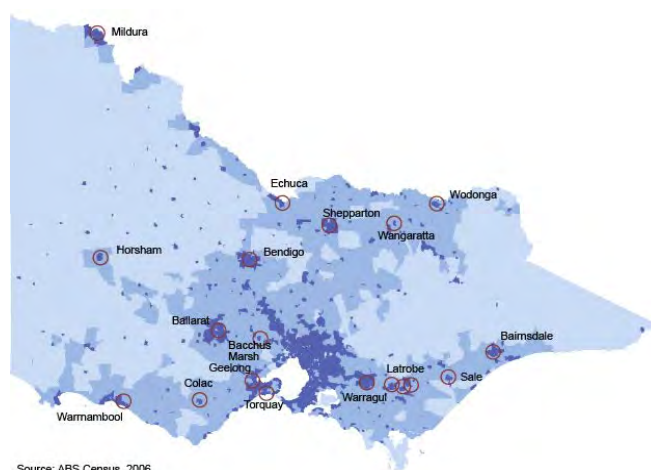
## State of the Country

Regional Victoria and Australia have undergone dramatic and sustained changes over the last few decades, influenced by economic changes as a result of changing national and international markets opening up to global competition; and most recently, drought, floods and the spectre of climate change. These changes have had, and will continue to have, significant and complex influences on regional communities, their social structure and economies. An outline of the current demographic, social and economic status of regional Victoria is provided below.

## Recent population change in regional communities

Melbourne dominates Victoria's settlement pattern. At 30 June 2009, the population of Victoria was estimated to be 5.44 million.<sup>42</sup> Melbourne's population was estimated at 4.0 million, while 1.44 million (26.47%) were estimated to be living in regional Victoria.<sup>43</sup> The regional cities are dominated by Geelong, Ballarat, Bendigo and the Latrobe Valley within 1-2 hours of Melbourne, and beyond that, the cities of Warrnambool, Horsham, Mildura, Echuca, Shepparton, Wangaratta, Wodonga, Bairnsdale, Sale and Colac service large rural hinterlands (Fig. 1). Victoria's rural population, those living outside of settlements with 200 or more people, was estimated to be approximately 330,000 in 2006.<sup>44</sup>

Figure 1 Victoria's Population Distribution (2006)



42 Australian Bureau of Statistics, *Regional Population Growth, Australia 2008-2009* (30 March 2011) Australian Bureau of Statistics <<http://www.abs.gov.au/ausstats/abs@.nsf/Products/3218.0-2008-09-Main+Features-Victoria?OpenDocument>>.

43 Ibid.

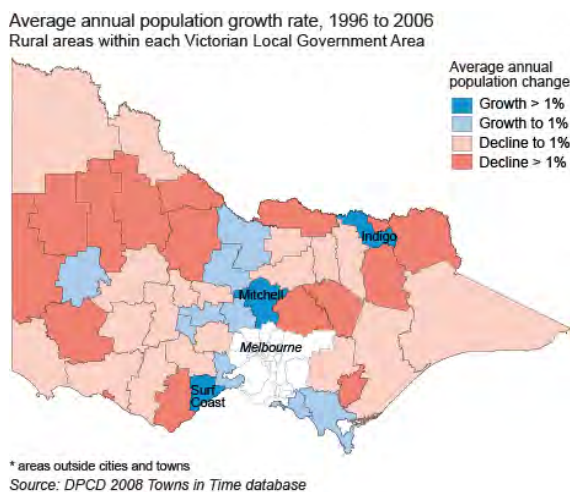
44 Fiona McKenzie and Jennifer Frieden, Department of Planning and Community Development (Spatial Analysis and Research Branch), *Regional Victoria – Trends and Prospects* (March 2010).

The City of Melbourne, and especially the inner suburbs, has experienced faster growth than regional Victoria.<sup>45</sup> Between 2001 and 2006, Melbourne's growth rate was 1.5% compared to 0.8% in regional Victoria.<sup>46</sup>

While Melbourne's growth is faster than the growth of regional Victoria as a whole, some parts of regional Victoria have experienced faster growth rates. Meanwhile, in the intercensal period of 2001-2006, the populations of several rural parts of Victoria have declined. This has predominantly occurred in the dryland farming areas of the state (Fig. 2). The reasons cited include "capital intensification of agriculture requiring fewer workers; rationalization of services into fewer, larger centres; increased personal mobility allowing people to access goods and services further away; and increasing economic and social attractiveness of urban lifestyles".<sup>47</sup>

In general, rural areas have experienced slower growth rates than country towns and cities.

Figure 2 Average annual rural population growth rate



Population has declined in rural areas but grown in areas adjacent to Melbourne or to regional cities. These areas around urban settlements are referred to as 'interface' or 'peri-urban' areas. Interface councils define themselves as, "the unique spaces that bridge the gap between metropolitan and rural Victoria. No more than 30 per cent of the land within each Interface municipality is classified as urban. The remaining land is rural inside their boundaries comprised of agricultural land, forest and parklands and rural communities."<sup>48</sup>

Peri-urban is generally defined as areas between metropolitan centres and rural areas, which do not have the characteristics of urban or rural communities, but comprise a 'middle band' of land with their own unique characteristics. While there is substantial growth in some areas outside metropolitan Victoria, much of the growth in the interface and peri-urban areas is town-based growth rather than *rural* growth.

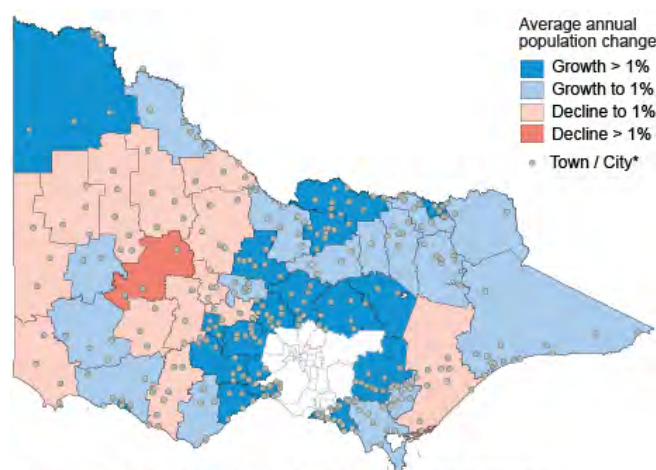
45 Ibid 3.

46 Ibid.

47 Ibid.

48 Interface Councils, Submission to Parliament of Australia's House of Representatives Committee on Infrastructure, Transport, Regional Development and Local Government, *Inquiry into the Impact of the Global Financial Crisis (GFC) on Regional Australia*, April 2009.

Figure 3 Population change of Towns and Cities\* in Victoria 1996 – 2006



\* cities and towns with populations greater than 200 persons, excluding Melbourne  
 Source: DPCD 2008 *Towns in Time* database

However, rather than reflecting a genuine regionalisation or counter-urbanisation, where people have moved permanently for a change of lifestyle, much of this growth may be commuter growth. A 2008 RMIT study found that 28 per cent of the working population in the peri-urban areas commutes to Melbourne, and a total of 42 per cent work outside its Local Government area.<sup>49</sup>

### Income

Real median incomes in Victoria increased over the past twenty years. Melbourne incomes are consistently higher than the rest of Victoria. The gap between Melbourne and regional Victoria grew from 1981 to 2001, with regional Victorian incomes dropping from 85% to 73% of Melbourne median household incomes. However, this has changed in the period from 2001 to 2006, with regional incomes rising to 76% of metropolitan median income.<sup>50</sup>

### Industry restructuring

A comprehensive report produced by the Victorian Department of Planning and Community Development summarises the major factors influencing the current economic position of regional Victoria.<sup>51</sup> The report indicates that the late 1980s and early 1990s saw a decline in some manufacturing sectors and the rationalisation or concentration of many public and private services in regional Victoria. Although traditional manufacturing industries in regional centres were strongly affected by restructuring and recession, other manufacturing industries, such as manufactured food, were emerging and expanding. Meanwhile, community services; wholesale and retail services, recreational and personal services industries expanded. The ageing population of regional Victoria has also produced an expanding health care and aged care sector.<sup>52</sup>

Employment has grown in regional Victoria, rising by 9% between 2001 and 2006.<sup>53</sup> However, similarly to population growth, much of this has occurred in cities and large towns. Some public services and many businesses have moved to, or opened up in, the main regional centres. Additionally, large scale retailers such as Myer are located in regional towns and

49 Michael Buxton, Amaya Alvarez, Andrew Butt, Stephen Farrell (Spatial Vision Innovation Pty Ltd) and Danny O'Neill, School of Global Studies, Social Science and Planning, RMIT University, *Planning Sustainable Futures for Melbourne's Peri-urban Region* (November 2008) 9.

50 Ibid.

51 Fiona McKenzie and Jennifer Frieden, above n 44.

52 Ibid.

53 Ibid.

cities, offering more employment opportunities. Increased individual mobility, in conjunction with extended opening hours, have provided people in the surrounding rural areas greater access to these services and businesses in regional centres.<sup>54</sup>

While there has been an increase in rural people working in service industries and manufacturing, large towns have shown an increase in residents employed in agriculture. As mentioned above, some urban residents have moved to rural areas for lifestyle reasons and in some cases, these people may be living in a rural area while commuting to nearby towns or cities.

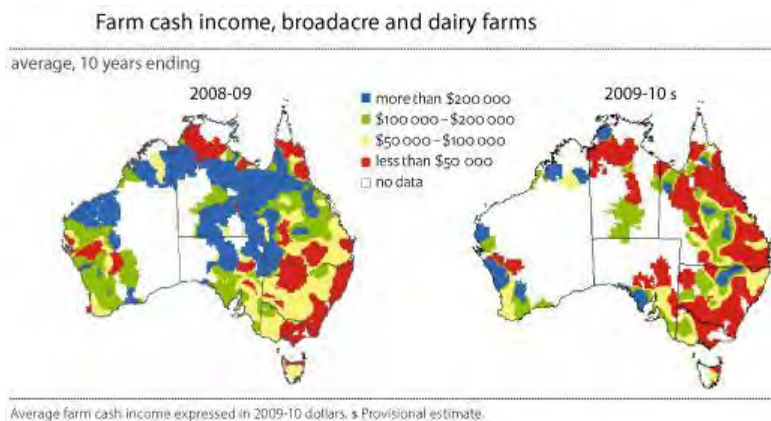
## Agriculture

The demographics of farming have changed rapidly over the last twenty years and drought has accelerated that change. Over this period the number of farms has reduced by approximately 25 per cent while the amount of land used for agriculture has reduced by 9 per cent. At the same time the average area of individual holdings has increased by around 23 per cent.<sup>55</sup>

Larger holdings and increasing volumes of production (economies of scale) are required if most broad-acre farming is to be viable. Income from primary production for many is low: 17 per cent of Australian farms have an estimated value of operations (EVAO) below \$22,500, while 11 per cent had an EVAO of more than \$500,000. Farm production has become more concentrated on large farms; the top 20 per cent of broad-acre farms now account for around 64 per cent of output. The last twenty years has also seen an increase in more intensive farming and a greater diversity of commodities produced, following emerging markets and moves to more intensive production techniques and systems.<sup>56</sup> Farming however, remains predominantly family based, and the economic and social health of these operations is also intrinsically tied to the local community and the infrastructure and knowledge resources available to it.

The status of Victorian farm cash income in comparison to the rest of Australia for that period is graphically illustrated in the map below (Fig. 4).

Figure 4 Geographical spread - farm cash income 2008–09



Source: ABARE Australian Commodities Vol 14 No. 4

ABS statistics reveal a dramatic decline of 20 per cent in the number of people employed in agriculture, and services to agricultural industries, over the five-year period between 2002 and 2006.<sup>57</sup> Of the total figure of 330,900 people employed in this sector in 2006, 68 per cent were male.

54 Ibid 17.

55 Productivity Commission (2005) *Trends in Australian agriculture*, Research Paper, Canberra xxii.

56 Ibid xxiv.

57 Australian Bureau of Statistics, 'Labour force', *Australia year book 2007*.

## The extent of regional disadvantage and inequity

The above provides an overview of the position of regional Victoria in relation to population, income and industry. The concept of disadvantage can be defined in many ways. A 2006 Mission Australia report<sup>58</sup> examines regional Australia within a context of five 'capitals', defined as; Natural or Environment capital, Social capital, Human capital, Institutional capital and Economic capital.<sup>59</sup> Whilst challenging over-simplified views of a regional and metropolitan divide (indicating that variations exist across regions and communities), the report identifies aspects in which regional communities fare worse than metropolitan areas with for example, higher rates of statutory incomes and unemployment, fewer educational opportunities and poorer health service outcomes. Areas identified by the report as needing urgent attention included:

- the retention of young people in regional areas
- improved access to health services
- improved access to services and extend service levels generally
- capacity building policies accompanied by macro-economic and social policies
- an enhanced role for local government bodies
- more effective intergovernmental planning and policy development, that directly engages the three tiers of government.<sup>60</sup>

In summary, the report concludes that "Non-metropolitan Australia includes an incredibly complex and varied range of people, communities, industries, opportunities, issues and development needs. This diversity, combined with changing demographics and accelerated internal migration, will require continuing specialised attention at the service delivery, research and policy levels."<sup>61</sup>

A graphic depiction of the extent and concentration of disadvantage experienced by regional Victorians was developed by Professor Tony Vinson drawn from a landmark 2006 study *Dropping off the Edge*.<sup>62</sup>

A set of indicators are used, broadly categorised under the following headings:

- *Social distress* including for example, rental and mortgage defaults
- *Health* including mortality, suicides and mental health
- *Community safety* including criminal convictions, domestic violence and child maltreatment
- *Economic* inclusive of unemployment, dependency and low income
- *Education* including qualifications, school attendance and early school leaving.

Based on ABS postcode data, the map (Fig. 5) identifies a spread of advantage and disadvantage using set indicators and confirms both a lack of uniformity and a broad spread of disadvantage in regional Victoria. Of the twelve postcode areas with the highest rating of disadvantage, nine were non-metropolitan. On the basis of populations, 32,499 were from non-metropolitan and 36,729 were from metropolitan localities.

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58 Mission Australia, *Rural and Regional Australia: Change, Challenge and Capacity* (2006).

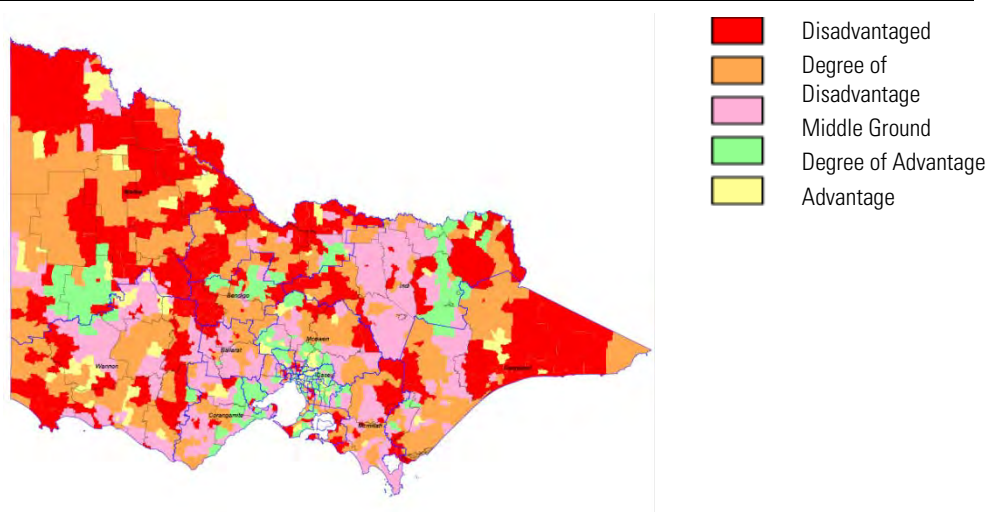
59 Ibid 4.

60 Ibid 4.

61 Ibid 3.

62 Professor Tony Vinson, Faculty of Education and Social Work, University of Sydney, *Dropping off the Edge: The Distribution of Disadvantage in Australia* (2007) 9.

Figure 5 Distribution of social disadvantage in Victoria, 2006 (Vinson 2007)



### State of the country: Conclusions

From the material presented above, it can be concluded that regional Victoria is not homogenous. Some areas, particularly the larger regional centres, have shown extraordinary resilience and sustained growth, while others, generally smaller regional centres and rural communities, lack the capacity to respond to these changes.

Agriculture has seen extraordinary swings affected by markets and the natural environment, which impacts upon farm sizes and the growing complexity 'corporatisation' of the industry. Despite its adaptation to these changes, farming remains an economically uncertain business.

Many smaller regional centres and rural communities in Victoria have experienced an overall population decline and regional income is lower than in metropolitan areas, though the situation varies with the expansion of peri-urban areas, motivated by greater mobility and lifestyle objectives, adding further complexity to the picture.

It is also proposed by the literature referred to here, that the 'health' of regional communities relies on the 'capital' of those communities. It will be argued in this report that effective and responsive justice system services, and associated infrastructure, provide an important role in sustaining and growing the 'social', 'institutional' and 'economic' 'capitals' and are an important component in sustaining and growing regional communities.



## Chapter 3 - Research Findings: The Courts

The following explores the various issues raised/offered by interviewees and includes an examination of the relevant literature and survey findings. It provides an insight into the interrelatedness between policies, programs and processes associated with the administration of justice system services and their relevance and implications for regional service users and their communities.

The findings confirm a broad range of both direct and indirect factors which result in disadvantage for regional communities when participating in the justice system.

### Victoria's Regional Courts - An Historical Perspective

To provide a context for discussions on the administration of the justice system, a list of the principle courts, their regional availability and a brief history of each is provided.

#### The Magistrates' Court

There are currently 54 Magistrates' Court locations in Victoria. In 1880 there were 235 locations.<sup>63</sup> This represents a ratio of one court location for every 100,000 people at present, and one court location for every 3,680 in 1880. The Magistrates' Court jurisdiction has grown from hearing cases of up to 20 pounds in 1880 (the then Court of Petty Sessions) to an upper limit for civil cases now of \$100,000.

The reduction in the number of Magistrates' Courts in regional Victoria occurred over nearly a century. Importantly, a large number of courts were 'decommissioned' in the last 30 years with a cut from 119 court locations in 1983 to 65 courts in 2000. This was largely due to a decision of the Cain government following a *Court Needs Study*,<sup>64</sup> undertaken in 1984, which found that many courts did not fulfil the 'functional adequacy' or standard of 'building conditions' required. This, together with dramatic budget cuts across the board, provided a rationale for the number of courts to be cut by 54 during 1986 to 2000. Since 2000, a further 11 courts have been lost, reducing the current number to 54 courts.

Evidence provided to the Victorian Parliamentary Law Reform Committee Review of Legal Services in Rural and Regional Victoria,<sup>65</sup> described this period as representing 'a huge purge on small country courts'.<sup>66</sup> The opening quotation to this chapter of the Law Reform Committee report was drawn from a submission made to the Review by the 'Clerk of Courts Group', and in part states that "The Court is an integral and central outlet for justice services but in rural Victoria many people believe they are being treated as being part of an outpost or backwater from Melbourne. This philosophy not only reduces the rural community access, it also costs them financially in terms of time, travel and accommodation expenses."<sup>67</sup> As identified by *Postcode Justice* interviews and survey responses, for many, this sentiment has not changed over the 11 years since the Law Reform Committee's review.

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63 State of Victoria, *Magistrates' Court of Victoria – Court History* (29 September 2010) Magistrates' Court of Victoria <<http://www.magistratescourt.vic.gov.au/wps/wcm/connect/justlib/Magistrates+Court/Home/About+the+Court/Court+History/>>. Not all locations were permanent courts.

64 This study is cited within: Law Reform Committee, Parliament of Victoria, *Review of Legal Services in Rural and Regional Victoria* (May 2000), but has not been viewed by the author.

65 Law Reform Committee, Parliament of Victoria, *Review of Legal Services in Rural and Regional Victoria* (May 2000) 290.

66 *Ibid* 207.

67 *Ibid* 289.

This drastic reduction in the number of regional court and localised courts services has had a significant effect on regional communities. Not only because the Magistrates' Court hears the vast majority of criminal and civil matters in Victoria (approximately 97% of all criminal and 93% of all civil cases are heard by the Magistrates' Court),<sup>68</sup> but also because in regional Victoria, the Magistrates' Court is multi-jurisdictional, providing the venue and administration for specialist courts and court programs, and other jurisdictions including the various VCAT jurisdictions.<sup>69</sup> The corresponding reduction in Court Registrar staff, who provided a range of services across all jurisdictions, also meant this often first port of call for general and specific information, was no longer available for the many regional towns which experienced the closure of their local court.<sup>70</sup>

## The County Court

In 2010, the County Court operated in 12 regional locations throughout Victoria, two of which, Bairnsdale and Sale, had one sitting period of approximately four weeks. Horsham had three circuit dates, Wodonga five and Wangaratta seven circuit periods of approximately three to four weeks duration. The remaining circuit courts sit for approximately three to four weeks each month for 10 to 12 months of the year, hearing both civil and criminal matters, either at the same or at separate circuit dates.

In 1858 the County Court, then known as the 'Court of General Sessions', sat at 14 locations outside metropolitan Melbourne, varying from two to four sittings per year.<sup>71</sup> The Court's civil jurisdiction in 1852 was limited to 50 pounds. The jurisdiction's monetary limit was removed in 2006 for personal injury cases and for other cases; the maximum claim costs dealt with is currently \$200,000. It now deals with serious criminal matters (all indictable offences except treason, murder and certain other murder related offences) and Magistrates' Court and Children's Court appeals.

## The Federal Magistrates' Court of Australia

The Federal Magistrates' Court was established under the Federal *Magistrates' Court Act* of 1999.<sup>72</sup> While responsible for jurisdictions such as administrative law, bankruptcy, human rights and copyright, over 90% of hearings are family law related. The Court sits at Melbourne and Dandenong, and also at 9 regional locations.<sup>73</sup> The Court sits approximately four times per year for a week at each circuit and is located at the regional Magistrates' Courts.

## The Supreme Court

The Supreme Court of Victoria is divided between the Court of Appeal, which deals with Supreme Court and County Court appeals, and the Trial Division, which deals with Criminal and Civil proceedings as well as VCAT appeals. In 1885 the Supreme Court sat at three locations external to Melbourne.<sup>74</sup> Nowadays, the Supreme Court circuit court sits at 12 locations around Victoria with for example, four sitting dates in Geelong, three in Bendigo and Warrnambool, two in Ballarat, Mildura, Morwell, Shepparton, Wangaratta and Wodonga, and

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68 Productivity Commission, Australian Government, *Report on Government Services – Chapter 7 Court Administration* (2011) 7.19.

69 Though VCAT currently manages its application process centrally.

70 Parliament of Victoria, above n 40, 310.

71 State of Victoria, *Victoria Government Gazette*, No 70, 12 January 1858.

72 Federal Magistrates' Court of Australia, *Introduction to the Federal Magistrates' Court of Australia* (19 April 2011) About the Court, <<http://www.fmc.gov.au/html/introduction.html>>.

73 *Ibid.*

74 State of Victoria, *Victorian Government Gazette*, No 4, 5 January 1855.

one in Horsham for the 2010 calendar year. The circuit courts sit variously from two days to six weeks. The Court of Appeal sits approximately twice a year at circuit court locations. In 1885 the Supreme Court sat at three locations external to Melbourne.

### The Victorian Civil and Administrative Tribunal (VCAT)

VCAT commenced with the introduction of the *Victorian Civil and Administrative Act* in 1998, as a 'super tribunal' amalgamating 15 independent boards and tribunals. VCAT sits at 13 Melbourne and 32 regional locations, mainly based at Magistrates' Courts. VCAT also states that other locations can be used when 'appropriate venues are available'. Additionally, direction hearings can be conducted by telephone. The frequency of VCAT visits to regional locations varies significantly and not all Lists hear applications at regional centres.

## The Courts and Associated Processes, Programs, Facilities and Services

### Magistrates' Court

#### Court Programs and Specialist Magistrates' Courts<sup>75</sup>

In 2008, the State Bracks-Brumby Labor Government expressed a strong commitment to a 'problem solving approach' to the justice system, stating that it "is committed to addressing the underlying links between disadvantage and offending. The Government will support strategies that can stop, or at least slow, the revolving door that circulates people with chaotic lifestyles in and out of the criminal justice system".<sup>76</sup>

However, court programs introduced by the State Government over the past ten years as part of this 'problem solving approach' to the role of the justice system, have only limited availability for regional Victorians. The recently elected Coalition government has acknowledged this shortfall, with the new Attorney General referring to it as a 'patchwork system of justice'.<sup>77</sup> Their strategy for responding however has, as yet, not been spelled out.

#### Magistrates' Court Programs

##### **Recommendation 3**

As per Recommendation One of the 2009 CISP Program review; that the State Attorney General commits to "Establishing a review of court support programs with the aim of developing a general court support service model that provides state-wide services to all Victorian Magistrates' Courts at all its venues and across all specialist lists and divisions."

##### **Recommendation 5**

That independent research be undertaken to examine the impact and implications for regional communities of the 'therapeutic jurisprudence' model of justice system service delivery, including its impact on any variations in penalties and sentencing between metropolitan and regional courts. The research is to provide practical strategies to ensure equivalent and equitable outcomes are available to all regional and metropolitan participants.

<sup>75</sup> It should be noted that following a change of State Government in Victoria in November 2010, there are proposed to be a number of changes to court programs, services and sentencing arrangements following the Baillieu Government's 'Get tough on crime' election platform.

<sup>76</sup> Attorney General's Justice Statement 2, October 2008. *The Next Chapter Addressing Disadvantage* 31.

<sup>77</sup> Farrah Tomazin, 'Neighbourhood and Koori Courts Could Go', *The Age* (online), 27 April 2011. <<http://www.theage.com.au/victoria/neighbourhood-and-koori-courts-could-go-20110326-1cb76.html>>.

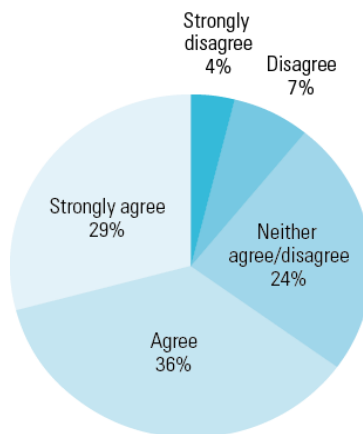
In its Justice Statement 2,<sup>78</sup> the previous Victorian Government embraced as a core element to its broad strategy, the concept of 'problem solving courts'. Problem solving courts focus on addressing the behaviour underlying many criminal offences. To address the 'underlying cause' of the offending behaviour, the courts deliver sentences that involve linking offenders to the various relevant programs and services.

The concept of 'problem solving courts' draws on the therapeutic jurisprudence model for the delivery of justice system services, which holds that the courts should work "towards a common goal of a more comprehensive, humane, and psychologically optimal way of handling legal matters".<sup>79</sup> A fundamental principle of this model is that courts should address the underlying problems and disadvantages associated with criminal behaviour.

The Magistrates' Court of Victoria reflects this approach. Its publication, *New Directions*, stated that it proposes to "build on reforms already underway ... including innovative approaches like problem-solving courts and therapeutic jurisprudence and other reforms that deliver on commitments in the *Justice Statement*."<sup>80</sup>

Various court programs, introduced by the State Government over the last 10 years, which are largely relevant to criminal matters, are not available at many regional courts. As the figure below indicates, approximately 65% of those surveyed by this research agreed, or strongly agreed, that their clients were disadvantaged by the lack of local access to Magistrate court programs; only 11% of survey participants disagreed with the statement. While agreement was much stronger from human service organisation survey respondents (this includes indigenous, youth, drug and alcohol, housing, disability, mental health, family, financial/consumer, children's, women's domestic violence, and general welfare/community services), that is, 80%, compared with 54% of lawyers surveyed, it should be noted that this includes a majority of lawyers who were not involved in criminal matters, which is the principle relevant jurisdiction.

**Figure 6 Limited Local Access to Court Programs: Combined Responses**



(Graph 12 in Appendix 7)

78 Attorney General, above n 76.

79 Susan Daicoff, 'The Role of Therapeutic Jurisprudence Within the Comprehensive Law Movement' in Dennis Stolle, David Wexler and Bruce Winick (eds), *Practicing Therapeutic Jurisprudence: Law as a helping profession* (Carolina Academic Press, 2000) 465-492.

80 Department of Justice, State of Victoria, *New Directions for the Magistrates' Court of Victoria 2008-2011* (2008) 2.

Human Service survey respondents also made comments in the open-ended section of this question. These comments included:

- “Rural regions don’t have access to programs that tend to be in metropolitan regions or regional cities. Too far to travel to”.
- “If there are visiting programs. . . . there is nowhere set aside for them to meet with clients. Very limited availability of rooms often have to see clients outside.(the court)”.

Additional comments can be read in **Appendix 7** under Court Programs.

In its Strategic Plan statement expressed in the Magistrates’ Courts publication, *New Directions*, the Court also reflects this approach in its statement that the Court proposes to “build on reforms already underway ... including innovative approaches like problem-solving courts and therapeutic jurisprudence and other reforms that deliver on commitments in the *Justice Statement*.”<sup>81</sup>

Three principal examples of court programs based on a ‘therapeutic jurisprudence’ model, introduced by the previous State Government and their locations are:

*CISP (Court Integrated Services Program (Established 2006))*. A multi-disciplinary team-based approach to the assessment and referral to treatment of defendants. Available in Melbourne Magistrates’ Court (MC), Sunshine MC and La Trobe MC.

*Credit Bail Program (Court Referral & Evaluation for Drug Intervention & Treatment Program (Established Dec 2004))*. Clients are provided with a range of services while on bail. Available at Melbourne MC, Ballarat MC, Broadmeadows MC, Dandenong MC, Frankston MC, Geelong MC, Heidelberg MC, Moorabbin MC, Ringwood MC.

*Mental Health Court Liaison Officer Service (Established Nov 1994)*. Determines the presence or absence of serious mental illness, and provide feedback based on these assessments to the court. Available at Melbourne MC, Ringwood, Heidelberg, Dandenong, Frankston, Broadmeadows and Sunshine MC’s. Part time staff at Geelong, Shepparton, Bendigo, Ballarat and Latrobe Valley MC’s.<sup>82</sup>

While there are some regional courts participating in these programs the majority are either provided at metropolitan or larger regional centres. In his most recent *Annual Report*, Chief Magistrate Ian Gray expresses the challenges for the court system to successfully implement these programs state-wide. Under the heading *Therapeutic Jurisprudence*, he asks: “How do we respond fairly and efficiently to each individual who comes through the door? How do we distribute programs equitably and consistently across 54 courts?”<sup>83</sup>

The answer given by Chief Magistrate Gray, is that they are met through “the dedication of Magistrates and staff, who are committed to the fundamental principles of case-by-case justice and also to the application of the principles of therapeutic jurisprudence, where appropriate”.<sup>84</sup> While it is a valid point that in implementing a new ‘culture’ (of therapeutic jurisprudence) within the court, a commitment of the judiciary and staff is essential; the ‘elephant in the room’ is the lack of resources and commitment by government to roll these programs out to those 54 courts. Chief Magistrate Gray makes this clear when he states

*“stress on the court’s resources jeopardises the upholding of these achievements into the future. While I thank the government for continued support for programs*

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81 Ibid.

82 A detailed outline on each of these programs is available in Appendix 8.

83 Ian Gray in Magistrates’ Court of Victoria, State of Victoria, *Magistrates’ Court of Victoria Annual Report 2009 – 2010* (2010) 6.

84 Ibid.

*such as the Court Integrated Services Program (CISP) with continued funding, the court's core budget continues to increase at a significantly lower rate than the court's caseload and responsibilities. Specific funding for programs and initiatives is needed and welcomed, however piecemeal funding arrangements highlight the lack of control that court administrators have over the budget, and exacerbate the shortcomings of current funding arrangements.*"<sup>85</sup>

Court services and programs can have a significant impact on outcomes for court clients. The Court Integrated Services Program (CISP) for example, was established "to assist in ensuring that the accused receive support and services to promote safer communities through reduced rates of re-offending". CISP is defined as a 'multi disciplinary team approach' that assesses and provides services and case management for offenders with drug, alcohol, mental health or disability needs; or those who are socially disadvantaged. As a component of the pre-sentencing process, an accused person whose hearing is located at a court that provides this program will (with their consent), be assessed for appropriate services and have them set in place. Once the CISP based support regime is in place for a defendant, which in itself will demonstrate to the Magistrate a lower risk of re-offending, it will potentially impact on his/her sentencing decision, thereby encouraging a more therapeutic rather than punitive approach. For those whose cases are not heard within the three courts where this program is provided, the immediate and long-term outcomes can be very different.

A 2009 independent review of the CISP Program by Melbourne University,<sup>86</sup> confirms its success. The resulting Report states stating that the program "has achieved its primary output and outcome goals."<sup>87</sup> The Report goes on to express concerns regarding regional disadvantage, stating that, "Magistrates were asked how they would like to see CISP develop in the future. The most commonly nominated enhancement to the program was its extension to other court venues, including regional courts and other specialist courts. Several referred to the variations in practice that were apparent when they were working at court venues where CISP was not available, and the inherent unfairness of this to defendants – 'postcode justice'. Magistrates whose work took them to regional courts commented on the limitations this placed on their capacity to respond effectively to defendants."<sup>88</sup>

The report does not elaborate on what is meant by 'responding effectively to defendants' but it could be assumed that, in addition to more effectively linking regional clients to appropriate services, this also relates to increasing the valuable range of orders available to Magistrates who are currently without recourse to this program.

With 2113 referrals made to the program over the 2009-2010 reporting period<sup>89</sup> and the decision to continue funding of the program<sup>90</sup>, it is clear that CISP is a success. Given its success within the locations that it is provided, and the comparative disadvantage likely to be experienced by those within regions that do not have access to this program, the question has to be asked, why after four years is there no commitment to the wider rollout of the service?

The same questions can be asked in relation to other programs of the Magistrates' Court, including for example, the CREDIT Bail Support Program (CREDIT stands for Court Referral & Evaluation for Drug Intervention & Treatment). This program "seeks to increase the likelihood of a defendant being granted bail and successfully completing a bail period. The program provides clients with access to drug treatment, accommodation, material aid and support, as

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85 Ibid 4-5.

86 Stuart Ross, Melbourne University - Melbourne Consulting & Custom Programs, *Evaluation of the Court Integrated Services Program – Final Report* (December 2009) 15.

87 Ibid.

88 Ibid 108.

89 Magistrates' Court of Victoria, *Magistrates' Court of Victoria Annual Report 2009 – 2010* (2010) 63.

90 Magistrates' Court of Victoria, *Magistrates' Court of Victoria Annual Report 2008 – 2009* (2009)17.

required, according to the assessed needs of the client".<sup>91</sup> The program focuses on drug related offences and was established to reduce the number of offenders in remand and reduce offending behaviour, through treatment and rehabilitation. Available in metropolitan courts and the Geelong and Ballarat Magistrates' Courts, the program is now integrated with the CISP Program in those areas.

While the merits of the program are clear<sup>92</sup> and the number of referred cases has continued and expanded over the seven years of its existence, there remain large areas of regional Victoria in which the program is unavailable and consequently, a variation in the likely treatment of offenders, thereby disadvantaging both regional offenders and their communities.

The piecemeal nature of the provision of court based programs in regional areas and the consequences for offenders was described by a Magistrate interviewed for this research, in the following way:

*"The lack of services starts from the front end [sic] where, for example, Sunshine police have a specific Domestic Violence Police Unit, this doesn't exist in most rural areas. For Programs such as CISP and Credit Bail, where they don't exist, it means[sic] that people are less likely to get bailed because participation in those programs demonstrate a [sic] reduced risk of re-offending and therefore those who can't access the programs will be more likely to get an onerous sentence such as gaol terms."*

While this is by no means an exhaustive list, a third program, which has limited availability in regional Victoria, is the Mental Health Court Liaison Service. The aim of the Mental Health Court Liaison Service "is to provide court assessment and advice services to Magistrates in relation to people who may have a mental illness appearing before the Magistrates' Courts."<sup>93</sup> This service is not available at many of the smaller regional courts and has part-time staff at larger regional centres. One practitioner, who regularly acts as a 'Duty Lawyer' at a small regional centre Magistrates' Court, provided an example of the consequences of limited resources. Often dealing with 20 to 30 'duty lawyer' cases in a day, he stated that, "Clients with a mental illness, particularly itinerant workers, may not be recognised by me or the courts as requiring specialist support, and without access to the Mental Health Court Liaison Service, they can be on a treadmill of conviction and sentencing, over and over without ever accessing appropriate interventions. For those attending Melbourne Magistrates' Court, outcomes for people with a suspected mental illness using the duty lawyer service can be very different". Following a literature review, no evaluation of the Mental Health Court Liaison Service appears to have been undertaken.

The current lack of a co-ordinated and committed approach to establishing court based programs regionally is best stated by the first Recommendation of the Magistrates' Court of Victoria commissioned review of the Court Integrates Services Program (CISP) when it proposes that the Magistrates' Court should, "Establish a review of court support programs with the aim of developing a general court support service model that provides state-wide services to all the Victorian Magistrates' Courts at all its venues and across all specialist lists and divisions."<sup>94</sup>

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91 Magistrates' Court of Victoria, 'CREDIT/Bail Support Program Brochure' <<http://www.Magistratescourt.vic.gov.au/wps/wcm/connect/e703dd80404a31e5bbc7fbf5f2791d4a/CBS+Brochure.pdf?MOD=AJPERES>>.

92 See M. P. Henderson and Associates, 'Bail Support Program Evaluation' (Final Report to Corrections Victoria, March 2008) 74-75 <[http://www.justice.vic.gov.au/wps/wcm/connect/justlib/DOJ+Internet/resources/e/b/eb833580404a6b4896f6fff5f2791d4a/BSP\\_evaluation\\_final\\_report.pdf](http://www.justice.vic.gov.au/wps/wcm/connect/justlib/DOJ+Internet/resources/e/b/eb833580404a6b4896f6fff5f2791d4a/BSP_evaluation_final_report.pdf)> See also Magistrates' Court of Victoria, above n 90, 97.

93 Magistrates' Court of Victoria, *Mental Health Court Liaison Service*, Magistrates' Court of Victoria Court Support Services <<http://www.Magistratescourt.vic.gov.au/wps/wcm/connect/Magistrates+Court/Home/Court+Support+Services/MAGISTRATES+-Mental+Health+Court+Liaison+Service>>.

94 Stuart Ross, above n 86.

## Specialist Courts

### Recommendation 4

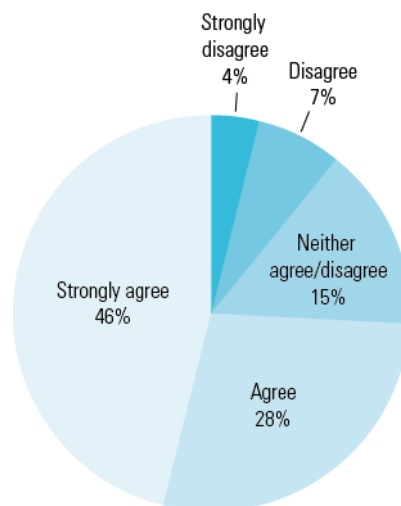
That the State Attorney General commits to a rapid expansion to the availability of specialist courts to include all regional Magistrates' Court locations, with consideration given to greater use of information technology services including 'virtual courts' and video conferencing, where appropriate.

Specialist Magistrates' Courts defined by the Magistrates' Court of Victoria include the Drug Court, Family Violence Division, the Koori Court and the Neighbourhood Justice Centre. Other courts/tribunals that might be described as specialist courts for the purposes of this research include the Children's Court, the Sexual Offences List, the Assessment and Referral List, the Victims of Crime Assistance Tribunal (VOCAT), the WorkCover Division and the Industrial Division. A brief summary of the role of each of these courts is available in Appendix 9.<sup>95</sup>

A large majority (88%) of survey participants from human service organisations either agreed, or strongly agreed, that their regional clients were disadvantaged by a lack of specialist courts in their area. Of the 65 lawyers surveyed, 63% agreed; of those, 40% strongly agreed. Only 13% of lawyers surveyed disagreed with the position that regional participants were disadvantaged by a lack of specialist courts. There was also a correlation between the degree of agreement and extent of the participating lawyers' court experience. Of the 30 lawyers with extensive court experience (averaging over 31 appearances per year) 52% 'strongly' agreed with the statement.

The combined survey responses provided in the chart below indicate that 74% of all respondents agreed or strongly agreed that their clients were disadvantaged by a lack of local access to specialist Magistrates' Courts.

Figure 7 Limited Local Access to Specialist Magistrate Courts: Combined Responses



(Graph 8 in Appendix 7)

While the Department of Justice has established specialist Magistrate courts designed to improve outcomes for defendants and local communities, a systematic commitment to rolling-out these services to regional Victoria has been lacking.

<sup>95</sup> The State Attorney General is currently reviewing the role of some specialist courts in Victoria. See *The Age*, above n 77.

There are currently 54 Magistrates' Court locations throughout Victoria, yet the roll-out of many of the specialist courts and court related programs is limited to a relatively small number of metropolitan and larger regional centres. Examples of Magistrates' Court specialist courts and their locations include (*Current as at April 2011*):

- *Drug Court (Established 2002)*. Available at Dandenong MC only.
- Family Violence Division (Established June 2005) and Specialist Family Violence Service. Available at Heidelberg, Melbourne, Frankston, Sunshine, Werribee and Ballarat.
- Neighbourhood Justice Centre (Established Jan 2007). Available at Collingwood only.
- *Koori Court (Established 2002)*. Available at Bairnsdale, Broadmeadows, Latrobe Valley, Mildura, Shepparton, Swan Hill and Warrnambool Magistrates' Court. Children's Koori Courts are also located in Melbourne and Mildura.
- *Industrial Division*. Available at Melbourne Magistrates Court only, can be held at regional courts by 'special' arrangement.
- *WorkCover Division*. Available approximately 10 weeks at each of the principal regional courts.
- *Sexual Offences List (Established 2007)*. Available at Melbourne, Ballarat, Bendigo, Geelong La Trobe Valley, Mildura and Shepparton.
- Victims of Crime Assistance Tribunal (VOCAT) (Established 1996). Available at regional courts.
- *Children's Court*. While the Children's Court holds hearings at regional courts (and at metropolitan courts for criminal division matters only), the local Magistrate presides over these hearings. At the Melbourne Children's Court, a specifically designed Court with attached services and programs, is presided over by Magistrates with expertise in this area of law.
- Assessment and Referral (ARC) List Pilot Court program (Established 2010). Available Melbourne only.

Where specialist courts and related services are made available outside metropolitan Melbourne they are generally limited to the larger regional centres and the infrequency of their visits may significantly reduce their effectiveness regionally. Those living in smaller regional towns using specialist jurisdictions are often required to travel to metropolitan Melbourne or to a large regional centre to attend those jurisdictions.

### **Regional Magistracy**

Demands on Magistrates presiding over regional courts can vary to a large extent from those based at metropolitan courts and the Melbourne Magistrates' Court, with regional Magistrates required to sit on a greater range of jurisdictions. In addition to Criminal and Civil matters, regional Magistrates may also be required to sit at Children's Court, Family Violence Orders, Koori Court, Coroner's Court, as Victims of Crime Assistance Tribunal members, and on matters under the Federal Family Law jurisdiction.

In general, Magistrates undertake a three-year 'Assignment' term which may be renewed at least once. Magistrates at smaller regional centres and visiting courts can be under greater local public scrutiny and pressure than Magistrates at metropolitan and larger regional

centres.<sup>96</sup> They can also experience greater limitations in the sentencing options available to them, as a consequence of a reduced number of court and community based support and rehabilitation programs.<sup>97</sup>

Various, and sometimes conflicting, comments were made by interviewees for this research in relation to the character and propensities of regional Magistrates. The descriptions ranged from 'conservative and harsh' to 'too flexible and lenient'. An advantage for solicitors presenting at regional courts, expressed by a number of interviewees, was 'knowing the Magistrate'. This, according to several solicitors interviewed, meant they were aware of and could respond to the Magistrates 'quirks'. Others suggested that having a local Magistrate who was familiar with the region or town meant that 'they know the areas issues and services in each town'. In bail applications for example, this meant that Magistrates familiar with local services, were more likely to set bail terms which reflected conditions which could be reasonably adhered to.

In relation to Magistrates' Court civil matters, interviewees raised particular concerns. The Magistrates' Court civil jurisdiction hears matters involving property or financial disputes up to a value of \$100,000; a substantial amount for many small businesses. In one instance a regional solicitor interviewed suggested that "priority is given to criminal cases over civil cases" ... and gave an example of where "a Magistrates' Court civil matter was adjourned 6 times over 12 months, which resulted in a client giving up and agreeing to an unsatisfactory settlement."

Another issue frequently raised by interviewees was the lack of expertise in civil matters by some regional Magistrates, which they suggested resulted in poor decisions. Several interviewees understood this to be due to their ranks largely being drawn from lawyers and barristers with criminal law expertise. As a consequence, interviewees indicated applications may be submitted for hearings before the Melbourne Magistrates' Court rather than regional courts, to ensure the expertise is available, or occasionally "civil Magistrates will come up for larger cases". Administrators within the Magistrates' Court however suggest that this rarely occurs.

The Magistrates' Court of Victoria also has the power to hear a limited number of Federal Family Law matters related to children, property and intervention orders, as well as domestic violence matters. Concerns were raised by interviewees in relation to the expertise of regional Magistrates to hear Federal Family Law matters.

Ongoing and extensive professional development training is provided to Magistrates across the range of jurisdictions at which they may be sitting and to assist in their various functions. The concern of interview participants was generally around the infrequency of sittings within some jurisdictions, which they claim render Magistrates less experienced compared with their counterparts who work either specifically or more frequently within those jurisdictions. When this was tested through the research survey however, the concerns raised by interviewees were not generally supported.

Further, following these comments by interviewees, a specific question addressing this issue was put to lawyer survey participants regarding the level of judicial skill of regional Magistrates. The statement *Compared to their metropolitan counterparts, people attending rural/regional courts are more likely to experience a lower level of skill of judicial officers at*

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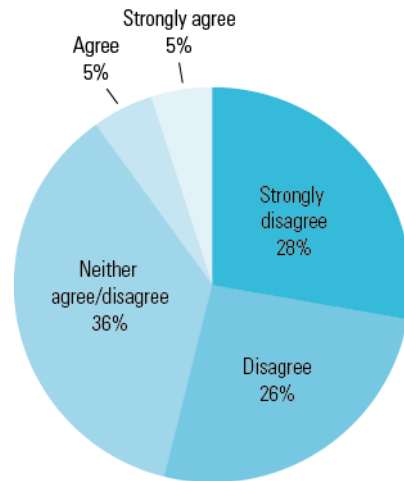
96 See Russell Hogg and Kerry Carrington, *Policing Rural Australia* (Irwin Law, 2006) 98; and Elaine Barkley, Joseph Donnermeyer, John Scott and Russell Hogg, *Crime in Rural Australia – Hogg Punishment and the Courts in Rural Australia* (The Federation Press, 2007) 167–179.

See also Kristy Hess and Lisa Waller, 'Naming and Shaming: Media Justice for Summary Offenders in a Regional Community?' (unpublished Conference Paper) <<http://www.deakin.edu.au/buslaw/law/trjc/papers/hesskwaller1.pdf>>.

97 Michael King, 'Applying Therapeutic Jurisprudence in Regional Areas – The Western Australia Experience' (2003) 10(2) *Murdoch University Electronic Journal of Law* 2.

*local courts*, was largely disagreed with by the majority of the lawyers surveyed. As the chart below indicates, only 10 per cent agreed with the statement, while 53 per cent disagreed and 36 per cent neither agreed nor disagreed.

Figure 8 Lower Level of Judicial Skill: Lawyers' Survey



(Graph 53 in Appendix 7)

While this suggests an overall satisfaction with the performance of regional Magistrates, the interview comments above indicate a number of areas which should be further explored.

#### A note on mediation at regional Magistrates' Courts

Interviewees indicated that the availability of quality mediation services to regional communities, particularly in relation to commercial/civil matters also remains limited. With small business in rural communities often unable to afford litigation and the process and outcomes of mediation being more compatible with the reality of living and working within rural and smaller regional communities, mediation holds a particular advantage for these communities. However, there are also issues in relation to the ability to provide mediation services in regional areas.<sup>98</sup>

Currently there are two geographically limited mediation programs established by the Magistrates' Court of Victoria and the Dispute Settlement Centre of Victoria. The first, is the Diversion to Mediation Program which operates at the Broadmeadows, Dandenong, Frankston, Heidelberg, Melbourne, Ringwood, Sunshine, Werribee and Moorabbin Magistrate Courts. The Diversion to Mediation Program is a voluntary program, predominantly focused on intervention order applications and neighbourhood disputes.

The second program, the Court Annexed Mediation Program, is a pilot program established in 2007 making mediation compulsory for all defended civil disputes at participating courts, where amounts are under a prescribed sum of money.<sup>99</sup> This is a free program which was initially piloted in Broadmeadows Magistrates' Court and has expanded to include Sunshine and Werribee, and in August 2009, the Latrobe Valley (Morwell). For all these courts, with the exception of the Latrobe Valley, the amounts sought must be \$40,000 or less, while for the Latrobe Valley, the amount is \$10,000 or less. The rationale for this difference is not clear. The

98 Frances Gibson and Francine Rochford, 'Dispute Resolution in Rural and Regional Victoria', La Trobe Law School Legal Studies Research Paper No. 2010/4.

99 State of Victoria, *Mediation Pilot at Broadmeadows, Sunshine, Werribee and LaTrobe Valley Magistrates' Courts* (30 May 2011) Magistrates' Court of Victoria  
<<http://www.Magistratescourt.vic.gov.au/wps/wcm/connect/Magistrates+Court/Home/Civil+and+Money+Matters/Procedural+Information/MAGISTRATES++Mediation+Pilot++Broadmeadows+Sunshine+Werribee+Latrobe+Valley>>.

lack of such programs at regional Magistrate's Courts is again disappointing, given the potential benefit which would be gained by regional communities. The intentions of the Department of Justice and Magistrates' Court to roll-out these programs and a timeframe for doing so, are not forthcoming.

In addition to the two mediation programs described above, there is also a voluntary pre-hearing Mediation program which is understood to be available at all courts at the discretion of the court registrar. In this instance, mediations are generally held for more complex matters, where the amount in dispute is \$30,000 or more, and mediators can be selected by the disputing parties.<sup>100</sup> The comparative extent to which pre-hearing mediations are offered or used at regional, compared with metropolitan courts, is not known,<sup>101</sup> however the collation of comparative data would be valuable.

### Court facilities and services

#### **Recommendation 6**

That a commitment be given by the State Attorney General to improve facilities and services provided at 'satellite' regional Magistrates' Courts, including security and the provision of safe, separated waiting areas, video conferencing facilities and soundproofed interview rooms. Greater investment should also be made to the consideration of 'virtual courts' for specialist jurisdictions and satellite courts in regional areas.

Effective administration of the law extends to the equitable provision of the infrastructure necessary for the delivery of justice system services. Court buildings and facilities can impact greatly on the experience and outcomes for those appearing at Magistrate's Courts. This is further compounded in regional Victoria where, in addition to the growing number of Magistrates' Court jurisdictions, most other courts including the County Court, the Supreme Court, the Federal Magistrates' Court and VCAT, also rely on Magistrates' Court venues and facilities. The closure of approximately 65 regional courts over the last 30 years<sup>102</sup> has further compounded the issue with the remaining regional courts being busier with an increasing volume of cases. A growing number of court programs and services, in addition to the increasing participation of local agencies as a result of the increasing use of diversionary programs under the therapeutic jurisprudence model, adds further demands on existing court spaces and facilities.

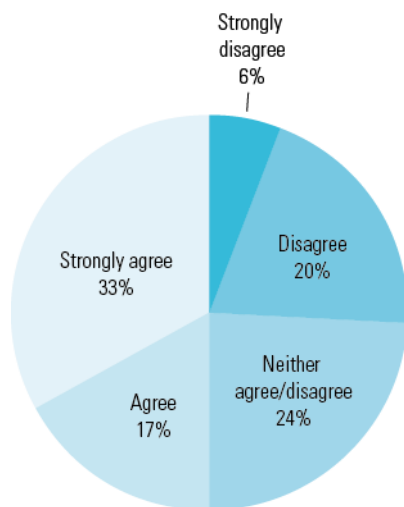
Various interviewees raised issues regarding the state of court buildings and lack of facilities and services. Following this feedback, survey participants were asked if they thought people attending regional courts *are more likely to experience a poorer standard of physical amenity at some courts (condition, layout, facilities)*. Responses to this question did not confirm disadvantage. Fifty per cent of respondents agreed with the statement, the majority (33%) of whom strongly agreed. A further 24% neither agreed nor disagreed, while 26% disagreed.

100 State of Victoria, *Pre-Hearing Conferences and Mediation* (28 March 2011) Magistrates' Court of Victoria <<http://www.Magistratescourt.vic.gov.au/wps/wcm/connect/justlib/Magistrates+court/home/civil+and+money+matters/procedural+information/Magistrates++pre-hearing+conferences+and+mediation>>.

101 For further discussion on the use of Court based Alternative Dispute Resolution process in see Victorian Law Reform Commission, *Civil Justice Review*, Report No 14 (2008).

102 Parliament of Victoria, above n 65, 290.

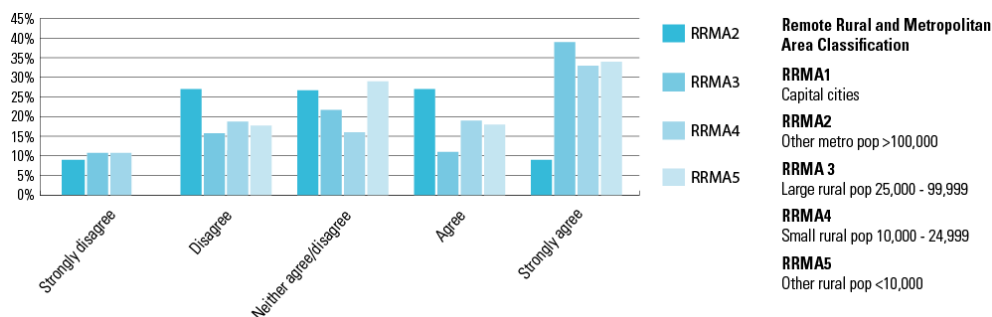
Figure 9 Physical amenity: Combined Responses



(Graph 40 in Appendix 7)

However, when the responses are categorised by the size of the towns, a general pattern emerges. As would be expected, the strongest agreement to the statement that there is a *poorer standard of physical amenity*, was provided by those from locations other than the large regional centres. This is however not an absolute position and reflects the fact that the amenity of some regional courts has improved over the past few years, while others have declined.

Figure 10 Location by Position on Courts Physical Amenity: Combined Responses



(Graph 43 in Appendix 7)

Statements by Human Service participants in an open-ended section of the survey included:

- “Safety issues for women and children experiencing domestic violence. There is often no ‘safe’ waiting place, many become intimidated and leave or pull out of the process.”
- “Smaller circuit courts often have no interview rooms or waiting areas and no facilities for secure spaces or remote witness facilities.”
- “I am a regional outreach diversion worker and attend to clients eligible for CISP or Credit Bail but services are not available at some country courts and there is no space provided to carry out assessments.”

Further survey participant comments in relation to the amenity of courts are included within the Survey Analysis Summary in **Appendix 7**.

Feedback from interviewees and survey respondents in relation to the amenity of regional courts may best be divided into three broad categories; buildings, facilities and security.

## Court buildings

The various state of court buildings in regional Victoria contrast significantly. While there have been a number of major refurbishments and new court buildings over the years, a number of regional courts remain in poor standard. Issues raised by interviewees and survey participants largely highlighted the lack of space: to confer with clients; for visiting programs to assist/support clients; and for victims and witnesses to sit separately while waiting for their hearings. In smaller regional centres the issue of court overcrowding was frequently raised, with participants waiting outside the court facility, which is usually on a main street, in full public view. Poor acoustics was another concern raised in relation to the in-ability to have private conversations.

These issues can directly impact on outcomes for court participants. For example, one interviewee assisting VCAT clients at the Mildura Magistrates' Court indicated that, prior to the provision of designated court space for conferencing/interviews (now available at the new court complex) pre-hearing settlements were much less likely as VCAT clients "simply had no appropriate private space to negotiate pre-hearing."

Even with the establishment of new or renovated courts, ineffective design can lead to a reduced capacity for the courts. For example criticism has been raised in relation to the relatively new Mildura Magistrates' Court which, with holding cells only available to one of the two courts, has reduced its capacity to run criminal matters at both courts.

The comparatively poor state of regional courts has been raised by Chief Justice Gray in a number of Annual Reports. In consecutive Magistrate Court Annual reports (2007-2008, 2008-2009 and 2009-2010), Chief Justice Gray raises concerns that "budget for capital improvements and minor new works has not kept pace with other, also insufficient, budgetary increments. This has created an enormous pressure on infrastructure."<sup>103</sup> In these annual reports Chief Justice Gray particularly cites the Shepparton and Bendigo Courts. Both these courts are regional headquarter courthouses, the effective functionality of which impacts on the entire region they service. The smaller courts at 'satellite' locations are even less likely to see the "urgent refurbishment, painting and the installation of appropriate modern facilities, including some modest improvements in bathrooms and toilets (needed)."<sup>104</sup>

Given the rationale for the major closure of courts following the 1984 Court Needs Study was in part the physical condition, the limited potential for the updating of many courts and the need to rationalise resources,<sup>105</sup> it is concerning that a number of those that remain continue to suffer poor condition. It is also a concern that this may provide a rationale for further closures in the future.

For assault, sexual assault and domestic violence related matters, the physical amenity of a court may also be a disincentive to attending. Without separate space for victims, the close proximity of the assailant and the very public nature of small regional courts compared with the anonymity of courts at larger centres, may be enough to dissuade attendance.

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<sup>103</sup> Ian Gray, above n 83.

<sup>104</sup> Magistrates' Court of Victoria, Magistrates' Court of Victoria Annual Report 2007-2008 (2008).

<sup>105</sup> Parliament of Victoria, above n 65, 290.

## Court security

Security has become a major issue for the Magistrates' Court. In his 2005-2006 Annual Report, Chief Magistrate Gray stated that "There is a steadily increasing number of security incidents at Magistrates' courts, some of them very serious. . . . Court users, court staff and Magistrates are exposed to an increased level of risk. . . . All courts should be provided with metal detection technology combined with the presence of security officers – this is the combination that affords the highest level of security." The subsequent 2007-2008 Annual Report indicated a \$15.6 million state budget allocation for security personnel and weapons screening, "Courts in priority areas will be serviced first, with other Magistrates' Courts across the state to receive a security upgrade over the next four years."<sup>106</sup>

As at early 2011, such upgrades appear not to have reached most regional courts. While all metropolitan courts have full security including security staff and metal detectors, based on the comments of court staff, no regional court (with the exception of the Geelong Courts) has these facilities. This lack of security is also within the context of an ever increasing family violence caseload, with over 30,000 cases initiated in the Magistrates' Court in 2010.<sup>107</sup> These cases often involve strong emotions and may place victims, court staff and the general public at risk. As one survey participant indicated, "People feel threatened and unsafe and intimidated in smaller regional courts. They (women involved in domestic violence disputes) often have to stand outside, behind the court as a group for protection". Another survey respondent indicated that there are "Safety issues for women and children experiencing domestic violence. There is often no 'safe' waiting place, many become intimidated and leave (court) or pull out of the process."

## Video Conferencing facilities and Information and Communications Technologies (ICT)

Interviews with Magistrates' Court staff indicate that video conferencing facilities are available at all metropolitan courts and headquarter regional courts (for example Geelong, Ballarat, Bendigo, Mildura, Shepparton, and Morwell) and other regional multi-jurisdictional courts. They are not available at approximately 15 smaller regional courts including 'visiting courts', where Magistrates may attend one or more days a week.

Access to video conferencing facilities at smaller regional courts could potentially provide them with access to jurisdictions and services currently not available or of limited availability at their location. Potential benefits include for example:

- an expanded use of Specialist Magistrates' Courts, such as the WorkCover Division, Industrial Division, and Family Violence Division to these locations
- the delivery of court programs currently not available at smaller regional centres, for example the CISP and Credit Bail programs, and the Mental Health Court Liaison Officer Service
- access to other jurisdictions such as VCAT, the Federal Magistrates' Court and mediation services
- reduced requirement for travel by witnesses and those providing experts evidence
- reduced requirement for travel by regionally based lawyers conducting litigation, which in turn, reduces costs to clients – may be particularly useful for pre-trial civil and criminal hearings
- reduced requirement for travel by remand prisoners to local courts for preliminary hearings (Remand Centres have video conferencing facilities available for this purpose).

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<sup>106</sup> Magistrates' Court of Victoria, *Magistrates' Court of Victoria Annual Report 2005-2006* (2006), 4 and Magistrates' Court of Victoria, above n 104, 6.

<sup>107</sup> Magistrates' Court of Victoria, above n 89, 26.

Video conferencing set-up costs are expensive (estimated at around \$250,000 per location). To a large extent this may be off-set by the efficiencies and accessibility it offers to court participants. This includes better use of a Magistrate's time and the reduce travel time for all parties. Costs at small regional centres and visiting courts where the courts and their facilities are not utilised, could also be off-set by for example the facilities being utilised for relevant education purposes by local communities when not required by the courts. For example, the use of use court video conferencing facilities by local lawyers and client support services to undertake Continuing Professional Development (CPD) Training.

The use of technology in managing information has increasingly created greater efficiencies and accessibility within the justice system. However the viability of applying ICT (information and communication technologies) to 'virtual courts' including the conduct of litigation and presenting evidence, requires careful consideration. In the *Journal of Law Information and Science*, Anne Wallace summarises a number of the issues which may arise in using information technologies in the 'virtual court'.<sup>108</sup> Wallace's article makes particular reference to the limitations for aboriginal people at criminal court, though much of what is raised applies more generally. The limitations presented include those related to culture, language and authority and deference to the court, each of which may be impacted in varied ways by the use of remote audio-visual technology.

The differing quality and dynamic of communicating in courts using remote audio-visual technology, and its impact on equity of the process, are also raised in her article and include the:

- quality of the courtroom experience for the witness
- way that witness evidence is received in the courtroom
- nature of the interaction between the witness and other parties in the courtroom
- ability of the court to maintain control of the courtroom environment
- right of confrontation and cross-examining witnesses to test the strength of their evidence.

A reliance on technology to convey the often complex interactions occurring at court hearings may significantly disadvantage those participants who rely on that technology. These limitations, and the need for processes and protocols to respond to them, are recognised by the Magistrates and County Courts through 'practice notes',<sup>109</sup> and is regulated by *The Evidence Act 1958*,<sup>110</sup> which sets out the various requirements for the conduct of an audio-visual link and audio-link.

Concerns were also raised more generally about the growing use of technology in the provision of justice system related information and advice to regional communities, disadvantaging regions, when compared to their metropolitan counterparts. Eighty-nine per cent of the 52 human service organisations who responded to a *Postcode Justice* survey indicated that there was *a greater reliance on telephone and online legal services, which are of limited value in comparison to face-to-face assistance*.

Current costs for establishing court based video conferencing are high, however advances in information and communication technology (ICT) will improve the service offered, create greater flexibility and inevitably reduce the set-up costs. An internet based system is currently being piloted by the Magistrates' Court of Victoria which may in the future offer advantages over the existing video conferencing facilities. A 'Virtual Magistrate' Pilot is also being

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<sup>108</sup> Anne Wallace, 'Virtual Justice in the Bush: The Use of Court Technology in Remote and Regional Australia' (2008) 19 *Journal of Law, Information and Science* 1.

<sup>109</sup> Magistrates' Court of Victoria, Practice Direction No. 10 of 2004 – Video Conferencing Guidelines, 16 September 2004; County Court of Victoria, Practice Note PNG-1208 – Audio and Visual Standards for Materials Presented in Court, 9 October 2008.

<sup>110</sup> Evidence (Miscellaneous Provisions) Act 1958 (Vic) pt IIA.

reviewed by the court.<sup>111</sup> VCAT, as part of its *Transforming VCAT Discussion Paper* also states its commitment to the greater use of video conferencing in regional areas.<sup>112</sup>

The take-up of audio visual technology in accommodating remote hearings has been slow. While there are limitations in the technology delivering a process comparable to face-to-face hearings, the set-up costs have also tended to be a major restrictive element. Caution in the use of audio visual technology in hearings is well founded. However, the personal and financial costs to participants in travelling distances to have a matter heard, if indeed they proceed with a formal court processes to resolve their dispute, given the associated time and financial costs, should also be part of the consideration in offering remote hearings.

## County Court

### **Recommendation 2**

That the State Attorney General commission an independent review of County Court practices and procedures where they impact on users of rural and regional circuit courts. The review is to have particular reference to addressing the current inequity between regional and metropolitan processes for setting hearing dates; the impact of 'circuit counsel'; and strategies for improving the availability of senior barristers, Senior Crown Council and related Office of Public Prosecutions services to regional courts.

The County Court hears approximately 3% of all criminal and civil matters in Victoria.<sup>113</sup> These are largely serious indictable (involving a judge and jury) criminal and civil offences covered under a number of statutes. With approximately 1870 circuit court cases initiated in the 2008/2009 period, this represents approximately 17.5% of the 10,600 cases commenced in the County Court during that period.<sup>114</sup> Proportionately, approximately 10% fewer cases than would be expected with 27% of Victoria's population living in regional areas.

Major issues were frequently raised by solicitors interviewed in relation to the County Court hearings and the setting of hearing times at regional circuit courts, which are discussed below.

### **Allocation of hearing dates at County Court circuit courts**

Most lawyers and barristers who participated in interviews and had experience of representing clients at County Court regional circuit hearings, raised concerns regarding the variation in County Court procedures in the setting of hearing dates, between metropolitan and regional courts. These variations in procedures exist for both criminal and civil cases and are established under a number of County Court Practice Notes, including the County Court Civil Procedure Rules,<sup>115</sup> the County Court Criminal Procedure Practice Notes,<sup>116</sup> and the County Court Criminal Jurisdiction Case List Management System (CLMS) Practice Notes.<sup>117</sup>

111 Magistrates' Court of Victoria, above n 107, 30.

112 Victorian Civil and Administrative Tribunal, *Transforming VCAT - A Three Year Strategic Plan 2010/11 – 2012/13* (2010) 28.

113 Productivity Commission, above n 68.

114 County Court of Victoria, *County Court of Victoria Annual Report 2008-2009* (2009).

115 *County Court Civil Procedure Rules 2008* (Vic). Version incorporating amendments as at 1 January 2010 Order 48 - Setting Down for Trial, 48.09 "Sittings for which trial set down. Clause (2)" Setting down for trial elsewhere than in Melbourne shall be taken to be for the next sitting of the Court at the place for which it is set down for trial, unless the Court otherwise orders."

116 County Court, *Criminal Procedure Practice Note PNCR 2-2010* (4 January 2010) 31, 8. The Criminal Procedure Practice Note makes specific note that "Practices vary for circuit court listings" but does not specify the nature of those variations. It does however indicate in relation to plea hearings that "For Melbourne matters, a plea date will also be provided."

117 County Court, *Criminal Jurisdiction Case List Management System (CLMS) Crimes (Criminal Trials) Act 1999 Practice Notes No 1 of 2000*, 13 June 2000.

The County Court Practice Notes establish a variation from the Melbourne County Court in procedural arrangements for regional circuit courts, placing circuit courts at a considerable disadvantage in a number of ways. Unlike the Melbourne County Court where notification of a specific day for the commencement of a hearing is provided months prior to the hearing, circuit courts notification is initially only given for the commencement date of a circuit sitting period; usually the month of the circuit sitting. Advice on the actual commencement day of a hearing is often only provided one to three days prior to the day of the hearing.

For practitioners and their clients at County Court circuit courts, the inability to work to a specific hearing date until only days prior to a hearing, can mean a significant disadvantage, specifically with the reduced capacity to secure well briefed counsel, expert evidence and witnesses. This potentially results in inequitable outcomes for regional circuit court users in comparison to their metropolitan counterparts. One Horsham solicitor indicated that “because the County Court doesn’t give a hearing date but rather the sitting date, our hearing may occur any time within that month, with as little as 24 hours notice, making it very difficult to engage suitably experienced counsel, organise character referees and arranging expert witnesses.”

According to Legal Services Board figures, there are currently only 8 of the 1852 practising barristers in Victoria, registered as having chambers outside Melbourne.<sup>118</sup>

The difficulty in retaining barristers with appropriate experience was raised by 37% of lawyers participating in the *Postcode Justice* survey; a notable proportion given the smaller number of survey participants whose work would necessarily require the services of a barrister. One of the few Melbourne based senior barristers with extensive circuit court experience, interviewed for this research, stated that “Barristers tend not to take on country trials. For circuit courts less than 24 hours notice is not uncommon - in Melbourne, you may have 12 months to hold a brief and plan”. It was also noted by interviewees that, where senior barristers had been secured and briefed for a circuit court hearing well in advance, they will often be unavailable on the day of the hearing due to the short notice and commitments at metropolitan courts.

The expectation of legal representatives at circuit courts is set out in the County Court *Criminal Jurisdiction Case List Management System (CLMS) Practice Notes*. These Notes specifically require that practitioners at circuit courts “must be ready to proceed on short notice and not necessarily in the listed order”,<sup>119</sup> such a requirement could not be found within Practice Notes relating to Melbourne County Court hearings and as such, significantly disadvantages participants at circuit courts.

A number of solicitors also raised the issue of the difficulty in finding senior barristers prepared to travel or risk the likely event that their trial would be adjourned. According to interviewee solicitors, if they are able to gain the services of a senior barrister at regional circuit courts it would mean significantly greater costs to cover their time and travel, which are thereby passed on to the client. One barrister interviewed indicated that regional circuits were more likely to “either get a very junior barrister desperate to get County Court work, or a solicitor will hold onto a brief in the hope of getting a barrister at short notice.”

Interestingly, court administrators who oversee the management of regional Country and Magistrate court sitting, presented a very different perspective upon interview. They suggested that, rather than an example of disadvantage for regional circuit participants, this issue reflected a lack of familiarity with or in some cases, a manipulation of the circuit court

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<sup>118</sup> Legal Services Board, above n 9.

<sup>119</sup> County Court, above n 117.

Both items 3.5 in relation to Trials, and 3.6 in relation to Pleas, specifically refer to variations for circuit courts in comparison to Melbourne sittings and specify that ‘parties must be ready to proceed on short notice.’ No reference to the need to be ‘ready to proceed on short notice’ could be found in relation to metropolitan sittings.

process by some of those involved. Stating that, over time, “a number of court processes have been introduced, such as mentions etcetera, to try and get solicitors to decide on a hearing but they continue to try and delay”.

For the court administrators, the operational issues of managing a regional circuit court presented particular difficulties. Stating that, “Less than 5% of civil matters actually run at court with 95% of matters resulting in ‘court door settlements’.”

In contrast to this view, it was also indicated by other interviewees who are involved in court administration that, because of the uncertainty of hearing dates, barristers involved with circuit court hearings were often unable to be briefed until closer to the hearings date and as a consequence ‘court door settlements’ tend to occur more often at circuit courts. For parties to the dispute, who have had to deal with the uncertainties and potentially additional costs as a consequence of a protracted legal dispute which could otherwise have been resolved much earlier, the potential disadvantage in comparison to their metropolitan counterparts may be significant.

The substance of these positions requires further investigation, however the County Court acknowledges that there are particular issues faced by circuit courts. In 2009 the County Court commissioned Boston Consulting Group to undertake a review of ‘Circuit Court procedures and protocols aimed at maximising the efficiency and effectiveness of circuit activity.’<sup>120</sup> The review recommended various actions in relation to the co-ordination of listing and sittings, and standardisation of practices across regional courts to reduce backlogs. No details of the review findings could be found in the *2008-2009 Annual Report*. A request made to the County Court Chief Executive Officer, seeking a copy of the Boston Consulting Review, received a response indicating that the document was ‘an internal report’ and therefore unavailable.

It was indicated however, that a number of actions have and are now being put in place by the court including:

- a set of ‘Protocols for Circuit Management’ to assist Judges and court staff in the administration of listings and respective roles
- extending circuit times for a set period to reduce delays
- the establishment of an additional role to assist Circuit Registrars
- greater use of circuit data to inform the establishment of rosters.

An additional action recently introduced by the Victorian Coalition Government Attorney General is to locate Judges at courts at the major regional centres (Geelong, Ballarat, Bendigo and Latrobe Valley) on an ongoing basis.

While these actions are applauded and will assist in managing court efficiencies, the problem of short notice of a hearing date at regional circuits remains. Correspondence with County Court staff indicated that, while cases can be listed with certainty at the Melbourne County Court because of the pool of Judges available, circuit courts are not able to list cases in the same way, as most often only one Judge sits at any given time. This is further restrictive by many regional hearing locations having only one courtroom available for County Court circuits, thus preventing the appointment of additional Judges to a circuit to accommodate fluctuations in demand.

Concern regarding a lack of date certainty for Country Court trials has been raised with past inquiries, including the Victorian Parliamentary Law Reform Committee - Review of Legal Services in Rural and Regional Victoria in 2000.<sup>121</sup> The issue is not exclusively a concern for defence counsel. In the Office of Public Prosecutions (OPP) Annual Report 2006-2007,

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<sup>120</sup> County Court of Victoria, above n 114, 12.

<sup>121</sup> Parliament of Victoria, above n 40, 345.

comment was made by Suzette Dootjes, the OPP Manager of the Eastern section regarding the difficulties in meeting the short notice for regional hearings, stating that, "County Court scheduling on circuit also operates differently from the city. . . . this means that cases can be moved up the list fairly quickly, creating case preparation and witness availability problems for the OPP's solicitors."<sup>122</sup>

While the flexibility of listing hearings at circuit courts may create the efficiency and 'productivity' the County Court seeks,<sup>123</sup> largely to accommodate a certainty of flow of cases when a circuit judge is present, the implications for procedural fairness and 'natural justice'<sup>124</sup> are significant.

At Civil Court circuits which may sit for typically, a month at a time, with a small number of barristers representing plaintiffs and defendants, it was suggested by one interviewee that 'Circuit Counsel' who regularly represent firms at circuit hearings, often build relationships to the extent that the outcome of matters are determined prior to a hearing, they "then turn up at court the next day to formalise their settlement in court". While this is a very serious indictment of the process, there are a number of other issues relating to Circuit Counsel which should also be considered. See *A note on 'Circuit Counsel'* below.

Issues resulting from the uncertainty of County Court circuit hearings also arise for small regional legal practices, affecting their ability to provide services to other clients in their communities. As one lawyer from Sale indicated, "County Court matters create a real problem where you may have only a day or two to prepare. . . (at) circuit you may have a whole bunch of matters to deal with at the one time (which). . . also affects other client appointments, . . . (while) other Magistrates' Court matters you may be involved in will require reallocation or adjournment".

An additional disadvantage also arises at regional criminal courts with the selection of prosecuting counsel, a role of the Office of Public Prosecutions (OPP). There are currently nine Senior Crown Prosecutors and seventeen Crown Prosecutors under the Director of Public Prosecutions.<sup>125</sup> To a large extent prosecutors representing the crown at regional circuit criminal matters are drawn from private barristers; 'in house' prosecutors primarily represent matters at Melbourne courts. The experience of private barristers acting as prosecutors will vary, with many having extensive experience in this role. However, for those with limited experience as prosecutors, access to Senior Crown Prosecutors has been significantly limited in comparison to their Melbourne counterparts and has the potential to again significantly impact on the quality of representation and the outcome of cases. As stated by one interviewee, "Crown prosecutors have an expertise which rarely goes to the country . . . Crown Prosecutors are accessible to metropolitan barristers being briefed but junior barristers on circuit don't have the same degree of access or expertise".

It should be noted that the OPP has undertaken several recent initiatives in serving regional Victoria. This includes initiating a Regional Prosecutions Directorate in late 2009, together with a Regional Prosecutions Directorate Manager, to deal with the 'Prosecution of major crimes in regional Victoria. . . as part of a strategy to enhance the delivery of regional prosecutions across the State.'<sup>126</sup> In 2010 the OPP established its first regional office, in Geelong.<sup>127</sup> It is hoped this will assist in responding to the issues raised by interviewees.

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122 Office of Public Prosecutions, *2006 – 2007 Annual Report* (2007) 32.

123 Ibid item 3.11. 'It is the Court's objective to make circuits as productive as possible in the disposal of pending cases.'

124 The rules and procedures to be followed by a person or body with the power to settle disputes chief among which are that the adjudication should be unbiased and given in good faith, and that each party should have equal access to the court and should be aware of arguments and documents adduced by the other.

125 State of Victoria, *Office of Public Prosecutions – Office Structure*, Office of Public Prosecutions (11 March 2011) <<http://www.opp.vic.gov.au/wps/wcm/connect/justlib/Office+Of+Public+Prosecutions/Home/About+the+OPP/OPP++Office+Structure>>.

126 Office of Public Prosecutions, 'Boost for Regional Prosecutions' (Media Release, 9 December 2009) 1 <<http://www.opp.vic.gov.au/wps/wcm/connect/Office+Of+Public+Prosecutions/Home/Media/OPP++Media+Release++09+December+2009++Boost+for+Regional+Prosecutions>>.

127 Ibid.

### A note on 'Circuit Counsel'

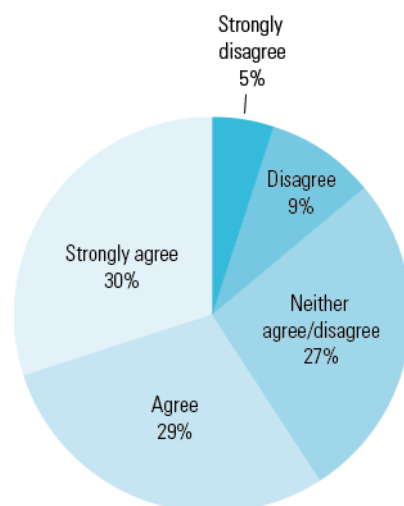
Mainly applying to County Court Civil Circuits as a way of managing the uncertainty of hearing dates, co-ordinating prosecution and defence counsel, interviewees indicated that practitioners would 'piggy back' on the 'circuit plaintiff barrister' and the 'circuit defence barrister' (collectively known as 'Circuit Counsel') (senior barristers often appointed by the larger local law firms and large commercial organisations, for example insurance companies), who have a number of cases set for hearing at each circuit court. While this 'piggy backing' may ensure representation by experienced senior counsel, the practice can potentially result in procedures unique to circuit courts, which adversely impacts on its overall independence. Interviewees indicated that this also applies, to varying degrees, to criminal circuit courts.

Interviewees suggested that not only does this limit the capacity of individuals and their solicitor to determine the barrister who will represent them, it also provides the larger regional law firms, who have the greater volume of cases, to influence the hearing list order. At its worst, this can mean that the firms with 'clout' can delay their cases where, for example, the circuit judge is known to be 'tough' on particular matters, leaving firms with fewer cases at the mercy of the presiding circuit judge. One regional solicitor indicated that, "the firm/s with the strongest economic grip on the circuit will adopt delaying tactics, and will adjourn a flurry of cases, leaving a gutted list ... conversely where the visiting judge is perceived to be 'softer', the reverse effect occurs." The frequency and impact of 'circuit counsel' arrangements requires further investigation than is possible here.

### Hearing delays

When survey participants were asked if they thought *regional clients were disadvantaged by longer hearing delays in some jurisdictions than at metropolitan courts*, the combined response rate was 59% agreeing with the statement. This combined rate however, was strongly influenced by the responses of Human Service organisations, with 82% agreeing; approximately half of whom strongly agreed. In comparison, 42% of lawyer survey respondents agreed and 33% neither agreed nor disagreed.

Figure 11 Longer Hearing Delays: Combined Responses



(Graph 24 in Appendix 7)

While the data discussed later under this heading confirms a variation between regional and metropolitan hearing delays, with regional circuit courts having a slightly slower rate of disposal of matters; the reason for the stark distinction between the two groups impressions is unclear.

Survey respondents cited almost all jurisdictions as examples in which there were delays. However the County Court figured as the most frequently raised jurisdiction in which delays were experienced.

The County Court of Victoria sits at one Melbourne and twelve regional locations: Bairnsdale, Ballarat, Bendigo, Geelong, Horsham, Latrobe Valley, Mildura, Sale, Shepparton, Wangaratta, Warrnambool and Wodonga. In the 2007-2008 County Court Annual Report a total of 10,210 cases were commenced across the County Courts civil and criminal jurisdictions, 9952 were finalised and 9220 were pending (waiting to be heard). The court saw the commencement of a slightly larger number of civil cases (5388) compared to criminal cases (4822) (including appeals cases 2329) during this period.<sup>128</sup>

Also during this period, the County Court regional circuits saw 1841 cases commencing, 1848 cases finalised and 1674 cases pending, with the Geelong, Ballarat, Bendigo, Warrnambool and Latrobe Valley circuits the busiest locations outside Melbourne.<sup>129</sup> Overall, cases being dealt with at the regional circuits constituted 22% of all cases,<sup>130</sup> approximately 5% less than regional Victoria's proportion of the States population (27%).<sup>131</sup>

The disproportionately larger number of hearings in metropolitan Melbourne may be the result of various factors. Interviewee solicitors indicated that this was due to hearing applications involving regional litigants being lodged and heard at the Melbourne County Court. Reasons cited included:

- Matters, particularly within the civil jurisdictions, were heard more promptly at the Melbourne County Court.
- Greater certainty of a set hearing date and fewer adjournments at the Melbourne County Court.
- Easier to access and brief more experienced barristers if the hearing was in Melbourne.
- Expert evidence was more likely to be available for Melbourne hearings.
- Other parties to hearings based in Melbourne, such as insurance companies and banks, issued hearing applications at the Melbourne County Court.

Some of these matters are further explored, later in this report.

However, as a potential consequence of moving matters to the Melbourne County Court there was concern that the frequency of regional circuits may be further reduced or, as has recently been the case with Hamilton County Court sittings, hearings are moved to a larger regional centre.<sup>132</sup>

Hearing delays for the County Court have been a significant issue for some time. The recent introduction of legislation, which prioritise serious sexual offences and 'special hearings' involving children and persons with a cognitive impairment (which require the matter to be heard within 3 months from the defendant being committed for trial), has added further demands on the courts and extended delays for other serious criminal offences and civil cases, particularly at regional courts.<sup>133</sup>

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128 County Court of Victoria, Country Court of Victoria Annual Report 2007-2008 (2008).

129 Ibid 7.

130 Ibid.

131 Australian Bureau of Statistics, above n 42.

132 See County Court of Victoria, *Practice Note PNG 201 2009 – Listing of Hamilton County Court Cases* (2009)

<[http://www.countycourt.vic.gov.au/CA2570A600220F82/Lookup/Practice\\_Notes/\\$file/PNG%201-2009\\_Hamilton%20County%20Court.pdf](http://www.countycourt.vic.gov.au/CA2570A600220F82/Lookup/Practice_Notes/$file/PNG%201-2009_Hamilton%20County%20Court.pdf)>. The Practice Notes do however indicate that setting cases down for 'special fixture' will be considered at the Hamilton Court 'in appropriate circumstances'.

133 Justice Legislation Amendment (Sex Offences Procedure) Act (Vic) 2008 pt 2 s 3; Criminal Procedure Act (Vic) 2009 s 212.

The impact of prioritising serious sexual offences without corresponding resources, and its particular effect on hearings at regional circuits, is confirmed by Judge Meryl Sexton, Judge in Charge of the Sex Offences List, who reported in a 2009 speech to the Criminal Bar Association that, "... almost half of sexual offences cases involve a child or cognitively impaired complainant. For the last financial year, that means about 264 cases. Fortunately for the system, about half of these are pleas of guilty. Otherwise, the system would simply collapse under the load, without more resources to hear and dispose of the special hearing trials. The effect on the rest of the criminal caseload is that the number of 'not reached' cases is increasing. These include other sex offences trials." Judge Sexton further states that "The most devastating effect has been on the circuit lists, particularly in those regions where there was already a backlog, or where there are only two or three circuits a year."<sup>134</sup> Judge Sexton's statement that the system would 'collapse' if the number of guilty pleas were to decrease, indicates the overall precarious state of the County Court and its ability to effectively manage cases within a reasonable time and the particular impact of inadequate resources to regional circuits.

Since Judge Sexton's comments to the Criminal Bar Association, the number of contested pleas and overall numbers of sexual offence cases has increased within the County Court.<sup>135</sup> This is confirmed in the 2010 Department of Justice Annual Report, indicating that "Since reforms began in 2004, there has been a 17.7 per cent increase in the number of rape victims reporting to police."<sup>136</sup>

The 2008-09 County Court Annual Report confirms the concerns of the County Court regarding this issue. In his report, Chief Judge Michael Rozens states that, "The impacts have been felt particularly at the regional courts where the hearing of sex offence cases has often been at the expense of the general list ... our resources have been stretched to the limit."<sup>137</sup>

The Department of Justice confirms the regional impact of sexual offence hearings stating, "This has been particularly felt in regional circuits of the County Court."<sup>138</sup> The Department of Justice Annual Report highlights recent measures to respond to this with "the provision of two extra trial judges in the County Court" and "introducing more frequent regional hearings to reduce the backlog."<sup>139</sup> The Victorian Attorney General proposes further measures in response to concerns regarding regional courts by establishing permanent County Court Judges in regional areas, stating that "We will also work with the CES (the new Courts Executive Services Division) to enable judges to be based in the major regional centres of Geelong, Ballarat, Bendigo and Latrobe Valley (Morwell) on an ongoing basis, rather than just on short-term circuit visits as at present."<sup>140</sup>

While the Department of Justice claims a recent dramatic reduction of those regional County Court cases pending for over two years,<sup>141</sup> this is yet to be confirmed by Productivity Commission data. On a State-by-State comparison, Victoria's courts do not perform well against other States when examining hearing delays. The 2011 Productivity Commission

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134 Judge Meryl Sexton, 'Sex Offence Trial Procedures and Evidence' (Criminal Bar Association Presentation, 20 November 2009) <<http://www.crimbarvic.org.au/docs/CRIMINAL%20BAR%20ASSOCIATION%20PRESENTATION%>>.

135 County Court of Victoria, above n 114, 19.

136 Victorian Government Department of Justice, *Department of Justice Annual Report 2009-2010* (2010) <[http://www.justice.vic.gov.au/wps/wcm/connect/justlib/DOJ+Internet/resources/f/c/fc0b5c0043f5e4f49426f4e640f93f6b/DOJ\\_Annual\\_Report\\_2010\\_web\\_1\\_report\\_of\\_operations.pdf](http://www.justice.vic.gov.au/wps/wcm/connect/justlib/DOJ+Internet/resources/f/c/fc0b5c0043f5e4f49426f4e640f93f6b/DOJ_Annual_Report_2010_web_1_report_of_operations.pdf)>.

137 County Court of Victoria, County Court of Victoria Annual Report 2008-2009 (2009) 5.

138 Victorian Government Department of Justice, above n 136, 13.

139 Ibid. See also County Court of Victoria, 'The County Court is Reducing Delays in Regional Victoria' (Press release, 5 April 2011) <[http://www.countycourt.vic.gov.au/CA2570A600220F82/Lookup/News\\_and\\_Statements/\\$file/County%20Court%20Statement%20re%20circuit05A%20pr2011.pdf](http://www.countycourt.vic.gov.au/CA2570A600220F82/Lookup/News_and_Statements/$file/County%20Court%20Statement%20re%20circuit05A%20pr2011.pdf)>.

140 Robert Clark, *Coalition to Slash Court Delays*, Robert Clark MP (23 November 2010) <<http://www.robertclark.net/news/coalition-to-slash-court-delays/>>.

141 County Court of Victoria, above n 139.

report on Court Administration<sup>142</sup> indicates that 26.4% of the Victorian County Courts' pending criminal matters (non-appeals courts) take longer than 12 months to be heard; the highest percentage of any state recorded for that year. The State with the next longest waiting period is South Australia, where the District Court has 23.6% of its criminal cases delayed for at least 12 months. For criminal jurisdiction taking more than two years to be heard, Victoria again has the longest delays with 7.5% of cases. Queensland is next, with 6.3% of cases taking over 2 years to be heard; while NSW has the shortest with 0.4% of cases. While variations will exist between state procedures and case management systems, the Victorian record is consistently poor at the higher court level (County and Supreme) with an overall 26.6% of cases pending for more than 12 months, following ACT with 38.4%. This is in comparison with South Australia 23.3%, Queensland at 16%, Tasmania 12.1%, NSW 6% and Western Australia at 5.9% of criminal cases taking more than 12 months.<sup>143</sup>

For Magistrates' Court matters, the Productivity Commission statistics indicate Victoria sits somewhere in the middle with four States having more delays for cases greater than 6 months, and two with fewer cases delayed for 6 months. For Magistrate Court delays of over 12 months, Victoria fares well in comparison to other States and is second to NSW for frequency of delays for that period.<sup>144</sup>

When making a comparison between delays for regional Victoria circuit courts and metropolitan Melbourne, County Court statistics from 2003/2004 to 2008/09<sup>145</sup> indicate an overall slower rate of the disposal of matters for regional criminal court circuits over that period, with 72.6% of regional cases disposed of within 12 months, compared with 75.3% of metropolitan cases. For County Court civil cases for the period 2003/2009, delays are longer compared with criminal matters at both metropolitan and regional hearings. For regional civil matters, delays are longer with on average across all regional courts of 42% of matters disposed of within a 12 month period, compared with 47% of metropolitan civil matters.<sup>146</sup>

It should be noted that a data set using an average disposal rate over an eight-year period was used, as the statistics for any one twelve month period can fluctuate substantially. The relatively smaller number of cases heard at some regional courts will have an impact on the overall average. For example, Bairnsdale reported a 100% disposal rate of criminal matters in the 2003/2004 period and a disposal rate of 47% in the 2007/2008 period.

The experiences of those interviewed and the comments of Judge Sexton indicate an impact of delays, which cannot be adequately represented by statistics. One barrister who represented clients at both Melbourne and circuit County Courts indicated at interview that, "For criminal matters, delays are enormous – a one week trial in Melbourne is listed to be heard about 12 months later. At regional circuits it can be many years if the accused is on bail; if they are on remand, it will be quicker."

### Consequences of hearing delays at regional courts

The legal maxim that 'Justice delayed is justice denied'<sup>147</sup> holds true not only on an individual basis but also on societal basis. For an individual, a delay in gaining legal redress can sustain or exacerbate the injustice already experienced, either as a result of a criminal offence or a

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142 Productivity Commission, above n 68.

143 Productivity Commission, above n 68, 28.

144 Productivity Commission, above n 68.

145 Department of Justice - County Court of Victoria, Court Statistics Service, *Inquiry - CLMS #77*. Relates to Percentage of Cases Disposed 2003/04 to 2008/09.

146 Ibid.

147 Attributed to William Gladstone (1809 - 1898) Prime Minister of England four times between 1868 and 1874.

civil injustice. For a community, in this case regional Victorians, delays can lead to an overall lack of confidence in the justice system and its relevance and ability to respond to community needs.

There are also a number of direct implications resulting from delays in County Court hearings, which have been raised by interviewees. These are briefly outlined as follows:

For offenders, victims and witnesses:

- A reduced ability over time to retain a clear recollection of events.
- Greater difficult in securing witnesses.
- For victims, "lives are put on hold, it's seen as unfinished business and they remain a victim longer".
- The duration of delays also affects the impact of the evidence. One example provided was a sexual assault on a fifteen-year-old victim. When called to give evidence two to three years later as an eighteen year old, the impact of the assault may be interpreted by a jury as less significant. Other resource and service based issues in dealing with sexual offences in regional communities are briefly discussed in the Victorian Law Reform Commission Sexual Offences Report (2004) – many of the issues raised within the report remain a concern.<sup>148</sup>
- Delays and frequent adjournments at County circuit courts (no statistics are available from the County Court on comparative frequency of adjournments, though as one interviewee from a state body indicated, there is a "general expectation that a client will need to come to court 5-6 times").
- Leaves victims and offenders with little confidence in the system.
- Delays and adjournments can result in substantial expense for victims and witnesses who are required to travel to and from court and arrange temporary accommodation.
- For young offenders "without a good understanding of the system, the time lag between being charged and going to court results in their believing that the crime has diminished in its importance over time".<sup>149</sup>
- Delays increase both the length and use of remand<sup>150</sup> and provides greater legitimacy for bail applications for often serious offences, resulting in the release of defendants back into their local communities, with potential access to witnesses and victims. See *Gray v DPP* [2008].<sup>151</sup>

For civil matters:

- Because of the priority of sexual offences and serious crime, Civil County Court matters often tend to get pushed back and delays extended.
- As a result there can become greater pressure for clients to acquiesce to inequitable settlements.

Delays are not unique to regional communities, however the evidence above suggests that, for County Court matters, delays are greater outside metropolitan Melbourne. For rural communities, delays compound a view already held by many involved in the justice system, as shown by

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148 Victorian Law Reform Commission, *Sexual Offences Final Report* (1 April 2004) s 2.4.

149 Interviewee comment.

150 Department of Justice data for the period to 30 June 2009 indicated that there were 815 unsentenced prisoners on remand in Victoria at that time. The data provided on a postcode basis indicates a slightly larger proportion of prisoners from rural and regional postcodes held for 3 months or less compared to the proportion of regional Victoria's population (31% held for up to 3 months compared to Melbourne metro areas of 69% held for the same period), but with an overall proportion compatible with population difference between regional and metropolitan Melbourne - 28% and 72%, respectively.

151 *Gray v DPP* [2008] VSC 4.

survey responses, that there has been a history of a limited and under-resourced presence of courts and court services in regional communities. As stated by one interviewee, a lawyer from a regional community legal service, “there is a sense in rural and regional Victoria that you are forgotten... a sense that you just have to put up with second-rate services”.

The work of the Department of Justice in recent times to address regional County Court delays should however not go unacknowledged. Revising court processes and particularly, establishing permanent Judges at regional courts are important initiatives which will go some way to addressing regional disadvantage.

## Victorian Civil and Administrative Tribunal (VCAT)

VCAT also received criticism from interviewees in relation to its services in regional Victoria. A review of VCAT by the past President of VCAT, Justice Bell,<sup>152</sup> which has been followed by further consultations under the current President, Justice Ross,<sup>153</sup> indicate issues in responding to the needs of regional Victoria.

Justice Bell’s report confirmed, “relatively poor access to the tribunal by people in outer-suburban Melbourne and country Victorian areas” and further stated that “Lack of access to the tribunal by people in outer-suburban Melbourne and country Victoria was the strongest access criticism made during the community consultation.”<sup>154</sup>

Specific concerns of interviewees participating in the *Postcode Justice* research included:

### Accountability

Poor accountability of VCAT Members at regional circuits due to the lack of recording of hearings. While Melbourne hearings are audio recorded, hearings at regional circuits (at the time of this report), are not. This also has implications for later appeals and interpretations of hearing decisions. Justice Ross has indicated this is now being addressed state-wide.<sup>155</sup>

### Limited regional hearings

Not all VCAT Lists have regular hearings in regional Victoria. Only the Residential Tenancies and the Guardianship Lists are included in the Victorian Law Calendar<sup>156</sup> with specific regional hearing dates allocated for the year. In its review of the year in the most recent VCAT annual report, several of the Lists reports<sup>157</sup> stated, “We heard applications in regional centres when it suited parties and appropriate venues were available”.<sup>158</sup>

VCAT has taken a number of initiatives, perhaps more than most other courts, in responding to the needs of regional communities with a flexible and innovative approach. However some Lists, such as the Land Valuation List, have not to date provided regional hearings and the frequency with which other Lists offer regional hearings is limited.

The VCAT practice of running regional ‘blitz days’ was also identified within the most recent VCAT Annual Report. Under the Civil Claims List the author indicated that, “When a critical mass of applications was reached, we conducted blitz days in regional areas, making it

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152 Justice Kevin Bell, President, Victorian Civil and Administrative Tribunal, *President’s Review of VCAT – One VCAT* (November 2009) <[http://www.vcat.vic.gov.au/CA256902000FE154/Lookup/miscellaneous\\_pdfs/\\$file/president's\\_review\\_of\\_vcat\\_report.pdf](http://www.vcat.vic.gov.au/CA256902000FE154/Lookup/miscellaneous_pdfs/$file/president's_review_of_vcat_report.pdf)>.

153 Victorian Civil and Administrative Appeals Tribunal, above n 112.

154 Justice Kevin Bell, above n 152, 71.

155 Victorian Civil and Administrative Appeals Tribunal, above n 112, 10.

156 Victorian Department of Justice, *Department of Justice Law Calendar 2010 – VCAT Contact Information and Sittings* (2010) <[http://www.justice.vic.gov.au/wps/wcm/connect/ad64a40041180364946fd5c241e6dc3/Victorian\\_Civil\\_and\\_Administrative\\_Tribunal\\_Contacts\\_Information\\_and\\_Sittings\\_2010.pdf?MOD=AJPERES](http://www.justice.vic.gov.au/wps/wcm/connect/ad64a40041180364946fd5c241e6dc3/Victorian_Civil_and_Administrative_Tribunal_Contacts_Information_and_Sittings_2010.pdf?MOD=AJPERES)>.

157 Victorian Civil and Administrative Tribunal, *VCAT Annual Report 2009-2010* (2010).

158 Ibid 41, 42 and 43.

efficient to visit those areas and finalise applications quickly”.<sup>159</sup> While this may be efficient use of VCAT time, it can result in long delays for applicants until that ‘critical mass’ is reached. As one Mildura human service provider indicated, “The Civil Claims List can take up to six months or more as they wait to get sufficient claims to set a hearing list”.

While VCAT has developed flexible processes to respond to regional hearings, for example, directions hearings are commonly conducted by telephone, there remain a number of problems that clearly disadvantage regional applicants. As one interviewee from a small regional centre put it, “urgent hearings are difficult to make. For example, urgent repairs under the Residential Tenancies List can take two weeks to be heard”. “While teleconferencing can happen immediately, you still have to wait for a VCAT member to be available, the court video conferencing facility needs to be booked and there can be problems where physical evidence needs to be tabled.” “In Melbourne people can walk straight in.”

### Regional VCAT venues

VCAT has traditionally used Magistrate’s Courts in regional Victoria to hear cases. While it offers greater security and some degree of administrative support through court registrars and other staff, there have also been disadvantages depending on the layout and resources available, particularly at some of the older Magistrate Courts. VCAT provides mediation services and many of its Lists encourage settlements at informal mediations prior to, or during, hearings. This process can be significantly inhibited without appropriate facilities for parties to privately negotiate compromise. A Mildura based advocacy service provider indicated during interview that the design of the new Magistrates’ Court actually encouraged more satisfactory outcomes for clients, stating that, “prior to the new Magistrates’ Court, there was nowhere VCAT clients could mediate their case with other parties, other than in the foyer or out in the street. The new court has separate areas so people can have more privacy with a separate conference room to discuss settlements, which has resulted in more frequent settlements prior to the hearing.”

### Regionalising VCAT

Through his President’s Review of VCAT, the then VCAT President Justice Bell formally acknowledged the shortcomings of the tribunal in meeting the needs of regional Victoria and committed to expanding hearing locations in regional areas and a decentralisation of services.<sup>160</sup> This was an important initiative which has been taken up by the current President Justice Ross with the development of a Regional Engagement Strategy. Commitments under this strategy include the establishment of 33 new hearing locations by December 2012, the establishment of a mobile service and improvements to telephone and online services. The extent to which this and other initiatives can be implemented however largely relies on the State Government taking the impetus and allocating sufficient resources.

The seeking out of ‘efficiencies’ and ‘creating a more flexible approach’ which are part of the current ‘Transforming VCAT’ plan, should consider not only the improvement of regional accessibility of VCAT services, but also the quality of those services. VCAT’s proposed approach is exemplified in Justice Ross’s statement that, “Historically, Members were assigned to a limited number of jurisdictions within VCAT. This created rigidity and an impediment to our capacity to respond quickly to changes in work volume across our various jurisdictions. We need to use our PD program to enhance our flexibility. Members and staff should be able to work across a number of Lists to ensure that the Tribunal can respond to changes in demand.”<sup>161</sup>

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<sup>159</sup> Ibid 24.

<sup>160</sup> Justice Kevin Bell, above n 152, 71.

<sup>161</sup> Victorian Civil and Administrative Claims Tribunal, above n 112, 12.

While this approach has merit, for both regional and Melbourne VCAT Lists, the expectation of Members moving from specialised expertise to being effective across diverse and often complex jurisdictions (there are currently over 120 Acts of Parliament allowing application and referral to VCAT),<sup>162</sup> may run the risk of reducing the quality and consistency of decisions. For regional circuits, where there will be a smaller number of Members participating across lists compared with Melbourne hearings, the issue may be compounded.

For regional communities, the attraction of the VCAT process is its low cost; no requirement for legal representation; and its less formal, accessible and non-adversarial approach. As an interviewee indicated, “in country towns, people have to live together after a dispute. VCAT hearings are non-adversarial, so outcomes are better for ongoing and close contact.”<sup>163</sup> The expense of litigation and limited availability of legal practitioners in smaller regional centres also makes VCAT a more appealing dispute resolution process for regional communities.

A principle purpose of VCAT “has been to provide Victorians with a low cost, accessible, efficient and independent civil and administrative tribunal.”<sup>164</sup> A criticism of VCAT raised within the VCAT review and indeed by the previous Attorney General, is that VCAT has “become a bit too legalistic, and indeed, there are certain sections of the community that haven’t had full access to VCAT – that includes people who live in regional parts of Victoria”<sup>165</sup> In its submission to the VCAT Review, in reference to the Domestic Building List, but which also could be applied to other Lists, the Consumer Law Centre states, “The increasingly ‘court-like’ nature of this VCAT forum results in financial and psychological disincentives to consumers to pursue legitimate claims.”<sup>166</sup>

Legislation governing VCAT specifically excludes legal representation, across many of its Lists, however, there are several areas of exception and pressure to extend these exemptions. The growing complexity of legislation and need for complex expert evidence also makes it increasingly difficult for self-representation to effectively occur. While VCAT is cognisant of the ‘creeping encroachment’ of legalism, should it continue, it will have a major impact on regional communities with less access to external legal supports and expert evidence.

In his *Presidents Review*, Justice Bell proposed some solutions to this, including a ‘Self-represented Persons Strategy’<sup>167</sup> which included increasing support services to self-represented persons, such as a ‘litigant in person co-ordinator’, an expanded ‘pro bono legal service’, the creation of a self-representation civil law service’, ‘early intervention mediation’, ‘telephone mediation’ and ‘roving mediation’. The extent to which these services have and will be taken up regionally is yet to be determined.

## The Supreme Court of Victoria

The Supreme Court deals with major criminal and civil matters and is Victoria’s principal appeal court, however it manages only 0.4% of Victoria’s court cases.<sup>168</sup> The Court sits at ten locations in regional Victoria. Sittings range from two weeks to three weeks duration, with one to three sittings per year at each location. Sittings are set for either civil or

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162 VCAT, *Legislation – Practice Notes* (25 January 2011) <<http://www.vcat.vic.gov.au/CA256DBB0022825D/page/Legislation-Practice+Notes?OpenDocument&1=25-Legislation-Practice+Notes-&2=-&3=->>>.

163 Interviewee comment.

164 VCAT, *Above VCAT* (7 March 2011) <<http://www.vcat.vic.gov.au/CA256DBB0022825D/page/About+VCAT?OpenDocument&1=10-About+VCAT-&2=-&3=->>>.

165 State Government of Victoria, *Hulls Announces New VCAT President*, Premier of Victoria <<http://www.premier.vic.gov.au/component/content/article/9653.html>>.

166 Consumer Action Law Centre, *Submission to the VCAT Presidents Review*, 12 June 2009 <<http://www.consumeraction.org.au/downloads/VCATreviews submission120609.pdf>>.

167 Justice Kevin Bell, above n 152, 74.

168 Productivity Commission, above n 68.

criminal cases, which means that at some regional locations only one civic or one criminal circuit will occur per year. Most sittings are for a period of two to three weeks. The Supreme Court has recently introduced its Commercial Court Service to one regional location; Geelong. The Commercial Court comprises specialist Judges and Associate Judges who have an expertise in commercial disputes.<sup>169</sup>

Few comments were made by interviewees in relation to the Supreme Court. Given the content of this report is largely the result of issues raised by interviewees and survey responses, and little comment was made in relation to the Supreme Court, there is no discussion as to disadvantages that may be experienced in relation to the Supreme Court in regional Victoria.

It cannot however, be presumed that there are no issues for regional Victoria in relation to the administration and accessibility of the Supreme Court. As the superior Victorian Court, it is important that this court is equally accessible to regional Victorians, and many of the issues raised above regarding the County Court may also apply here.

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<sup>169</sup> See Justice G. T. Pagone, 'The Role of the Modern Commercial Court' (Paper presented at the Commercial Law Conference, 12 November 2009) <[http://www.supremecourt.vic.gov.au/wps/wcm/connect/justlib/Supreme+Court/resources/3/8/3804e68040f66474b376f70ffb994a81/The+Role+of+the+Modern+Commercial+Court\\_12\\_NOV+2009.pdf](http://www.supremecourt.vic.gov.au/wps/wcm/connect/justlib/Supreme+Court/resources/3/8/3804e68040f66474b376f70ffb994a81/The+Role+of+the+Modern+Commercial+Court_12_NOV+2009.pdf)>.

## Chapter 4 - Research Findings: Variation in Penalties and Sentencing

This section of the report is not intended to provide an in-depth analysis of all the issues and the (mainly interstate) research already undertaken in the area of penalties and sentencing variations between regional and metropolitan areas. This issue does however merit attention, as a number of matters relating to penalties and sentencing were raised by interviewees and these matters provide a context for discussion on equity between regional and metropolitan Victoria which require further consideration. While not exclusively within the domain of the Magistrate's Court, this was often the jurisdiction cited. As the principle criminal court dealing with approximately 97% of Victoria's criminal cases, its role in sentencing affects a large proportion of those involved in the criminal justice system. This includes those involved in the over 170,000 criminal offences committed annually,<sup>170</sup> the victims of those offences, their families, and communities.

A number of studies have explored the relationship between rurality, penalties and sentencing over the last 30 years, though there has been surprisingly little research undertaken specific to Victoria. One study undertaken by Roger Douglas and reported in the *Regional Journal of Social Issues*, (1992)<sup>171</sup> suggests that "the theory is inconclusive and the empirical evidence is inconsistent"<sup>172</sup> when attempting to identify difference between rural and urban Magistrates' Court sentencing in Victoria. Douglas does however note a significantly higher rate of non-appearances at rural courts and suggests that the "closure of more and more rural courts will aggravate this state of affairs for rural defendants who, increasingly, will have to make far from negligible outlays in order to defend themselves or make a plea in mitigation".<sup>173</sup>

### Custodial and Community Based Sentences

A 2006 examination by the NSW Standing Committee on Law and Justice,<sup>174</sup> drawing on data compiled by the NSW Bureau of Crime Statistics and Research suggested "that offenders sentenced in country locations are more likely to receive a custodial sentence compared with offenders in the metropolitan area".<sup>175</sup> This discrepancy is largely put down to the lack of community based sentencing options available at rural court locations. The report further states in its Executive Summary that, "The Committee considers it inequitable that the full range of community based sentencing options are not more widely available throughout the State. This impacts not only on offenders in rural and remote areas, who are therefore more likely to go to gaol than their metropolitan counterparts, but also on their families and the community."<sup>176</sup>

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170 Productivity Commission, above n 68.

171 Roger Douglas, 'Courts With Little Conflict: Magistrates' Court justice in Rural Victoria' (1992) 26 *Regional Journal of Social Issues*.

172 Ibid 19.

173 Ibid 35.

174 NSW Legislative Council, Standing Committee on Law and Justice, *Community Based Sentencing Options for Rural and Remote Areas and Disadvantaged Populations* (Sydney, 30 March 2006)

<[http://www.parliament.nsw.gov.au/prod/parliament/committee.nsf/0/b09ba359e47f0703ca25714100013df1/\\$FILE/Community%20based%20sentencing%20options%20for%20rural%20and%20remote%20areas%20and%20disadvantaged%20populations%20Report%2030.pdf](http://www.parliament.nsw.gov.au/prod/parliament/committee.nsf/0/b09ba359e47f0703ca25714100013df1/$FILE/Community%20based%20sentencing%20options%20for%20rural%20and%20remote%20areas%20and%20disadvantaged%20populations%20Report%2030.pdf)>.

175 Ibid 34.

176 Ibid xiii.

Russell Hogg, in *Crime in Regional Australia* also highlights the relationship between limited penalty options and imprisonment. Drawing again on the NSW experience he states that “As a consequence of the paucity of ‘intermediate’ sanctions, offenders in rural and remote communities are more likely to be imprisoned and imprisoned at a distance from their homes.”<sup>177</sup>

While variations will exist between states in relation to legislation, court process, resources and sentencing policy, there remains a parallel between the NSW experience and the situation in Victoria. The limited availability of Victorian sentencing data that compares regional and metropolitan trends however, makes it difficult to explore regional and metropolitan comparisons in any detail.<sup>178</sup>

The lack of community based sentencing options in some regional areas was raised by several interviewees and survey participants. Community based sentencing options rely on the availability and participation of Community Corrections Services and often, locally based support services. While Community Corrections Offices are located in 37 regional locations, there remain parts of the state where these are inaccessible and as a result, will impact adversely on outcomes for regional offenders. Penalties such as Suspended Sentences and Community Based Orders, Intensive Corrections Orders, Custody and Treatment Orders and Parol Orders require a degree of supervision which may not be easily accessible at smaller regional centres. As a survey participant commented, “Department of Corrections refuses to accept defendants eligible for Intensive Corrections Orders because they have no presence in Hamilton.” Further examination similar to the NSW Standing Committee Sentencing Options Review is required in Victoria.

From the comments of interviewees and those of both the recent Victorian CISP Review<sup>179</sup> and the NSW Sentencing Options Review,<sup>180</sup> sentencing can be inconsistent between regions, with outcomes reliant on the availability of services and programs rather than based on appropriateness and equity.

## Community Orders

Offenders may be required to serve their sentence under a community order. These include Community Based Orders, Intensive Correction Orders and Combined Custody and Treatment Orders. As one interviewee indicated, “when Magistrates are aware of a lack of resources available to implement a Community Based Order (CBO), they usual give a fine as an alternative.” Other situations were also cited, including a client with carpentry skills under a CBO, who could not be allocated voluntary tasks in his local towns because of the lack of supervision available there, “but was required to sit in the (regional) court for 3 hours per day to fulfil his CBO.”

According to several interviewees, the distance required to be travelled by some regional offenders to fulfil a CBO also results in greater hardship for other family members. As an interviewee indicated, “CBO’s operating through provincial cities means a person out of town is required to report in regularly, but has had his licence taken away, which sentences another member of his family who has to drive.” As an interviewee suggested, this may also create a larger number of breaches of Orders in regional areas.

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<sup>177</sup> See Russell Hogg, ‘Crimes Courts and Sentencing in Rural Communities’, in *Crime in Rural Australia* (Federation Press, 2007) 172-173.

<sup>178</sup> See A Note on the Availability of Data. - below

<sup>179</sup> Stuart Ross, above n 86, 15.

<sup>180</sup> NSW Legislative Council, above n 174, 34.

## How the Data Compares

When comparing sentencing data between regional and metropolitan Victoria however, a discrepancy in outcomes is not so clear. The table below, based on data provided by the Magistrates' Court of Victoria,<sup>181</sup> on Defendants by Principal Sentence and Court Region is somewhat at odds with the anecdotal evidence provided by interviewees. The data indicates that the provision of sentences such as Community Based Orders in fact slightly favours regional offenders, while sentences of imprisonment occur slightly less frequently in regional areas. While a useful overview, this data combines courts in both the larger regional centres and smaller rural centres, which limits the ability to examine variations between the two. A much more detailed examination of sentencing outcomes is required to provide any categorical commentary on variations between metropolitan and regional courts.

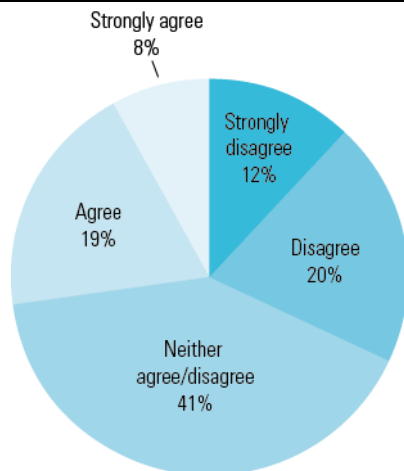
Table 1 Regional and Metropolitan Principal Sentence 2006 – 2009

	Total Regional	Total Metro	Regional %	Metro %
Adjourned for Diversion Plan	4712	11291	6.83%	6.17%
Adjourned Undertaking	7231	17621	10.49%	9.63%
Combined Custody & Treatment Order	11	63	0.02%	0.03%
Community Based Order	4585	8925	6.65%	4.88%
Convicted and Discharged	841	1442	1.22%	0.79%
Detention in a Youth Training Centre	193	210	0.28%	0.11%
Discharged - Proven	6415	8396	9.30%	4.59%
Dismissed - Proven	325	4589	0.47%	2.51%
Drug Treatment Order	0	7	0.00%	0.004%
Fine	35132	103811	50.94%	56.75%
Imprisonment	2859	8016	4.15%	4.38%
Intensive Corrections Order	1068	3632	1.55%	1.99%
Partially Suspended Sentence	539	1139	0.78%	0.62%
Section 19(a) Recognisance	326	1217	0.47%	0.67%
Section 20(1)(a) Recognisance	91	241	0.13%	0.13%
Unknown (Fine or Adj U'taking)	0	0	0.00%	0.00%
Wholly Suspended Sentence	4633	12328	6.72%	6.74%
<b>Total</b>	<b>68961</b>	<b>182928</b>	<b>100%</b>	<b>100%</b>

When comparing results with responses from lawyers participating in the *Postcode Justice* survey, the majority tended to support the view that there are no major disadvantages experienced by regional offenders in relation to penalty options. Lawyer Survey participants were asked if they agree or disagree with the statement, *Compared to their metropolitan counterparts, people living in rural/regional are more likely to be disadvantaged by – Fewer penalty options available at rural regional courts for example Intensive Corrections Orders or Community Based Orders*. Thirty-two per cent disagreed with the statement and 27% agreed, while 41% neither agreed nor disagreed.

<sup>181</sup> Magistrates' Court of Victoria, Defendants by Principal Sentence and Court Region.

Figure 12 Fewer Penalty Options for Rural Regional Clients: Lawyers' Survey



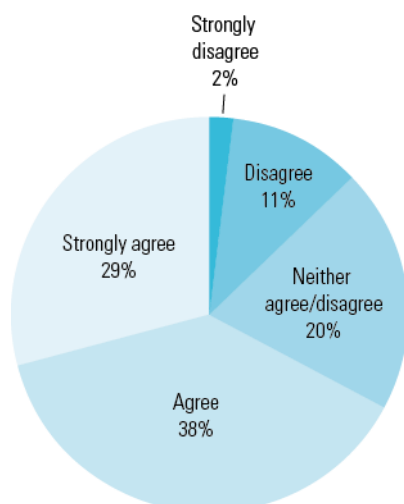
(Graph 54 in Appendix 7)

When focussing on survey responses from lawyers involved in criminal matters, the position highlighted greater contrast with the literature and comments from interviewees, with 55% of criminal lawyers disagreeing with the statement and only 30% agreeing. Fifty-four per cent of non-criminal lawyers neither agreed nor disagreed. The reason for the discrepancy between this result and the literature is unclear and requires further research.

### Equity of Penalties

Survey respondents did however raise concerns regarding how penalties are applied in regional areas compared with Metropolitan Melbourne. As indicated by Table 1 above, 67% of participants agreed or strongly agreed with the statement that *Compared with their metropolitan counterparts, court orders and penalties do not adequately reflect the differing circumstances of people living in regional areas*. Of the Lawyers surveyed, 61% agreed with the statement while 71% of the small sample of *criminal lawyers* surveyed (N=19) agreed, 40% of whom strongly agreed. Examples of penalties given within the survey statement included *mandatory loss of licence* and *Shared Parenting Orders*. This suggests that while in the opinion of survey participants, penalties may not greatly differ from those given to metropolitan participants, those penalties were in many cases not appropriate to the circumstances of regional offenders. Further discussion of these two examples is provided below.

Figure 13 Orders/Penalties Do Not Reflect Rural Regional Circumstances: Combined Responses



(Graph 32 in Appendix 7)

## Mandatory loss of licence

Mandatory loss of driver's licence was a significant issue raised by a large number of those consulted. Loss of licence is mandatory for driving under the influence of alcohol (over .05 Blood Alcohol Concentration (BAC) for first time offenders with full licence), driving whilst under the influence of drugs and for speeding offences of 25 kilometres per hour over the speed limit. With no discretion available to Magistrates, they must impose penalties that may have much greater consequences to many living in rural and smaller regional communities, including the loss of livelihoods for people living in areas where large distances are required to be travelled and no public transport is available. As one Warrnambool based lawyer stated, "If you are a Milker living in Warrnambool and need to be in Koroit by 5am, the consequences of a mandatory loss of licence is much harsher compared to a person living and working in metropolitan Melbourne." "Often whole families can be penalised as a result". For farmers, the consequence of a loss of licence can be ruinous. One example provided involved a farmer who was unable to drive his tractor across a public road to access parts of his property divided by that road, because of his loss of licence.

Further, the mandatory term of imprisonment for a second offence of driving a vehicle whilst suspended or disqualified, without discretion or consideration of circumstances, further impacts unfairly on some regional Victorians. While a suspended sentence option may provide some discretion, it is an ad hoc approach and does not address the inflexible intention of the penalty. In general, the notion of mandatory penalties can have serious consequences, eroding the principle of judicial independence and discretion.

It should be noted that other states including NSW, Queensland and Western Australia, in addition to other countries, include options for conditional licences such as 'drive to work licences'.

## Shared Parenting

The Family Law Shared Parenting legislation (*Family Law Amendment (Shared Parental Responsibility) Act, 2006*), is also an example cited by interviewees of legislation, or its interpretation by the judiciary, as not adequately reflecting the variation in impacts, particularly upon people living in rural and remote communities. The Act is based on the principle that 'equal shared parental responsibility' is in the best interests of children. In the implementation of the Act there has been some confusion by both the courts and participants, between the concept of 'shared parental responsibility' and 'shared care time'.<sup>182</sup> Several of those consulted raised concerns regarding the consequences for parents, mainly women who, once they have moved to a rural or remote community with their husband, were obliged, once separated, to stay in those communities with their children. The Shared Parenting legislation objective to ensure children are accessible to both parents has resulted in issues raised by interviewees around greater isolation, lack of support services in smaller regional communities and the potential consequences of violence from their ex-partner. While the Act specifically acknowledges and attempts to respond to issues of potential violence and the practical difficulties and costs associated with shared parenting, the legislation remains controversial.<sup>183</sup> Debate also continues as to the extent to which problems lie with the legislation, or interpretation by participants including Judges and lawyers and disputing parties.

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<sup>182</sup> Misha Schubert, 'Family Violence Report Takes Aim at Troublesome Shared Parenting Law', *The Age* (Melbourne), 28 January 2010.

<sup>183</sup> *Ibid.*

## Home Detention

A clear inequity exists in eligibility for the Home Detention Program. Under current arrangements, serving prisoners may serve a period of their sentence at home. Enabling them to re-integrate into community life, take up employment and rebuild community ties. This option however is currently only available to offenders who live within a 40km radius of metropolitan Melbourne.<sup>184</sup> With a change of State Government in November 2010 the Home Detention Program has been under review. The Coalition State Government's intention to abolish the program has not as yet occurred.<sup>185</sup> A revision of the *Sentencing Act 1991* (Vic) in March 2011 maintains the Home Detention Program with greater restrictions for offenders and with a continued provision that it be provided only where "the home detention program is located close enough to the place where the offender will reside during the period of the order to ensure adequate support and supervision."<sup>186</sup> This avoids the requirement to make the program available in regional Victoria.

## Bail and Remand

Remand is a major restriction on an individual's freedom, requiring alleged offenders to be incarcerated until their case is heard, and must be carefully balanced against the interests of the community. A recent report titled *Young People on Remand in Victoria*,<sup>187</sup> in referring to a 2005 Criminology Research Council report<sup>188</sup> indicated "40% of (Victorian) remandees are either found not guilty or sentenced to a period equal to, or less than, the time already served on remand".<sup>189</sup> The report indicates that, while Victoria's remand rates have increased and do not reflect the reducing crime rates,<sup>190</sup> the state has a significantly better track record in comparison to other states in its use of remand. This, the authors suggests, may in part be attributable to the uptake of therapeutic jurisprudence by the State's criminal justice system.<sup>191</sup> Given the limited availability of the CISP and Credit Bail programs in some regional areas,<sup>192</sup> together with the lack of other court and community based programs, there is a greater likelihood that bail will not be available to some regional offenders and as a consequence, they will be held in remand.

Unfortunately the *Young People on Remand in Victoria* report does not examine variations in remand and bail outcomes between regional and metropolitan Victoria.

It does however note the relationship between remand, bail, the social/health status of remandees and availability of community services and programs, stating that "Remand is increasingly being used to accommodate Victorians with health and social problems associated with engagement in crime, including mental health problems, alcohol and drug addictions and homelessness. Notably, remandees are more likely than other prisoners to be homeless, unemployed or have some form of mental disorder".<sup>193</sup> A report produced for the

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184 Adult Parole Board of Victoria, Department of Justice – *General Guide to Home Detention*.

185 Denis Napthine, *Coalition to End Home Detention*, Denis Napthine MP (14 January 2011) <<http://www.denisnapthine.com.au/page.php?id=205>> : 'Labor's home detention policy is part of their soft-on-crime approach that ignores proper sentencing, community protection and the views of victims,' 'A Coalition Government will completely abolish Labor's home detention.'

186 *Sentencing Act 1991* (Vic) s 26Q(c)(ii).

187 Matthew Ericson and Tony Vinson, 'Young People on Remand in Victoria – Balancing Individual and Community Interests' (Jesuit Social Services, 2010) <[http://www.jss.org.au/files/Docs/policy-and-advocacy/publications/Young\\_people\\_in\\_remand\\_in\\_Victoria\\_-\\_Balancing\\_individual\\_and\\_community\\_interests.pdf](http://www.jss.org.au/files/Docs/policy-and-advocacy/publications/Young_people_in_remand_in_Victoria_-_Balancing_individual_and_community_interests.pdf)>.

188 Sue King, David Bamford, and Rick Sarre, Criminology Research Council, Consultancy on *Factors That Influence Remand in Custody: Final Report to the Criminology Research Council* (November 2005).

189 Matthew Ericson and Tony Vinson, above n 187, 20.

190 Matthew Ericson and Tony Vinson, above n 187, 11.

191 Matthew Ericson and Tony Vinson, above n 187, 26-28.

192 See an explanation of the role of these programs in Appendix 8.

193 *Ibid* 20.

Indigenous Justice Clearing House on bail and indigenous Australians makes a direct link between bail, remand and the lack of accommodation services stating that, “The most significant deficiency in bail support programs for young people throughout all states and territories is the lack of available and appropriate accommodation for young people. This is the single most significant factor associated with young people being remanded in custody”.<sup>194</sup>

Where bail conditions which require significant travel do apply, or the bail conditions do not reflect the limited availability of services in regional areas, then breaching of these conditions are also more likely to result in offenders being held in remand.

Data provided by Corrections Victoria in 2009<sup>195</sup> outlined in the table below, provides confirmation of a higher incidence of regional offenders being held in remand. Based on the home postcode nominated by offenders in remand,<sup>196</sup> the data indicates that, as at June 2009, 29% of the remand population was drawn from regional areas, with the highest proportion (35% of the remand population held for under one month) being from regional locations. As an overall comparison, the mean of 29% indicates an over representation compared with the 26% of Victoria’s population living outside metropolitan Melbourne.

Table 2 Prisoners on Remand in Victoria - June 2009

Period in remand	Under 1 month	1 and under 3 months	3 and under 6 months	6 and under 12 months	One year and over	Total
Total Regional	57	73	29	42	29	<b>230</b>
Total Melbourne	104	167	109	104	74	<b>558</b>
Percentage Regional	35%	30%	21%	29%	28%	<b>29%</b>

It has also been raised by interviewees that the Supervised Bail program for young offenders, which relies on court referrals to the Department of Human Services, will not always be available or taken up in some regional areas. As a result, there is a greater likelihood of young regional offenders, who may have been eligible for this program, being held in custodial centres.

### Penalties and sentencing of Indigenous offenders

Data in relation to variations in imprisonment rates between regional and urban Australia is inconclusive, however overall rates of imprisonment have increased dramatically from 83 to 164 adults per 100,000 population over the past three decades.<sup>197</sup>

The rate of imprisonment for indigenous community members is much higher than non-indigenous. In 2008, Aboriginal people represented only 2.3% of the total population, yet over 24% of Australia’s prison population were Aboriginal people.<sup>198</sup> This overrepresentation continues to exist despite more than a decade of policies and programs introduced following the

194 Gabrielle Denning-Cotter, Indigenous Justice Clearing House, *Bail Support in Australia* (Brief 2 April 2008) 5.

195 Data provided by Data Analysis Unit – Corrections Victoria - Unsentenced Prisoners, By Level of Court, Remand and Time Already Served on Remand at 30 June

196 The data, which was provided by the Department of Justice, came with a warning that it may not be of high reliability. For example, the largest number of any one offender home postcode was 3000, Melbourne CBD, which is unlikely to be the actual residential address of most offenders.

197 Between 1984 and 2007 the Australian imprisonment rate has increased from 83 to 164 adults per 100,000 population. David Biles, ‘How the ACT Compares – Facts and Figures in Australia’ (Speech delivered at Christians for an Ethical Society, Canberra, 19 March, 2008) <[www.ces.org.au/d\\_biles\\_speech.htm](http://www.ces.org.au/d_biles_speech.htm)>.

198 Australian Bureau of Statistics, 4517.0 D0003\_2008 *Prisoners in Australia, 2008* (11 December 2008) <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4517.02008?OpenDocument>>.

seminal *Bringing Them Home* report<sup>199</sup> and the *Royal Commission into Aboriginal Deaths in Custody*<sup>200</sup>; both of which made recommendations for increased diversionary options for Indigenous people.

Victoria has the lowest proportion of indigenous prisoners with 5.8% of the prison population. However as indigenous people represent only 0.6% of Victoria's population, this means Indigenous people are approximately 11 times more likely to be imprisoned than non-Indigenous people. For indigenous young people (10 to 17 years of age) the likelihood of imprisonment is higher again, at 14 times more likely.<sup>201</sup> A rate second lowest nationally to Tasmania, which has a ratio of 3 times more likely, with Western Australia 45 times and Northern Territory 31 times, respectively.<sup>202</sup> The State Government's policy of detention being the 'option of last resort for young people'<sup>203</sup> further highlights the significance of this figure.

While this ratio for both adult and juvenile prisoners compares favourably with most other states, it remains an area of significant concern in relation to regional overrepresentation. Given the high proportion of indigenous people living in regional, rural and remote areas (approximately 73% of Indigenous Australians live in regional, rural and remote Australia),<sup>204</sup> this continues to be a major issue for regional Victoria.

Over the last 10 years, the Victorian State Government has recognised the need to respond to indigenous overrepresentation within the criminal justice system and the need to better respond to indigenous cultural differences. The advent of the Victorian Aboriginal Justice Agreement in 2000, the expansion of the Koori Court Program since its inception in 2001 in Shepparton and Broadmeadows, to include 5 other locations, and the establishment of the Children's Court - Children's Koori Court (Criminal Division), have been important State Government initiatives. Much more however needs to be done to respond to this disproportionate representation of indigenous prisoners. The fate of the Koori Court and other specialist courts under the new Coalition government are currently unclear.<sup>205</sup>

## Young people penalties and sentencing

The *Young People on Remand in Victoria* report<sup>206</sup> indicates the impact and shortfalls of current programs and services on the use of remand for young defendants. It also draws a direct parallel between entry into remand and recidivism (repeat offending), stating that, "Young people who have early interaction with the criminal justice system are more likely to be drawn further into the system. Remand detention can expose young people to negative influences and result in increased recidivism."<sup>207</sup>

Young people living in regional communities are particularly vulnerable to experiencing a disadvantage in relation to sentencing. While the Australian Law Reform Commission Report, *Seen and Heard: Priority for children in the legal process*<sup>208</sup> is now some 14 years old and

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199 Bringing them home - Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families Diversionary Schemes 457, December 1996 <<http://www.austlii.edu.au/au/journals/AILR/1997/36.html>>

200 Commonwealth, Royal Commission into Aboriginal Deaths in Custody, *National Report* (1991) vol 5.

201 Kelly Richards and Mathew Lyneham, *Juvenile Detention in Australia 1981-2008 – Monitoring Report no. 12* (Australian Institute of Criminology, December 2010) 33.

202 Ibid.

203 Children's Court of Victoria, *Sentencing Principles & Sentencing Orders* (15 March 2011) <<http://www.childrenscourt.vic.gov.au/CA256CAB00011129/page/Research+Materials-Sentencing?OpenDocument&1=60-Research+Materials-&2=94-Sentencing-&3=->>>

204 Australia Government Department of Sustainability, Environment, Water, Population and Communities, *The Distribution of the Indigenous Population, Indigenous Settlements in Australia* (22 November 2010) <<http://www.environment.gov.au/soe/2001/publications/technical/indigenous/distribution.html>>.

205 Farrah Tomazin, above n 77.

206 Matthew Ericson and Tony Vinson, above n 187.

207 Matthew Ericson and Tony Vinson, above n 187, 11.

208 Australian Law Reform Commission, *Seen and Heard: Priority for Children in the Legal Process*, Report No 84 (1997).

significant improvements have been made in how the criminal justice system deals with young offenders, comments from *Postcode Justice* interviewees suggest that major concerns remain. Interviews documented as part of the *Seen and Heard* report indicated that “Sentencing may have particularly harsh effects on children from rural areas . . . In addition, children in rural areas may not have access to non-custodial programs, making a custodial sentence the only option in some cases. In detention they are likely to be placed in a centre far from their family and community. They may suffer a greater degree of dislocation than children from urban areas.”<sup>209</sup> This was reinforced by *Postcode Justice* interviewees; a Mildura family service provider indicated that “sentencing options mean that young people can end up in Malmsbury in Victoria or Wagga in NSW, both hundreds of kilometres from their home.”

Once leaving these custodial programs, young regional offenders may also be faced with a lack of supports. As the Victorian Auditor General’s Report on Services to Young Offenders states, “Pre-release programs provided to young offenders support their rehabilitation and reintegration back into the community. However, in rural areas there are particular difficulties in parole planning and accessing services post-release. This can delay support or result in insufficient levels of support to assist the effective reintegration of young offenders into the community.”<sup>210</sup> This is supported by comments of one survey participant stating that “There is a lack of contact planning by correctional institutions who release offenders back into community; follow up and planning is needed for successful reintegration.”

Comments from the Victorian Youth Parole Board and Youth Residential Board in its 2007-2008 Annual Report raise additional concerns regarding regional young offenders, stating that, “During 2007–2008, the Boards have noted a number of issues. Some problems, perhaps most, are well recognised but remain unsolved. There are disproportionate numbers in the parole system of young people who are Aboriginal, who have an intellectual disability (including acquired brain injury) and who are from rural areas. Perhaps unsurprisingly, there are large numbers with significant mental illness or mental health problems. In the Boards’ view there is an urgent need for assistance, including co-ordinated resourcing, for these young people.”<sup>211</sup> Consecutive Victorian Youth Parole Board Annual Reports for 2008-2009 and 2009-2010 continue to echo those concerns, adding issues in relation to court delays resulting in longer remand periods and the challenges faced in finding suitable accommodation services for young prospective parolees.

Issues around access to mental health and accommodation services for young offenders were also raised within the Victorian Auditor General’s Report,<sup>212</sup> stating that “A number of DHS regions, particularly rural regions, advised audit that they faced increasing difficulties in accessing mental health and housing services for young offenders.”<sup>213</sup>

While not substantiated, it was indicated by one interviewee that approximately 46% of those in the youth parol system are from regional Victoria. The interviewee suggested that this was in part due to “Sentencing options being greater in Melbourne where young people may get Probation, Youth Division Order, Youth Attendance Order, whereas in the country there are not so many options.” Other interviewees indicated a harsher sentencing regime experienced by young people in rural areas as a possible reason for overrepresentation of regional young people within correctional facilities.

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209 Ibid.

210 Victorian Auditor General, *Report on Services to Young Offenders* (June 2008) 36 <[http://download.audit.vic.gov.au/files/SYO\\_Report.pdf](http://download.audit.vic.gov.au/files/SYO_Report.pdf)>.

211 Victoria Youth Parole Board and Youth Residential Board Annual Report 2007-2008 <[http://www.cyf.vic.gov.au/\\_data/assets/pdf\\_file/0019/272026/youth-parole-board-annual-report-07-08.pdf](http://www.cyf.vic.gov.au/_data/assets/pdf_file/0019/272026/youth-parole-board-annual-report-07-08.pdf)> xi.

212 Victorian Auditor General, above n 210.

213 Victorian Auditor General, above n 210, 22.

This latter concern also relates to the capacity of regional Magistrates to effectively respond to Children's Court matters. Currently there are 11 Children's Court Magistrates and the President of the Children's Court sitting at the Melbourne Children's Court.<sup>214</sup> Children's Court matters heard at regional locations are heard by the residing circuit Magistrate on gazetted days. One regional lawyer interviewed expressed concern at this arrangement, stating that the "Court will sit and then declare it is a Children's Court while those represented at previous jurisdiction are still there". The equally concerning result of this arrangement is the comparative quality of outcomes. On the one hand the specifically designed Melbourne Children's Court will utilise the expertise of specialist Children's Court Magistrates, while regional Courts will rely on the skills of the local Magistrate who may be dealing with a range of matters including adult criminal and civil cases on the same day.

When providing evidence to the 2000 Parliamentary Law Reform Committee Review, the then Acting Director of Legal Aid Victoria (and now a regional Victorian Magistrate), proffered comments on a circuit Magistrates 'frames of mind' when dealing with both adults and children's matters, stating that, "It's pretty hard to switch from one to the other... I say that from what I have seen the tariffs (penalty) in country areas are significantly higher for children compared with my experience in Melbourne".<sup>215</sup>

An added overlay to the expectations of Magistrates is the focus on diversionary programs for young offenders, which places a further reliance on the knowledge of the presiding Magistrate of relevant programs and services.

The limited availability of specialist clinical children's services compounds the challenges and costs to regional participants at the Children's Court. For example, as one interviewee indicated, psychiatric and psychological reports required by the Court necessitate a visit, often by the whole family, for assessment by Clinic staff at the Melbourne Children's Court Complex in Lonsdale Street Melbourne.<sup>216</sup>

A paper presented to the recent National Rural Regional Law and Justice Conference raises additional issues in relation to providing adequate therapeutic services to regional juvenile sexual offenders. "With attention to the difficulties in providing services to regionally and remotely located adolescents, this paper highlights challenges around lengthy remand terms, the provision of pre-offence diversionary programs, and the provision of specialised supervision for young people serving community orders."<sup>217</sup>

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214 Children's Court of Victoria, Children's Court of Victoria Annual Report 2008 – 2009 (2009) 8.

215 Parliament of Victoria, above n 40, 233.

216 Children's Court of Australia, *Children's Court Clinic*, Children's Court of Australia Criminal Division (14 January 2009) <<http://www.childrenscourt.vic.gov.au/CA256CA800014B4A/page/Criminal+Division-Clinic?OpenDocument&1=30-Criminal+Division-&2=60-Clinic-&3=->>>.

217 Wendy O'Brien, 'Australian Crime Commission Youth Justice: challenges in responding to young people convicted of sexual offences' (unpublished) <<http://www.deakin.edu.au/buslaw/law/rrjc/papers/obrienwendy.pdf>>.

## A Note on the Availability of Data

### **Recommendation 7**

That improved monitoring and data collection systems be established by the Department of Justice and the Courts, which encompasses comparative data relating to courts and tribunal administration, the administration of court programs, civil matter outcomes, bail remand, penalties and sentencing in rural and regional Victoria.

Gaining statistical evidence of variations in outcomes between metropolitan and rural communities when participating in the judicial system is difficult. Limited data is held by the Department of Justice, Magistrates' Court, County Court or the Sentencing Advisory Council in relation to breakdowns between regional and metropolitan areas across jurisdictions and in for example the areas of, adjournments, bail, remand, penalties and sentencing. This problem is also raised in relation to justice system data more generally in other reports referred to here, including:

- The *Evaluation of the Court Integrated Services Program (CISP)*, which indicated a lack of data 'constitutes a significant barrier to the evaluation of court programs';<sup>218</sup>
- The *Young People on Remand in Victoria* report, which references the lack of data available from Corrections Victoria and the need for a service similar to the NSW Bureau of Crime Statistics and Research (BOCSAR) to better collect and interpret crime statistics;<sup>219</sup> and
- The Victorian Auditor General's *Report on Services to Young Offenders* which indicates that the current systems do "not currently provide sufficient analytical data to management on the effectiveness of interventions and services in rehabilitating young offenders."<sup>220</sup>

This lack of data impacts on the effectiveness of government policy making and reflects a poor recognition of the need for the ongoing review of the delivery of equitable justice system services across metropolitan and regional Victoria.

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<sup>218</sup> Stuart Ross, above n 86, 14.

<sup>219</sup> Matthew Ericson and Tony Vinson, above n 187, 30-31.

<sup>220</sup> Victorian Auditor General, above n 210, 3 and 5.

## Chapter 5 - Research Findings: Regional Services

The comparative availability of court programs are explored earlier in this report. It is however, not only the administration of the courts and court programs which can impact on outcomes for those using the justice system. As raised by interviewees, availability of local support and rehabilitation services will have a significant influence on outcomes when using the justice system. The following section provides a context and examples of these influences.

### Community-Based Programs and Services

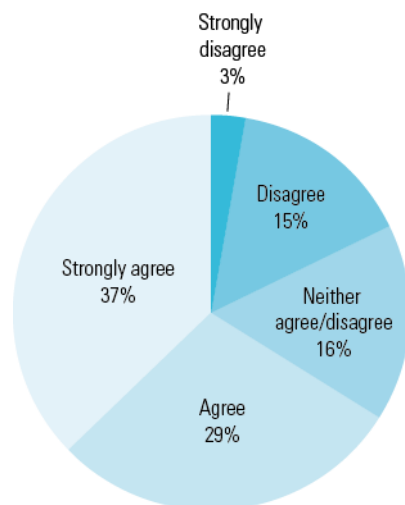
As is evidenced by the Victorian Department of Justice and the Victorian Magistrates' Court statements below, community based programs for offenders and potential offenders have a real and attributable impact on the prevention of offending and re-offending. These programs include for example, those in the areas of disability/psychiatric services, accommodation services, drug and alcohol programs, youth support services, mediation services, relationship counselling services, anger management or domestic violence counselling programs, victim/witness counselling services and interpreter services.

Such community-based services also play a growing and integral part in court diversionary programs. Russell Hogg in *Crime in Rural Australia*, points out that "Critical to (the success of this approach) is the ability of courts to marshal (these) other services that are often in short supply in rural communities."<sup>221</sup>

When survey participants were asked if they thought that there was a limited availability of local services and programs of these types in their area compared with metropolitan areas, and that this lack of availability impacted on justice system outcomes for their regional clients, 66% (73) of all respondents agreed; only 18% (20) disagreed (See Fig. 14, below). The position held by human service organisation respondents was the most adamant with 77% agreeing with the statement, 46% of whom strongly agreed. Fifty-six per cent of lawyers agreed, 29% of whom strongly agreed.

Some human service sectors held stronger views than others. For example, 82% or 9 of the 11 psychiatric service based respondents agreed with the statement, 55% of whom strongly agreed.

Figure 14 Lack of Local Services and Programs Impacting on Justice System Outcomes

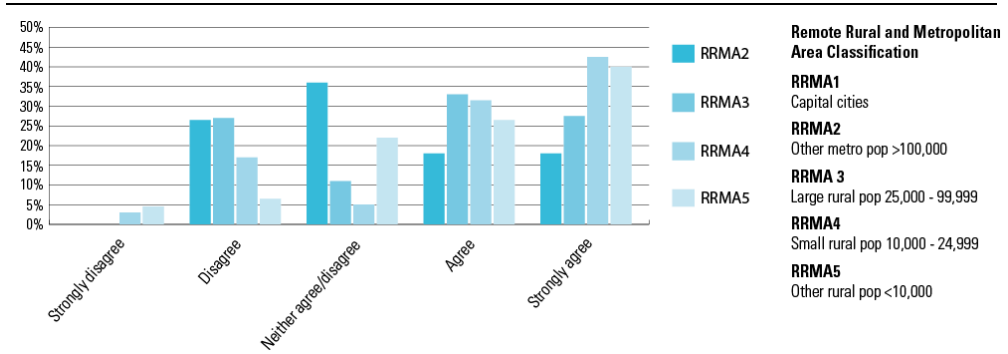


(Graph 16 in Appendix 7)

<sup>221</sup> Russell Hogg, 'Punishment and the Courts in Rural Communities' *Crimes in Rural Australia* 2007 p 173

Not surprisingly, the location of respondents also affected their views. As can be seen from Figure 15 below, those from smaller communities (in the lighter green) with fewer local support services, more strongly agreed that a lack of local support services adversely impacted on their client's likelihood of offending or re-offending.

Figure 15 Location by Position on Impact of Limited Local Services and Programs: Combined Responses



(Graph 19 in Appendix 7)

Human Service survey participants provided a number of comments that can be viewed in **Appendix 7 - Local Services and Programs**. Comments included:

- Other services not provided by us are further away making it impossible to access, as many clients don't have transport, so Treatment Plans are limited and do not reflect clients' commitment to make changes.
- These services are extremely limited in our local area as we are very under resourced. If available always long waiting lists.
- Accommodation and mental health support are probably some of the most obvious areas of disadvantage.

Strategies behind the previous Victorian Attorney General's Justice Statements 1 and 2, and the programs generated on the basis of those Statements, pre-suppose a level of availability of locally based services to the courts, when setting orders and penalty options.

For example, Justice Statement 1 states "(a) focused justice system capable of effectively delivering expected outcomes through improved cooperation within the court system, improved collaborative arrangements with external agencies, and the optimal use of supporting technology."<sup>222</sup> Justice Statement 2 sees as a key, "A collaborative approach between the court, prosecution, support services and the defendant to identify the most effective response and intervention."<sup>223</sup>

These 'external agencies' and locally based 'support services' may not exist in many rural and smaller regional locations to the level that they are available in metropolitan areas. As a result there is a real danger of there being two levels of justice system outcomes: *Postcode Justice* – dependent on where you live and the location of the court you attend. One system for metropolitan and larger regional centres with the services available to support more progressive and innovative programs, and another for smaller regional communities without the required infrastructures. This applies to both court programs and services, and community based programs and services, each of which play an important role in diverting offenders and potential offenders from paths which lead to further contact with the criminal justice system, and can influence more constructive court orders and sentencing outcomes for individuals in regional areas.

<sup>222</sup> Department of Justice (Vic), 'Attorney-General's justice statement: New Directions for the Victorian Justice System 2004-2014' 5

<sup>223</sup> Victorian Attorney General, above n 76.

In *Crime in Rural Australia*, Hogg suggests that a lack of such programs regionally not only disadvantages individual offenders but also adds an additional burden for regional courts, suggesting that “The conundrum is that in communities depleted of other social infrastructure and services, higher demand and expectations are likely to be placed on courts to deal with social problems that require multi-agency responses and the input of other professional services”.<sup>224</sup> The extent to which this does occur and the impact on regional courts and their communities requires further research. What is clear however, is that a lack of court and community based resources influence the penalty and sentencing options available at some regional courts.

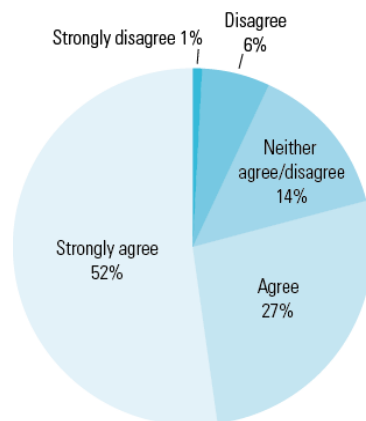
## Distance to Courts and Related Services

Australian historian Geoffrey Blainey’s book *The Tyranny of Distance*,<sup>225</sup> describes how distance and isolation from the rest of the world, have been central to Australia’s history and continues to shape its national identity. Australia has an enormous land mass while being one of the most urbanised countries in the world. Population density outside the capitals and major regional cities is one of the lowest in the world. Achieving equity in the provision of infrastructure and services across Australia raises many challenges. Physical access to justice system services and resources is no exception. The notion of ‘tyranny’ associated with distance also applies within this context, where distance and isolation can impact on the availability of services and reduce the opportunity for the ‘voice’ of regional communities being heard.

The *Postcode Justice* report argues that distance fosters arbitrary and inequitable outcomes in the provision of services, programs and processes which do not respond to the variations of circumstances and needs of regional communities. In Blainey’s book, the ‘tyranny of distance’ also related to economic cost associated with remoteness.<sup>226</sup> This parallels with considerations of cost which results in a reduced availability of justice system services in regional areas and its consequence for equity of outcomes compared with metropolitan and larger regional centres.

Distance was one of the most frequently raised impediments by survey participants and interviewees, to accessing justice system services. As the Figure 16 below indicates, almost 80% of survey participants agreed or strongly agreed that regional communities are disadvantaged in comparison to metropolitan residents because of the distance they are required to travel to attend some or all jurisdictions. Interviewees indicated a number of scenarios for this, with travel often a consequence of, or compounded by, other issues.

Figure 16 Travel Distance to Court: Combined Responses



(Graph 36 in Appendix 7)

224 Russell Hogg, *Punishment and the Courts in Rural Communities*, *Crimes in Rural Australia* (2007) 173.

225 Geoffrey Blainey, *Tyranny of Distance: How Distance Shaped Australia’s History* (Sun Books, Melbourne, 1966).

226 Ibid.

Cost, associated with distance, was of particular concern for the human service organisations surveyed. Ninety-two per cent of the 52 human service organisation survey respondents cited a lack of public transport and the distance required to be travelled by clients when seeking legal assistance or attending court, as a major issue. Similar concerns were raised by the 2001 Victorian Parliamentary Law Reform Committee Report.<sup>227</sup>

*Postcode Justice* interviewees also suggest that court hearing delays, particularly at County Court Civil jurisdiction, drive litigants and their lawyers to applying for hearings at metropolitan courts, though this has not been confirmed by data made available by the courts.

The distances required to be travelled to get to court does not only result in inconvenience, but also financial cost and hardship. One Gippsland solicitor interviewed, provided an overview of the practical travel issues her clients face. Her comments, which are paraphrased and in point form to summarise, provides an insight into the mix of issues faced by regional participants when dealing with the Family and Federal Magistrates' Courts:

- Clients from Bairnsdale and Sale with Family Law matters attending the Federal Magistrates' Court often have to travel to Dandenong or Melbourne courts because the Moe circuit (covering all of Gippsland) sits only 4 times a year for a week. Approximately 50% of our clients use the Moe circuit Court and 50% go to either the Melbourne or Dandenong Federal Magistrates' Court for their hearing. To travel from Bairnsdale to Melbourne is approximately 3<sup>1/2</sup> hours, from Sale to Melbourne is 2½.
- Everything is listed for 10am, so people may attend all day and not have their matter heard. Suddenly they have to cover costs of accommodation and re-arrange work obligations as a consequence of not being able to catch a connecting train back or the matter is re-set for the following day. . . they just have to be dealt with.
- Family Court circuits are not designed to cope with lengthy or urgent matters. If you start with the Moe circuit but then because of its complexity and likely length, have to have a hearing in Melbourne or Dandenong, you then go down the list again. If you have a preliminary hearing in Melbourne you generally have to use mediators recommended for the Conciliation Conference at the same sitting location so you need to go back to Melbourne for both the mediation and the hearing.
- Good counselling and mediation are available in the local area but still usually involves travel. Family Reports made by psychologists may mean the client needs to go to Melbourne to have the psychologist's assessment undertaken.
- Conflict of interest is a huge problem for clients in small towns. Some have been with the same law firm for many years but because the firm and their ex-partner were involved in a will or conveyancing or commercial matter, their lawyer will not be able to undertake the family law matter. Clients then have to go to another town or the city to find a lawyer.

The capacity to attend the 'local' Magistrates' Courts was raised by several interviewees and survey participants. One participant working in the mental health field stated that, "People with mental health difficulties suffer great stress around court hearings. . . they have to catch a bus at 8am (for an approximately 2 hour trip) from (their town) to the regional centre to arrive in time for court and if the hearing continues past 2:30pm they are unable to return home as the last bus leaves at 2:30pm. We are regularly working with vulnerable people who have had to hitch home or sleep rough (after a court hearing)."

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227 Parliament of Victoria Law Reform Committee - Review of Legal Services in Rural and Regional Victoria May 2001.

## Lack of public transport

The lack of suitable public transport services in regional Australia is well documented. A 2009 Senate Inquiry into public transport indicated that, "Regional people without cars suffer particular transport disadvantage. Many submissions described the difficulties of life for people without cars or driver's licences - for example, difficulties that the elderly have in getting to doctor's appointments, or that youth have in gaining the independence they need. This particularly applies to transport from the smaller towns to the regional centres. Providing even a little public transport can greatly increase these people's opportunities".<sup>228</sup>

The Victorian Department of Planning and Community Development also recognises the particular disadvantage for regional Victorians in accessing adequate public transport, stating that, "Transport is consistently rated by rural and regional communities as one of the most significant barriers to accessing services, employment and social networks".<sup>229</sup>

This acknowledgment of the difficulties experienced, particularly for low income regional Victorians, does not however extend in any significant part to justice system processes, penalties and policies, which often result in much greater hardship for regional participants. The very deliberate policies of past State Governments in reducing the number of regional court locations and corresponding services provided by local registrars, continue to have consequences for those regional communities. In evidence provided to the *Victorian Parliamentary Law Reform Review of Legal Services in Rural and Regional Victoria*, one witness stated that "when you centralise and abolish a court in Camperdown and people have to go to Warrnambool or Colac it's alright for families with nice modern cars, but it is very hard on people who are either disabled or have to use public transport, which is almost non-existent in some of those areas".<sup>230</sup> This and other evidence provided to the Parliamentary Law Reform Committee prompted Recommendation 1 of the Committee's report, which stated, "That the Victorian Government establishes a litigant transport fund, administered by the Department of Justice through courts and tribunals. Such a fund should be available for needy litigants required to travel to Melbourne or to other regional centres to resolve their legal issues."<sup>231</sup> To the knowledge of the author and research interview participants, no fund has been established by the Department of Justice for this purpose.

## Cost to regional human service agencies

For legal practices, costs associated with travel for client related matters are generally subsumed within the fees charged. Not-for-profit human service organisations in regional areas however, generally bear the cost associated with supporting clients within their usually very limited budgets. In response to a *Postcode Justice* survey question regarding issues adversely impacting on the capacity of participants organisation to respond to client needs, 73% of human service agencies surveyed indicated that the geographic area required to be covered by their service to support regional clients was a significant disadvantage compared with metropolitan services.

Domestic violence is a significant problem within regional communities, with a higher reported incidence in those areas, compared with metropolitan areas.<sup>232</sup> One interviewee, who co-ordinates a regional domestic violence support service, stated that, "while laws have

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228 Senate Rural and Regional Affairs and Transport Committee, Parliament of Australia, Inquiry into the investment of Commonwealth and State funds in public passenger transport infrastructure and services (August 2009).

229 State Government of Victoria, *Transport Connections*, Department of Planning and Community Development (1 November 2010) <<http://www.dpcd.vic.gov.au/transport>>.

230 Parliament of Victoria, above n 40, 19.

231 Ibid 36

232 Women's Services Network (WESNET), 'Domestic Violence in Regional Australia', A literature review prepared for the Commonwealth Department of Transport and Regional Services (2000) 3.

attempted to improve protection from domestic violence, the system which implements these laws does not provide adequate financial support for this to occur". She noted that limited budgets for services such as hers, in conjunction with the lack of other support services in regional communities, are a major issue. Citing inadequately funded travel and staffing budgets as examples, she indicated that her after-hours staff receive as little as \$13 per hour. This often involves them going out at night to attend a client in volatile situations and travelling significant distances (which result in slower response times and as a consequence can mean a change of circumstances, such as the violent partner returning), with little protection available.

## Health Services

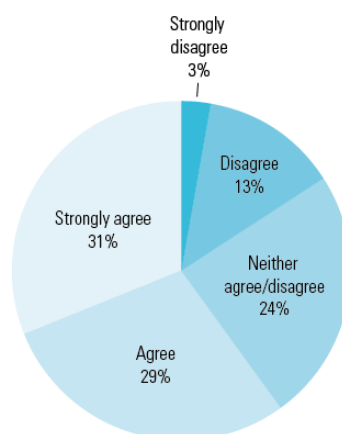
The limited availability of health services in regional Victoria and Australia are well documented. The lack of these services also has a direct and significant impact on the provision of equitable justice system services to regional communities as is demonstrated below.

### Medico-Legal Court Reports and assessments

An issue frequently raised by interviewees was the lack of professional reporting and assessment services (medico-legal reports) in regional Victoria. This relates largely to independent assessment reports on the existence, extent and impact of mental illness, intellectual disability, acquired brain injuries or physical injuries.

As Figure 17 below indicates, 60% of all participants agreed with the statement *that there was a greater difficulty in regional residents accessing these services* (only 16% disagreed). This included 30% of all lawyers surveyed and 33% of human service organisation participants 'strongly' agreeing with the statement. Further examination would be required to determine the consequences of limited access to assessment services, in addition to the inconvenience and cost. For criminal matters, there are likely to be bail and sentencing implications in cases where assessment reports have been inadequate or not provided for a hearing.

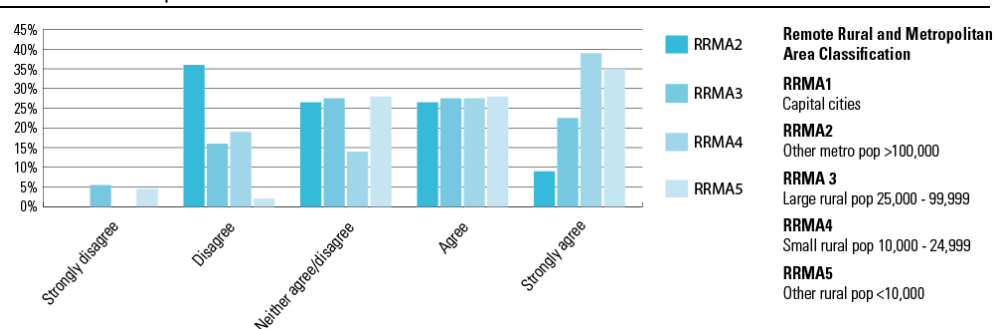
Figure 17 Lack of Local Court Related Assessment and Reporting Services: Combined Responses



(Graph 20 in Appendix 7)

An increase in the strength of views held on the basis of participants' location was also evident from the survey as can be seen from Figure 18, below. The smaller the community at which survey respondents were located, the stronger their agreement to the notion that their clients were disadvantaged by a lack of locally available, independent medico/legal assessment and reporting services.

Figure 18 Location by Position on Court Related Reporting/Assessment Services – Combined Responses



(Graph 23 in Appendix 7)

A particular concern raised by interviewees was the inability to gain Psychologist and Psychiatrist reports. Comparatively few medico-legal services are available in regional areas to provide assessment and reporting services. An interviewee placed these limitations within a stark context, stating that, “For our area (Warrnambool), the closest forensic psychologist is in Geelong. Legal Aid funding for such services is limited, making guilty pleas with mitigation difficult - people end up pleading-up as a direct result of the lack of these services. Remand is like warehousing of people with a mental health issues”. Another interviewee suggested that, while in some situations the Department of Human Services can appoint appropriate staff to undertake an assessment and produce the report without cost, these reports are then the property of the Department and may be used against their client. Other comments from survey participants on this issue are provided in **Appendix 7 – Court related assessment and reporting services.**

Similar concerns arise for a range of conditions and disabilities. For example, in regional communities, the lack of drug and alcohol services, in addition to disability and acquired brain injury services, has a direct impact on both the prevention of criminal activity and victim and offender support services.

### Psychiatric services in regional areas

One of the more frequently raised issues by interviewees, which can have a direct impact on involvement in the criminal justice system, related to a lack of regional mental health services. The comparative lack of mental health services in regional communities has been a long standing issue and the correlation between people with undiagnosed or poorly managed/supported mental illness, the criminal justice system and incarceration, is well documented.

The Australian Institute of Criminology *Trends and Issues Journal* states that, “prevalence rates of a wide variety of mental disorders are disproportionately high in the offender population within the criminal justice system.” “Rates of the major mental illnesses such as schizophrenia and depression are between three and five times higher in offender populations than those expected in the general community.”<sup>233</sup>

The National Rural Health Alliance, in its Fact Sheet on Mental Health in Rural Australia, states that, “The closure of many of the residential care facilities over the past two decades (a large number of which were based in regional Australia) has had the desirable effect of allowing many people with mental illness to live in the community. However, during that period there has not been any real increase in spending to ensure the availability of the range of support services, clinical and non-clinical, needed by people with a mental illness to live

233 Australian Institute of Criminology - Trends and Issues in Crime and Criminal Justice No 334 1- 2 (March 2007)  
 <<http://www.aic.gov.au/documents/E/B/4/%7BE84E29C4-4390-41C6-8EEF-93AB042C6BFC%7Dtandi334.pdf>>.

well in the community. This problem is accentuated if you live in a rural area which is likely to have fewer health professionals, a much smaller choice of health service providers and scarce community support services".<sup>234</sup>

While the level of mental illness does not appear to be greater in regional communities, the consequences can be significant, where adequate support services do not exist.<sup>235</sup> For example, the relationship between mental illness and suicide are strong. The Australian Institute of Health and Welfare reports that rates of 'completed' suicide in regional and remote areas are 1.2 to 2.4 times higher than those in major cities.<sup>236</sup>

The lack of services in regional Australia is supported by a Mental Health Council of Australia report which indicates the rate of usage of specialist mental health services in regional areas was 40-90 per cent of that in major cities (depending on type of service required); and in remote areas it was 10-30 per cent of the rate in major cities. Rates are based on Medicare codes for psychologists and general practitioner mental health services.<sup>237</sup> Regional access to psychiatrists is also very poor, with 91% of psychiatrists having their main practice in metropolitan areas."<sup>238</sup>

These issues however, extend beyond those related to offenders. As the American Psychiatric Association reported in its *Psychiatric News Journal* "More than one-fourth of persons with severe mental illness are victims of violent crime in the course of a year, a rate 11 times higher than that of the general population, according to a study by researchers at Northwestern University".<sup>239</sup> The article goes on to suggest that the vulnerability of people with severe mental illness and the high rate of homelessness are major factors. While the numbers may vary, the relevance of these findings on the vulnerability of Australians with a mental illness is significant.

Given the demonstrated inadequacy of mental health services in regional Australia and the relationship between mental illness and criminal offences, either as a victim or offender, the limited regional roll-out of the Victorian government's *Mental Health Court Liaison Service Program*, now established for the last 16 years, is disappointing. Much greater resources are required in regional areas to rectify this issue.

Perhaps even more 'off the radar', are services able to support clients with attention-deficit hyperactivity disorder (ADHD) and acquired brain injury (ABI). Local services, particularly in smaller regional centres, able to recognise and assist clients with these impairments are much fewer than exist in larger regional and metropolitan centres. A senior psychologist with a regional Community Health Centre interviewed for the research identified ADHD as a major area of concern. "ADHD is a condition not treated by psychologists, with specialists in this area only available in Melbourne and Geelong." In her experience, a relatively high number of untreated adults with ADHD enter the criminal justice system with drug dependence and criminal records. "If better screening were available it could dramatically save the justice system resources."

A review of the Victorian Magistrates' Court CISP program; a multi-disciplinary team-based approach to the assessment and referral to treatment of clients, prior to sentencing, also noted the general issue of supporting clients with Acquired Brain Injuries participating in the criminal justice system, stating that "The rate of suspected Acquired Brain Injury (ABI) in

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234 National Rural Health Alliance Inc. 'Fact Sheet 18: Mental Health in Rural Australia' (August 2009) <<http://nrha.ruralhealth.org.au/cms/uploads/factsheets/fact-sheet-18-mental-health.pdf>>.

235 Ibid.

236 Australian Institute of Health and Welfare, 'Rural, Regional and Remote Health, A Study on Mortality: Summary of Findings' (October 2003) 9.

237 Mental Health Council of Australia, 'COAG Mental Health Reform - Mental Health and the New Medicare Services: 2nd Report November 2006 - August 2008' (September 2008) 15.

238 National Rural Health Alliance Inc, above n 232.

239 Aaron Levin, 'People With Mental Illness More Often Crime Victims' (2005) 40 *American Psychiatric Association Psychiatric News* 16.

program clients is much higher than allowed for in the demand modelling for CISP. This points to a high rate of ABI in justice client populations generally, and indicates that a comprehensive strategy to address this issue is required.<sup>240</sup> While this reflects a general lack of services for clients with ABI involved in the criminal justice system, the scarcity of such services in regional areas further compounds the disadvantage they may experience in comparison to metropolitan areas.

### Shortfall in regional medical services

There is a correlation between the problems of providing legal services in regional Victoria and the difficulties that other services face in attracting professionals. Challenges in attracting General Medical Practitioners (GPs) to regional areas have been well researched and documented for some years. In its 2007 Federal Election Position Statement, The Rural Doctors' Association of Australia reported that, "at least 1000 extra doctors are urgently needed in rural and remote Australia to provide basic healthcare".<sup>241</sup> The Association report further stated that an acceptable ratio of doctor to patients is 1:900, while in some rural towns the ratio is 1:4000 patients.

Ironically, attempts by GPs in small town to address the shortfall in numbers, have also been thwarted by legislation. A request by regional medical services for exemptions from *Trades Practices Act* provisions have been denied, preventing co-operative medical rosters between medical practices being used in rural areas to ensure the provision of services.<sup>242</sup>

The shortfall in GPs in regional areas also has a direct impact on the provision of legal services in several ways. According to the Australian Bureau of Statistics *National Survey of Mental Health and Wellbeing*, GPs are the most likely source of mental health support and treatment, with 80% of Australians presenting to their GP when they have mental health issues.<sup>243</sup> Given the lack of both GP services and specialist mental health services in many regional areas, accessing assessment and reporting services for court related matters comparative to metropolitan areas, is likely to create greater difficulties.

Gaining psychological assessments and general and specialist medical reports is potentially further compounded by communication and cultural issues. In response to the growing shortfall in the number of general practitioners in regional Australia, the Federal Government has over several years introduced incentives to attract overseas- qualified doctors largely to regional areas of Australia.<sup>244</sup> The 2003 Australian Bureau of Statistics Australian Social Trends report indicated that, "the proportion of doctors who were born overseas was highest in Remote areas (56%) and Very Remote areas (51%)."<sup>245</sup> More recent ABS statistics reveal that "Generalist medical practitioners who arrived in Australia in the last five years accounted for more than a quarter of the generalist medical practitioners in Remote and Very Remote areas."<sup>246</sup> In some regional areas the number of recently arrived medical practitioners would be even higher.

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240 Stuart Ross, above n 86, 19.

241 The Rural Doctors' Association of Australia, 'Caring for the Country - Federal Election Position Statement 2010' 13.

242 Matt Wade, 'Bush Doctors' Bid to Avoid Competition Law Rejected', *Sydney Morning Herald*(online) 11 November 2002 <<http://www.smh.com.au/articles/2002/11/10/1036308576003.html>>.

243 Australian Bureau of Statistics, National survey of mental health and wellbeing 2008 - 4326.0 - National Survey of Mental Health and Wellbeing: Summary of Results, 2007: 'Of the people who had a 12-month Affective disorder, only 45% used services for their mental health, with most of these (80%) seeing a General Medical Practitioner (GP).'

244 Australian Government – Department of Immigration and Citizenship, *Working in Australia as a Doctor*, Visas, Immigration and Refugees <<http://www.immi.gov.au/skilled/medical-practitioners/doctors.htm>>.

245 Australian Bureau of Statistics, 4102.0 - *Australian Social Trends, 2003* <<http://www.abs.gov.au/ausstats/abs@.nsf/21762f95845417aeca25706c00834efa/2a7c6e498f342fb2ca2570eb008398cb!OpenDocument>>.

246 Australian Bureau of Statistics, 4819.0 - *Selected Health Occupations: Australia, 2006 (Issued 2008)* <<http://www.abs.gov.au/ausstats/abs@.nsf/mf/4819.0>>.

This issue was raised by one interviewee, who indicated that, “when clients use GP services in our region, they often find it difficult to understand the Doctor's accent. While medical services can be great, the standard of (medico-legal) reports can be terrible”. “Medical reports produced by overseas trained GPs can be difficult to interpret because of the language issues”. “There are also cultural differences which impact on what is written in the report.”

The extent to which this impacts on outcomes for participants in the justice system reliant on these reports is not clear, though it implies a disadvantage for regional areas, which thereby reduces the capacity for expert medico-legal evidence to be effectively provided.

## Chapter 6 - Research Findings: Legal Practitioner Issues

### Recommendation 8

That independent research be undertaken which examines in detail, gaps in the provision of legal practitioner services to regional communities, and the current and future impact of those gaps on the Social, Human, Institutional and Economic 'Capitals' of those communities.

Members of regional human service organisations surveyed for the *Postcode Justice* research were asked if they thought people living in regional Victoria are more likely to be disadvantaged than their metropolitan counterparts by the limited availability of *adequate legal and related advice and information services*. Seventy-five per cent agreed with this statement. Fifty per cent of lawyers agreed to a similar statement in relation to the local availability of *specialist legal and related advice and information services*; while 26% disagreed.

Proportionally there are fewer private solicitors in regional Victoria than in metropolitan parts of the state. A 1998 *Law Institute Journal* article titled *Present and future bright for country practice* put a rather cheery complexion on the state of regional practices. It did however signpost a disparity in the number of lawyers in practice regionally, indicating that, at that time, "28.5% of the Victorian population live in the country...by comparison approximately 13 per cent of lawyers were practising in the country".<sup>247</sup> Current Legal Services Board statistics indicate that there are 13,953 registered solicitors practising in Victoria, 1167 of whom practice in 'country' Victoria, equating to 8.3% of the total number of registered practitioners. The current population of regional Victorian is 26.65% of the total state's population. In very simple terms, this equates to a ratio of 1:252 lawyers to citizens in metropolitan Melbourne and a ratio of 1:1243 lawyers to citizens in regional Victoria. NSW figures indicate that approximately 13% of solicitors in that state practice in country areas, a ratio of 1:1060 of practising lawyers to citizens in regional NSW.<sup>248</sup>

In comparison with national ABS figures, 14.7% of practising solicitors and barristers are based in regional Australia,<sup>249</sup> while regional Australia accounts for 36% of the national population.<sup>250</sup> These figures require some qualification, but nevertheless provide a rough comparison which indicates a substantial difference in the availability of legal practitioners between regional areas and capital cities generally. These figures should be considered within the context of distance and geographic isolation which may arise when regional practitioners provide services to their clients; and also within a context of the levels of socio-economic disadvantage existing across many regional communities. The added geographical dimension for regional lawyers is confirmed by responses to the *Postcode Justice* survey statement, that regional lawyers experienced *Greater difficulty in obtaining instructions and managing matters due to the geographic distance from some clients*, than their metropolitan counterparts. Thirty-six per cent (23) responded in the affirmative. Of those, 87% (18) were from the smaller RRMA 4 and 5 areas with populations of 25,000 or less.

247 Ian Dunn, President Law Institute of Victoria, 'Present and Future Bright for Country Practice' (1998) 35 *Law Institute Journal* 14.

248 Based on figures used by Law and Justice Foundation of NSW, 'Report - Recruitment and Retention of Lawyers in Regional, Rural and Remote New South Wales' (2010) 10–12.

249 Australian Bureau of Statistics, *Legal Services Australia 2007 – 2008*  
<[http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/ED9EDC3A4FFBF9BDCA2575DE0019F004/\\$File/86670\\_2007-08.pdf](http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/ED9EDC3A4FFBF9BDCA2575DE0019F004/$File/86670_2007-08.pdf)>.

250 Australian Bureau of Statistics, *3218.0 - Regional Population Growth, Australia, 2008-09*  
<<http://www.abs.gov.au/ausstats/abs@.nsf/Products/3218.0-200809-Main+Features-Main+Features?OpenDocument#PARALINKS>>.

Several recent reports indicate a growing gap in the availability of legal services for regional communities and commerce. In March 2009, the Law Council of Australia and the Law Institute of Victoria undertook a survey of legal practitioners in rural, regional and remote areas of Australia. The survey resulted in a *Report into the Rural, Regional and Remote Areas Lawyers Survey*, which stated that "Overall, . . . there is a significant problem for access to justice in regional Australia. Action is required to ensure that viable practices are retained and country Australians are able to access legal services within their communities. The loss of legal practices will impact negatively on rural and regional commercial infrastructure and also on the community life of country towns."<sup>251</sup>

The report, which was broken down on a state-by-state basis, indicated that nearly 40% of Victorian practitioners surveyed stated that they currently had insufficient staff to serve the needs of their community, while 38% indicated they would no longer be practising in rural regional Victoria in the next 5 years.<sup>252</sup>

The 2009 Senate Legal and Constitutional Affairs References Committee - Access to Justice Inquiry,<sup>253</sup> also acknowledged the shortfall in adequate legal services available to regional Australia, with several recommendations in relation to the declining availability of legal practitioner services.

A 2006 report produced by TNS Social research for the Federal Attorney General's Department, which focussed on Legal Aid services, noted the decline in the number of private practitioners in regional Australia and their reduced participation in legally aided work. The report indicated that, while there remains a strong sense of moral obligation to provide legally aided services by regional law firms, "33% of (rural/regional) firms used to provide legal aid but now do not."<sup>254</sup>

The most recent and detailed research has been undertaken by the NSW Law and Justice Foundation. Focussing on the NSW experience, this research indicates that issues around retention and attracting lawyers to regional areas are much more 'nuanced' than has been represented and should not simply rely on notions of a city/country divide. The research, which focussed on public legal services (Legal Aid, Aboriginal Legal Services and Community legal Centres), identified that "Some RRR areas have recruitment and retention difficulties and some do not." "The difficulties experienced vary from region to region."<sup>255</sup> The research also cites a study undertaken by Urbis Keys Young<sup>256</sup> which assessed the existing and projected number of solicitors in metropolitan and regional areas, and the comparative proportions to population numbers. The Law and Justice Foundation report states that, "So while the *proportion* of solicitors working in rural areas was expected to decline slightly over time, the actual *number* of solicitors in all areas of NSW, including rural NSW, was expected to rise. Nonetheless, the increase in the number of solicitors in rural NSW was not expected to match the increase in the number of solicitors in non-rural NSW."<sup>257</sup>

The NSW Law and Justice Foundation research recommends a flexible but coordinated region-by-region approach, concluding that, "While strategies need to be location specific and problem orientated, a coordinated approach across the sector to address the availability,

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251 Law Council of Australia, above n 35, 6.

252 Law Council of Australia, above n 35, 6.

253 Legal and Constitutional Affairs References Committee, above n 18, xxi.

254 TNS, above n 33, 62-63.

255 Suzie Forell, Michael Cain & Abigail Gray, above n 37.

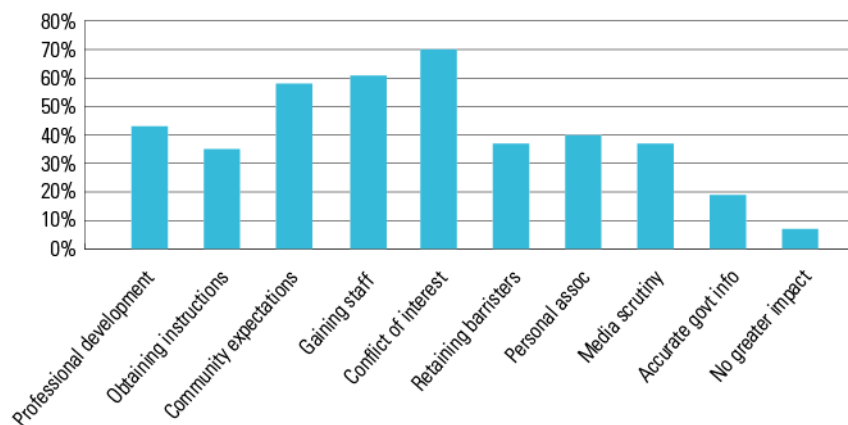
256 Urbis Keys Young, 'The Solicitors of NSW in 2015: Final Report' (Law Society of NSW, Sydney, 2004) <<http://www.lawsociety.com.au/idc/groups/public/documents/internetcontent/025942.pdf>>.

257 Suzie Forell, Michael Cain & Abigail Gray, above n 37, 11.

recruitment and retention of lawyers in RRR areas should be seriously considered.”<sup>258</sup> The research also provides insights from interviewees practising in regional communities, indicating both imperatives and disincentives for practising in regional communities.

Following feedback from interviewees on issues facing regional practitioners in delivering services to their clients, a *Postcode Justice* survey question was put to participating lawyers to test the extent of issues raised. The question *In comparison to your metropolitan counterparts, do any of the following issues adversely impact on your capacity to provide services to rural and regional clients?* provided a list of options. More than one box could be ticked and there was also an opportunity for additional comments. The chart below provides a representation of the results.

**Figure 19** Issues Impacting on Ability to Provide Services to Regional Clients: Lawyers’ Survey



*Difficulties in attracting graduates and experienced lawyers* to regional communities as discussed above, was the second most frequently raised issue by 61% of lawyers participating in the *Postcode Justice* survey. The top three issues raised by participants all reflect the limited availability of legal practitioners in regional communities and its consequences. *Greater potential for a conflict of interest as a result of the smaller number of legal practitioners/services available*, received the largest number of responses (69%), with *Communities expectation that I am able to respond to a broader range of legal matters* the third most frequently raised issue, with 58% of responses.

## Conflict of Interest

### Recommendation 9

That independent research be undertaken which examines and makes recommendations on the implications of ‘conflict of interest’ protocols on those using the services of regional private practitioners and Legal Aid services, and for those services themselves.

This research focuses on the administration of the justice system in regional Victoria. As ‘gatekeepers’ of justice system services, lawyers are an integral part of the process and their availability and capacity to deliver services to their communities in comparison to metropolitan services will have an impact on the equitable administration of justice across Victoria.

<sup>258</sup> Ibid.

Conflict of interest is a major ethical and practical issue for the legal profession<sup>259</sup> and can present in a many forms. Categories of conflict of interest within the lawyer/client relationship are briefly defined here and include:

- Current clients' conflict of interest ('concurrent' conflicts)

The most common and obvious instance is acting for both parties. Lawyers have an obligation to provide their client with an uncompromised service. This means they cannot effectively represent the interests of opposing parties.

- Lawyer-client conflict of interest

Where lawyers act in self-interest, compromising their duty of loyalty to their client's interests. This has particular relevance to a financial or generally fiduciary relationship.

- Past client/current client conflict of interest ('successive' conflicts)

This relates to a continuing duty of a lawyer to a past client not to disclose confidential information acquired as part of their lawyer client relationship.<sup>260</sup>

A fourth category is where a lawyer (including partners, other solicitors and employees of the same firm) is at risk of being called as a witness 'to give evidence material to the determination of contested issues before the court'.<sup>261</sup>

Conflict of interest "has of course always been a problem for practitioners in country towns where one or two law firms might deal with the legal problems of the whole town".<sup>262</sup> The problem is however becoming exacerbated for their clients with the reduced availability of legal services in regional communities. When conflicting parties seek legal advice in a small town, alternative legal representation will often need to be sought by one party from firms in other regional centres or from a practitioner with less experience in that area of law. As one interviewee indicated "Some (clients) have been with our firm for many years but because they and the ex-partner were involved in a Will or Conveyancing or commercial matter, it will make it a conflict of interest (for the firm) to do their family law matter".

Conflict of interest can also exist where disputing parties attempt to use the services of Legal Aid solicitors, which is regarded as the equivalent of private solicitors from the same firm representing opposing parties.<sup>263</sup> With the declining number of private solicitors undertaking Legal Aid work,<sup>264</sup> it is also becoming increasingly difficult for low and statutory income clients in regional areas to find a private solicitor who will represent them as a legally aided client; has expertise in the area of law; and does not have a conflict of interest. It can also arise at regional courts where for example, the one duty solicitor rostered to that court when the Family Violence List is running, is confronted with opposing parties seeking their services.

Several interviewees indicated a practice of 'conflicting out', in smaller towns. This was often quoted by interviewees in relation to family law disputes and involves one party to a dispute deliberately seeking initial advice from all local solicitors, to create a conflict of interest and thus prevent the other party from seeking local legal advice. This practice is also raised in a

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259 Ysaih Ross and Peter MacFarlane, *Ethics in Law, Lawyers Responsibility and Accountability* (Lexis Nexis Butterworths 2002) 414, cites a review of past issues of the Law Institute Journal (Victoria) 'found that a majority of requests for an Ethical Committee ruling, concerned conflict of interest'.

260 Ibid 5. Based on a summary of categories of conflict of interest by Michael Robertson, Griffith Law School.

261 Law Council of Australia, *Model Rules of Professional Conduct and Practice* (March 2002) <[http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file\\_uid=01EC79F6-1C23-CACD-2252-D298393FBFA0&siteName=lca](http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file_uid=01EC79F6-1C23-CACD-2252-D298393FBFA0&siteName=lca)> 13.

262 Ysaih Ross and Peter MacFarlane, above n 257, 355.

263 Victoria Legal Aid, Professional practice standards for casework –

'When VLA acts for a client under a grant of legal assistance, a solicitor-client relationship is formed which could prevent another VLA lawyer acting for another client or giving advice to another party in the same matter. In determining whether a conflict may exist, VLA lawyers have regard to the extent to which VLA has previously been given details about the facts of a matter or a person's personal circumstances which could prevent VLA acting for another party in relation to the same matter or those facts or circumstances.' <<http://www.legalaid.vic.gov.au/xfw/1250.htm#conflict>>.

264 TNS, above n 33, 62-63.

South Australian report following a *Lawyers, Clients and the Business of Law Symposium*,<sup>265</sup> in which a symposium panel member quotes the experience of Community Legal Centres. "This ('conflicting out') is particularly true in relation to rural and regional services where the pool of available service providers is small – so for example, a person may seek initial advice from the only CLC in the region, the local Legal Aid office advice service, the two different firms of practitioners in town and the one telephone advice line that is available. In effect, the person 'covers the field' in order to prevent the other party from obtaining local (and sometimes) any assistance".<sup>266</sup>

A variation, which may not be undertaken as a strategy to 'engineer' the exclusion of other parties, nevertheless has the same results. In this case, it is the practice of larger businesses in regional communities, engaging several local firms across a range of their legal requirements. The result of which limits the capacity of other parties in dispute with them to secure the services of a local lawyer.

Conflict of interest is therefore more likely to occur in regional communities; where there are a smaller number of practising solicitors; parties are more likely to be known to each other and; past legal/commercial dealing with others within that community are more likely to have occurred. The growing practice of merging law firms to ensure sustainability and efficiencies further compounds issues of conflict of interest, particularly for regional practices, whereby bringing in clients of each merging practice increases the likelihood of conflict of interest.

The growth in specialisation, where lawyers focus their expertise on narrower areas of law in response to an increasing complexity of legislation and a more sophisticated level of expertise required by business clients, also has a greater conflict of interest impact on regional communities,<sup>267</sup>. For example, in areas such as water law, farm succession planning, intellectual property law and environment and planning law, the relatively small number of lawyers practising in specialist areas within regional Victoria results in a greater likelihood of a conflict of interest in those areas of specialisation, adversely impacting on individual litigants and small business. Those practices are more likely to rely on the larger business clients and service agencies including for example, food processing industries, health services, local government and water authorities etc, who will provide the volume of work to sustain their specialisation. Those smaller businesses and individual clients seeking specialist legal expertise will find it more difficult to do so and may have to engage those services external to their local communities, if indeed comparable services are available.

The Law Council of Australia - Model Rules of Professional Conduct and Practice,<sup>268</sup> provide a basis for the ethical behaviour of all legal practitioners in Australia.<sup>269</sup> These rules, and related rules and protocols, for example the Law Institute of Victoria Professional Conduct and Practice Rules<sup>270</sup> and the Victorian Legal Aid Code of Conduct,<sup>271</sup> from an initial reading, do not however address dilemma around a need for balance between two competing public interests. The right of clients to have complete confidence in their solicitor to act in their best interest, which these rules reflect, and the right to have a client represented by a solicitor of their choice or indeed access to a solicitor.

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265 *Lawyers, Clients and the Business of Law - A Symposium Series* hosted by Griffith University Socio-Legal Research Centre and the Legal Services Commission, *Conflicts of Interest: Perspectives from Diverse Legal Settings – A report of the Symposium* (15 March 2007) 31 <<http://www.lsc.qld.gov.au/projects/Conflicts-of-interests-symposium-March-15.pdf>>.

266 *Ibid*.

267 Ysaiah Ross, *Ethics in Law, Lawyers Responsibility and Accountability* (Butterworths, 2002) 415.

268 Law Council of Australia, 'Model Rules of Professional Conduct and Practice' (March 2002).

269 A National Conduct Rules Reference Group, formed in late 2008, is currently reviewing these rules.

270 Law Institute of Victoria, 'Professional Conduct and Practice Rules' (2005) <<http://www.liv.asn.au/PDF/Practising/Ethics/2005ConductRules.aspx>>.

271 Victoria Legal Aid, 'Code of Conduct' <<http://www.legalaid.vic.gov.au/1258.htm>>.

As demonstrated by the frequency with which it has been raised by interviewees and survey participants alike, conflict of interest is clearly a significant issue for legal practitioners from regional areas. Erring on the side of caution by excluding acting for or advising a later party to a dispute, ensures 'justice is seen to be done', at least for one party. To do otherwise and thereby establishing more sophisticated methods and committing time to more closely examining the possible conflict of interest in individual cases, requires a degree of resourcing many smaller law firms and Community Legal Centres do not have. Solutions discussed in *Ethics in Law* such as 'Chinese Walls'<sup>272</sup> and the signing of waivers by clients aware of possible conflicts of interest,<sup>273</sup> require more development to accommodate circumstances in regional communities. Equally, the issue will place increasing demands on Victoria Legal Aid to respond to this dilemma, particularly as low income clients from smaller regional centres increase their reliance on Legal Aid services.

Considerations within a context of regional communities, of how best to respond to conflict of interest issues while ensuring access to legal advice and representation, requires greater and immediate scrutiny by both the legal profession, including its representative body the Law Institute of Victoria; and government, including the Department of Justice and Victoria Legal Aid.

A variation on issues of professional conflict of interest in accepting a client involves issues related to personally knowing opposing parties in a dispute. When lawyers participating in the *Postcode Justice* survey were asked if, compared with their metropolitan counterparts, there was a *greater likelihood of having a personal association with opposing parties in rural/regional towns* and that this *adversely impacted on their capacity to provide a service*, 40% of solicitors surveyed agreed. As indicated by the table below, it is no surprise that when these results are compared by their location, the proportion of the sample in agreement with the statement progressively increased, as the size of the regional centre decreased.

**Table 3** Personal association with opposing parties adversely impacts on capacity to provide a service (N=63)

RRMA	Disagree	Agree
RRMA 2 Other metro pop >100,000	77.8%	22.2%
RRMA 3 Large rural pop 25,000-99,999	62.5%	37.5%
RRMA 4 Small rural pop 10,000-24,999	58.8%	41.2%
RRMA 5 Other rural pop < 10,000	50.0%	50.0%

## Generalist Regional Practices

The third most frequently raised issue was in response to the statement, In comparison to my metropolitan counterparts, the community's expectation that I am able to respond to a broader range of legal matters, adversely impacts on my capacity to provide services to rural and regional clients. This was agreed to by 58% of lawyer respondents.

272 'Chinese Wall' - A law firm establishing structures to ensure that different solicitors within the one firm, acting for each client to a dispute, do not have access to confidential information in relation to the other client. See Ysiah Ross, above n 265, 4659.

273 See also American Bar Association Model Rules 1.7 <[http://www.law.cornell.edu/ethics/aba/current/ABA\\_CODE.HTM](http://www.law.cornell.edu/ethics/aba/current/ABA_CODE.HTM)>.

Approximately 70% of all legal practices in Victoria are sole practitioners.<sup>274</sup> As indicated earlier, past figures produced by the *Law Institute Journal* indicate the ratio of regional legal practices in Victoria to regional populations is significantly higher than in metropolitan Melbourne. Recent NSW figures also indicate a “ratio of residents to all locally based solicitors (public and private) increased with remoteness. Inner Regional areas had a ratio of one solicitor for every 1,000 residents. This increased to one solicitor for every 2,000 residents in Outer Regional areas. In the Remote and Very Remote areas of NSW, there was only one solicitor for every 3,000 residents.”<sup>275</sup> Of Victoria’s regional practices, 80% are sole practitioners with 99% of all regional practices either sole practitioners or practices with 5 or less partners.<sup>276</sup>

The need for regional solicitors to respond to a wider range of legal matters than their metropolitan counterparts (who have a sufficient volume of clients to sustain both larger practices with specialised areas of expertise and boutique or specialised practices) is acknowledged.<sup>277</sup> Regional law firms are more likely to be generalist, both in response to community needs and to ensure they accommodate the diversity of work necessary to sustain their practice. Given the proportion of regional legal practitioners to regional communities is expected to continue to decline, as is suggested by the Law Council of Australia<sup>278</sup> and to a lesser extent the NSW Law and Justice Foundation research,<sup>279</sup> this issue will be further exacerbated in the future.

Survey respondents and interviewee comments provide further context to the issue, suggesting that not only is there an expectation to respond to a broader range of legal matters, but that there is a lack of capacity to adequately deliver the range of services required. One interviewee suggested that, “You are expected to be able to cover anything that comes through the door; much more than you have any expertise or experience in, and inevitably you stuff up”. “Clients however won’t ever know that their service has been compromised”. “It’s easier in the city where you can develop an expertise in one area”. In contrast, a survey participant reflected on the dilemma of how, on the one hand, you have to deal with the expectations of your local community within a context of a limited availability of other local solicitors, while on the other, your actions were more vulnerable to local scrutiny, stating that, “Smaller choice of other lawyers to refer work to. Smaller Communities (means you) must always act in a way which reflects well on one personally and professionally, as your business seems to be the business of the entire community”.

The statement within the *Postcode Justice* survey regarding *the community’s expectation that I am able to respond to a broader range of legal matters*, was made in the context of a regional law firm’s ability to deal with unreasonable expectation of current and potential clients. However, given the large number of survey participants confirming this as an issue and the comments they provided, perhaps a more fundamental question arising is: How then do solicitors respond to those expectations? A reasonable inference (given the limited availability of law firms in regional areas, in addition to the lack of specialist firms and the constant conflict of interest issues arising), may be that the consequence of community expectations and a lack of alternatives is that regional law firms are more likely to accept and attempt to manage cases without the prerequisite level of expertise.

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274 Legal Services Board, *Practitioner Statistics* (6 May 2011) <<http://www.lsb.vic.gov.au/PractitionerStatistics.htm>>.

275 Suzie Forell, Michael Cain & Abigail Gray, above n 37.

276 Law Institute of Victoria, *What is Law All About – Information for Schools, TAFE and Students* <<http://www.careers.liv.asn.au/content.asp?contentid=17>>.

277 TNS, above n 33, 39 confirms that through

‘the qualitative phase, interviews with practitioners revealed that many regional and remote firms tended to be more generalist or multi-disciplinary in order to meet the broader legal needs of their community. This is reflected in the quantitative findings whereby 43% of firms in regional and remote areas provided Legal Aid for both family matters and criminal matters, rather than specialising in one, compared to the 21% seen across all firms.’

278 Law Council of Australia, above n 35.

279 Suzie Forell, Michael Cain & Abigail Gray, above n 37, 36.

Both the Law Council of Australia *Model Rules for Professional Conduct and Practice* and the Law Institute of Victoria *Professional Conduct and Practice Rules* require that practitioners act competently for their client. Law Council Model Rule Number One states that: "Duty to Client - 1.1 A practitioner must act honestly and fairly, and with competence and diligence, in the service of a client."<sup>280</sup> Accepting cases in areas of law which are not part of a practitioner's area of competency clearly conflicts with this professional practice rule. But the reality is that this rule is difficult to objectively measure and administer, and does not reflect the position of practising within particularly smaller regional centres, where the economic realities of covering costs and the lack of options available to clients, may reduce their use of discretion in determining the matters they accept. The dilemma is that clients with no or limited understanding of the legal complexity of a matter, will rely on that discretion of their local practitioner and may not always receive the level of competence required. While this no doubt also occurs in metropolitan and larger regional centres, the reduced legal service options for clients in smaller regional centres exacerbates the issue.

## Professional development for regional lawyers

Maintaining and building competence is critical to the effective delivery of legal services. The Law Institute of Victoria (LIV) requires that to continue to hold a Victorian Practising Certificate, lawyers are required to undertake 10 hours of recognised Continuing Professional Development (CPD) each year.<sup>281</sup> This is a minimal requirement and many lawyers will participate in a range of formal and informal activities to maintain a high level of knowledge across a range of areas of law and practice issues.

A concern raised by several interviewees and 44% of the *Postcode Justice* survey participants was the difficulty in accessing professional development programs. One interviewee expressed it in terms of "Professional Development seminars are not easily available; LIV and Leo Cussens will have one-hour seminars which (because of the distance required to be travelled) are just not worth attending. Podcast would be better." Another interviewee indicated the value of technology in the delivery of CPD, stating that the regional "Legal Aid Office would make their video conferencing facility available to local private lawyers when CPD programs were being delivered."

Issues around participating in less formal forms of professional development, largely through peer activities were also raised by interviewees and survey respondents. Survey comments such as, "when wanting some feedback its hard to find" and "there is limited opposition to keep me up to the mark" and "it's a profession which improves by its cohesion, which is difficult when the changes/resources are all in Melbourne", reflect the difficulties for lawyers in building knowledge and expertise particularly in smaller regional centres.

For recent graduates, the development of skills when working in regional areas can be a testing experience. While advantages often expressed in promoting regional practices include the ability to experience a wider variety and depth of legal work and having a greater responsibility<sup>282</sup>, this can come at a cost to junior practitioners and their clients if there is insufficient support and mentoring.<sup>283</sup> This is particularly so in the context of the dramatic reduction in the number of experienced regional legal practitioners as forecast by the Law Council of Australia.<sup>284</sup>

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280 Law Council of Australia, 'Model Rules of Professional Conduct and Practice' (March 2002) 5 and 10 <<http://www.liv.asn.au/PDF/Practising/Ethics/2005ConductRules.aspx>>.

281 As prescribed under the Legal Services Board, 'Continuing Professional Development Rules' (2008) <<http://liv.asn.au/PDF/Practising/Professional-Standards/Acts/2008CPDRulesLIV.aspx>>.

282 Law Institute of Victoria, *Opportunities in Regional Victoria*, Law Institute of Victoria <<http://www.liv.asn.au/Practising-in-Victoria/Careers-Centre/Managing-my-Career/Opportunities-in-Regional-Victoria>>.

283 Trish Mundy, above n 36, 13.

284 Law Council of Australia, above n 35, 6.

The NSW Law and Justice Foundation research on recruitment and retention of regional lawyers provides detailed accounts of recent graduate experiences, which can be equated to the experience of Victorian graduates. One interviewee for the NSW research provides an insight to the precarious position of junior legal staff, stating that, “They put a lot of weight on those new lawyers. I was in [town] by myself virtually. My boss was based in [a larger regional town]. It meant that a lot of pressure landed on me. I was having to make decisions not knowing very much and to run cases not knowing very much. I was lucky to get 10 minutes a week talking to him for any advice . . . and so that makes it tougher . . . it makes it really quite a hard gig when you are trying to run it yourself when you don’t have much knowledge and very little backup.”<sup>285</sup>

*Postcode Justice* interviewees also raised concerns regarding the quality of litigation due to the inexperience of legal representatives at regional Magistrates’ Courts. One stated that, “Court appearances are tending to be undertaken by juniors while senior solicitors deal with probates and farmers etcetera - where the income is. As a consequence, juniors have no role models to follow in court”. Another indicated that this also impacted on the overall accountability and standard of hearings, suggesting that, “the laziness of some Magistrates was reflected in their bullying of younger lawyers who may be making a reasonable legal point”.

Professional development encompasses both a formal and informal process. In both instances, distance, time, resources and the nature of regional practice, present challenges in gaining a reasonable level of professional development. Recent research indicates an aging and declining number of regional legal professionals. Without addressing their knowledge and support needs, which largely relies on the mentoring and support of more experienced regional practitioners, endeavours to encourage new graduates and junior lawyers to regional areas will have limited success. Attracting and retaining legal professionals within regional communities is an important part of building the social capital of those communities. It is the legal profession within those communities that ensure the courts, and other services and systems that are at the core of the administration of justice, are accountable and rigorous in their delivery of justice to those communities. In smaller regional communities, where there may be less external accountability and scrutiny, their competence and skill as ‘gatekeepers’ is even more critical to the effective administration of justice.

## The impact of regional media

Another issue raised by participants in both the *Postcode Justice* interviews and the survey, which deserves attention here, was in relation to the role of the media in regional communities. A number of comments regarding the impact of the local media on regional courts and court participants were made, including:

- “Impact of local paper reportage (is) greater in smaller communities. Consequences of public knowledge (is) often harsher than the penalty.”
- “Sunshine Court hearings would not have the same consequence as Ballarat Court. Should have protocol (preventing reporting) on people not convicted or psychiatric reports.”
- “Magistrates sometimes act as the local sheriff. Press coverage may mean (clients are) less likely to get bail.”
- “Local papers print convictions and names and addresses. Whatever the offence, they print it! (The local) papers often also publish committal outcomes! (first hearing, where a Magistrate decides if there is enough evidence for the case to go to trial).”

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<sup>285</sup> Suzie Forell, Michael Cain & Abigail Gray, above n 37, 111.

- “Court reports are always in the local paper which results in people’s reputations being stained.”
- “Invasive, degrading reporting by local media, including publication of defendant’s age and address. Whereas city counterparts don’t face the same shaming.”

When lawyers surveyed for the *Postcode Justice* research were asked if there was *Greater public scrutiny as a result of local media and word of mouth in rural/regional towns* in comparison to their metropolitan counterparts, 37% noted this as an issue. The largest proportion of survey participants agreeing to this statement came from those based in communities of less than 25,000 people.

While public hearings are a tenet of procedural fairness,<sup>286</sup> the reporting of court events can have an adverse effect on fairness of court outcomes in ways other than the shaming of individuals. Greater public scrutiny of judicial decision making at regional courts may influence Magistrates presiding over regional hearings.<sup>287</sup> The introduction of a therapeutic jurisprudence model at the Magistrates’ Court creates a further dilemma for Magistrates, “should they act as local problem solvers or simply administer justice according to the law”.<sup>288</sup> The latter is more likely to appeal to a mass media (which is less interested in the complexities of judicial decision making) in addressing the underlying problems and disadvantage associated with criminal behaviour and more interested in ‘punishment fitting the crime’. A paper delivered to the recent National Rural Regional Law and Justice Conference adds a further dimension to the role of regional media, examining the legitimacy of shaming offenders. The paper considers the issue, “does this form of media power offend the principle of equality, as media coverage of criminal matters is highly uneven and accords more closely with news values and media production requirements than considerations of justice or sentencing principles.”<sup>289</sup>

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<sup>286</sup> *Charter for Human Rights and Responsibilities Act 2006 (Vic)* s 24. [http://www.austlii.edu.au/au/legis/vic/consol\\_act/cohrara2006433/s24.html](http://www.austlii.edu.au/au/legis/vic/consol_act/cohrara2006433/s24.html).

<sup>287</sup> Russell Hogg, ‘Crimes, courts and sentencing in rural communities’ in *Crime in Rural Australia* (Federation Press, 2007) 172-173.

<sup>288</sup> *Ibid* 173.

<sup>289</sup> Kristy Hess and Lisa Waller, ‘Naming and Shaming: Media Justice for Summary Offenders in a Regional Community?’ (unpublished Conference Paper) <<http://www.deakin.edu.au/buslaw/law/rjrc/papers/hesskwaller1.pdf>>.

## Chapter 7 - Research Findings: Cross-Border Issues

### Recommendation 10

That improved cross-border protocols be established in relation to the provision of justice system services, the application of court orders and where appropriate, the fostering of parallel legislation between states.

State borders often mark the greatest distance from capital cities and centralised decision making. State services provided in regional communities set near borders, also mark the spatial extent of a state's mechanisms to deliver services. In the provision of legal services and the administration of the justice system, borders create a number of issues and even impact on individual relationships. As one interviewee put it, "state borders create greater demands. People may be related and share the same sporting facilities and clubs, but don't have the same laws".

For communities located on or near state borders, legal issues often traverse those borders. Many of the laws, processes and institutions governing both commercial activities and responding to criminal behaviours are however state bound. For legal practitioners working in towns bordering on or near state boundaries, the additional weight of dealing with at least two sets of state laws, jurisdictions and related procedural variations places a significant demand on their services. An example cited by one Mildura lawyer included dealing with a client who owned a transport business and whose truck was involved in a road accident. The client lived in, and had a registered office in NSW, had his truck depot based in Victoria, and the truck was registered in the ACT. To add further complexity, the accident occurred in South Australia.

For Community Legal Centres with often very limited resources, the costs associated with serving a large geographic area is inhibitive. The additional burden of dealing with interstate laws, institutions and legal processes, significantly limits their ability to serve their clients needs. Funding of Community Legal Services continues to be tight and in rural communities, while they are expected to serve large areas and cross border communities, there are limited resources. It is understood that Victoria Legal Aid has protocols for dealing with clients involved in interstate jurisdictions, however there are currently no Victoria Legal Aid offices at any regional centres on, or close to, Victorian state borders, including for example at Mildura or Albury/Wodonga.

Interviewees based at regional towns close to state borders expressed a frustration with the lack of cross border co-operation between state services. Orders made by a court in one state may not be recognised or supported by bordering state services. One example raised by an interviewee, related to Community Treatment Orders set in Victoria (which, in their experience, are not supported by mental health services in NSW), where the client had recently moved. As a consequence of not complying with the order, the client was in breach, with the prospect of incurring a gaol term. Another example raised by interviewees related to Compliance Orders and Child Protection Orders, "At one stage both the Victorian Department of Human Services and the NSW Department of Community Services were housed in the same building and still didn't talk." 'Standardised' Court orders that for example prevent interstate travel, can have unexpected consequences for those offenders living on, or near, state borders. An example given was that of a homeless woman who found affordable accommodation just over the border. As a consequence of breaching an Order because of her 10 kilometre move, she was put into custody. For clients living

on borders, confusion can also exist in understanding which State jurisdiction is appropriate. An Albury/Wodonga practitioner cited a client uncertainty if a claim in relation to an assault should be dealt with in the State where the assault occurred, or in the State where they resided.

Intervention orders in Victoria and Apprehended Violence orders in NSW also create issues in border communities. One *Postcode Justice* interviewee provided an example of a woman moving across the border from Wodonga to Albury who was, as a consequence, no longer protected by the intervention order she had received. While dual orders can be obtained for such circumstances, this was often not undertaken. Co-operation between states in the implementation of court orders has tended to be ad hoc and slow. In some instances, protocols between police in each State have enabled them to implement cooperative and practical responses to this, however a more effective response would be universal Orders covering all States. A recent Joint Press Release from the Commonwealth Attorney General and the Minister for the Status of Women flags such a scheme. A National Registration Scheme for domestic and family violence orders (Daisy Digital Accessible Information System), is now proposed “to be applied Australia-wide (which) will allow a domestic or family violence order (DVO) issued by a court in one jurisdiction to be automatically recognised in other jurisdictions”.<sup>290</sup>

In the press release the Attorney General acknowledges that, “Under current arrangements, if a protected person wants to have their DVO (Domestic Violence Order or in Victoria an Intervention Order) recognised in another jurisdiction, they have to ‘register’ the order with a court in that jurisdiction – putting the onus entirely on the victim. Many people fleeing domestic violence may not be aware of the requirement to register the order if moving interstate (and) in addition, some protected people are too fearful for their safety to approach a court.”<sup>291</sup>

Under this proposed National Scheme, victims of domestic violence will be able to travel or move to another State or Territory and be automatically protected by their Order. It is hoped that this scheme paves the way for the national recognition of other state-based Court Orders.

## Indigenous communities and State borders

For indigenous populations, where clan and language boundaries do not follow State borders, those borders may be an extra consideration, adding further complexity to the language, cultural and jurisdictional issues which already exist. For example, the Koori Court, a division of the Magistrates’ Court of Victoria has proven to be a very successful and important Victorian innovation.<sup>292</sup> As with the Circle Sentencing in New South Wales and Nunga Court in South Australia, and indigenous sentencing courts in other States and Territories (except Tasmania where there are no specialist indigenous courts),<sup>293</sup> it is limited to hearing offences committed in those States. However, some language groups cross State borders, for example the Kureinji, Meru and Ngargad indigenous language groups, extend through north western parts of Victoria and interstate to NSW and South

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290 Hon. Kate Ellis, Minister for the Status of Women and Hon. Robert McClelland MP, Attorney-General ‘New national register for domestic and family violence orders’ (Media Release 4 March 2011)

<[www.kateellis.fahcsia.gov.au/mediareleases/2011/Pages/domestic\\_familyviolence\\_orders\\_4march11.aspx](http://www.kateellis.fahcsia.gov.au/mediareleases/2011/Pages/domestic_familyviolence_orders_4march11.aspx)>.

291 Ibid.

292 Mark Harris, La Trobe University A Sentencing Conversation ‘Evaluation of the Koori Courts Pilot Program October 2002 – October 2004’, Commissioned by the Department of Justice

<[http://www.justice.vic.gov.au/wps/wcm/connect/justlib/DOJ+Internet/resources/3/0/30b2b88045b5b35c8eaceae6d4b02f11/Evaluation\\_of\\_the\\_Koori\\_Courts\\_Pilot\\_Program.pdf](http://www.justice.vic.gov.au/wps/wcm/connect/justlib/DOJ+Internet/resources/3/0/30b2b88045b5b35c8eaceae6d4b02f11/Evaluation_of_the_Koori_Courts_Pilot_Program.pdf)>.

293 Indigenous sentencing courts do not use indigenous customary laws. Rather, they use Australian criminal laws and procedures to sentence Indigenous offenders who have either pleaded guilty or been found guilty, utilising the cultural expertise of Indigenous Elders and Respected Persons in the process.

For a comparison of Indigenous Sentencing Court, See Elena Marchetti, ‘Indigenous Justice Clearing House Brief 5’ (December 2009)

<<http://www.indigenousjustice.gov.au/briefs/brief005.pdf>>.

Australia.<sup>294</sup> The Mildura Koori Court is unable to deal with offences committed just over the border and the closest NSW Circle Sentencing Court is in Dubbo over 800 kilometres away, and South Australian Nunga Court, 350 kilometres away. It is somewhat ironic that people from the same language group, with the same kinship or tribal affiliations are then required to use different State justice systems, if indeed they are available, to accommodate their cultural differences to non-indigenous culture and institutions.

Parallel Cross-Border Justice Acts established by the Western Australian, South Australian and Northern Territory and the Commonwealth governments<sup>295</sup> have been a recent initiative to respond to inconsistencies between jurisdictions and the delivery of justice system services across State borders. Originally “instigated by the NPY (Ngaanyatjarra Pitjantjatjara Yankunytjatjara) Women’s Council, which initially approached State and Territory governments in 2003 seeking a solution to the serious justice problems in these remote regions”.<sup>296</sup> Primarily instigated to deal with domestic violence issues, the parallel legislation was established to enable police, Magistrates, fines enforcement agencies, community corrections officers and prisons of one jurisdiction, to deal with offences occurring in another of the participating jurisdictions within the lands held by the Ngaanyatjarra, Pitjantjatjara and Yankunytjatjara people in the north-west of SA, the WA Central Reserves and NT Aboriginal Land south of Alice Springs.

The parallel legislation is however not without its critics. An article in the Indigenous Law Bulletin suggests that, “The proposed legislative scheme is extraordinarily complex. It comprises 147 sections and covers some 58 pages. It might be described as a sledgehammer to crack a walnut. The scheme, radical in scope, seems excessive to address jurisdictional issues better resolved by means of expedited extradition procedures. Its extensive reach, in reordering the operation of the criminal justice system in the cross-border region, gives rise to significant concerns.”<sup>297</sup>

Other cross-border legislation<sup>298</sup> and numerous policies and protocols which respond to the limitations of State bound justice system mechanisms, exist across a range of criminal and civil matters. However the WA, NT and SA Cross-Border Justice Acts are perhaps one of the few examples of cross-border legislation which exclusively respond to issues within the immediate border regions. Whether improved protocols or legislation are the most appropriate mechanisms for dealing with such issues, will perhaps vary depending on the particular jurisdiction and area of law. However, there is clearly room for improving the delivery of justice related services across borders to ensure a level of sensitivity to the implications for those immediate border regions.

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294 Australian Broadcasting Corporation, *Indigenous Language Maps*, ABS Online <<http://www.abc.net.au/indigenous/map/>>.

295 See Cross-Border Justice Act 2008 (WA), Cross-Border Justice Act 2009 (SA), Cross-Border Justice Act. 2009 (NT), and Law and Justice (Cross Border and other amendment) Act 2009 (Cth).

296 NPY Women’s Council, ‘Fact Sheet – Advocacy: Cross Border Justice Issues’ <[http://www.npywc.org.au/FACT\\_SHEET\\_16.pdf](http://www.npywc.org.au/FACT_SHEET_16.pdf)>.

297 Chris Charles, ‘The National Cross-border Justice Scheme’(2009) 7.12 *Indigenous Law Bulletin* 23-26 <<http://search.informit.com.au/documentSummary;dn=074998690928275;res=IELHSS>>.

298 Notably the *Jurisdiction of Courts (Cross Vesting ) Act 1987* (Vic), which allows the Supreme Court of Victoria, interstate Supreme Courts and Family and Federal Courts to run proceedings from other state jurisdictions.



## Chapter 8 - Research Findings: Regional Engagement in Laws, Policies and Programs

### Recommendation 1

That an independent authority be established whose role will be to review the impact of government policy, services and programs on the equitable provision of justice system services in rural and regional Victoria, and advise government on the outcomes of such reviews. Additionally, that body should be provided with the powers to nominate to the Attorney General or relevant Ministers, new and amended legislation likely to significantly impact upon regional communities and which require a Regulatory Impact Statement review. The body would contribute to such reviews.

A criticism raised by *Postcode Justice* interviewees was that legislation is drafted with little consideration of its relevance, effect or application to regional communities. When survey participants were asked for their position on the statement *Legislation tends to be developed centrally without due consideration of its impact on rural and regional Victorians*, of the 115 survey participants who responded to this question, only 7 (6%) disagreed; a further 27% neither agreed nor disagreed. Sixty-seven per cent agreed (77) of whom, 36% strongly agreeing. Of the legal practitioner cohort participating in the survey, 60% agreed with the statement and 33% neither agreeing nor disagreeing. Seventy-six per cent of human service organisations participating agreed with the statement.

These results represent a significant degree of dissatisfaction with current legislative processes, perhaps bordering on disenfranchisement; a level of regional dissatisfaction demonstrated with the recent Water Reform process engaged in the development of the Murray Darling Basin Plan.<sup>299</sup>

### Legislative review and policy and law reform

Regulatory Impact Statements (RIS) are the principle mechanism by which government assesses the cost-benefit of proposed legislation. "For a regulatory measure to represent the most efficient solution to an identified problem, it must be demonstrated through the RIS that the proposed measure:

- is likely to yield benefits greater than the costs it imposes; and
- yields greater net benefits (i.e. total benefits less total costs) than any of the other viable options."<sup>300</sup>

Guidelines for developing RIS outlined in the *Victorian Guide to Legislation*, emphasise the importance of consulting. The level and target of consultations however is at the discretion of the responsible Minister.<sup>301</sup> A recent review of the RIS process in Victoria<sup>302</sup> indicates the

299 Murray Group of Concerned Communities, – Submission to the Murray Darling Basin Authority (December 2010) <[http://www.basinplan.com.au/media/user\\_documents/pdf/37871/murray-group-of-concerned-communities-1297219958.pdf](http://www.basinplan.com.au/media/user_documents/pdf/37871/murray-group-of-concerned-communities-1297219958.pdf)>.

300 State Government of Victoria – Department of Treasury and Finance. 'Victorian Guide to Legislation' (April 2007) <[http://www.dtf.vic.gov.au/CA25713E0002EF43/WebObj/VictorianGuidetoRegulation2007/\\$File/Victorian%20Guide%20to%20Regulation%202007.pdf](http://www.dtf.vic.gov.au/CA25713E0002EF43/WebObj/VictorianGuidetoRegulation2007/$File/Victorian%20Guide%20to%20Regulation%202007.pdf)>.

301 Ibid.

302 Department of Treasury and Finance, 'Reviewing the effectiveness of the Regulatory Impact Statement (RIS) Process in Victoria' (December 2010) <[http://www.vcec.vic.gov.au/CA256EAF001C7B21/WebObj/RISReviewfinalreport-VCECversion02Feb11/\\$File/RIS%20Review%20final%20report%20-%20VCEC%20version%2002Feb11.pdf](http://www.vcec.vic.gov.au/CA256EAF001C7B21/WebObj/RISReviewfinalreport-VCECversion02Feb11/$File/RIS%20Review%20final%20report%20-%20VCEC%20version%2002Feb11.pdf)>.

limitations of RIS stating that, “too often, the RIS process is seen as a compliance exercise rather than the policy development process it is intended to be, and too much emphasis is placed on preparing the RIS document rather than the appropriateness of regulatory outcomes”. The Review further stated that from its consultations with ‘stakeholder departments’, they “were concerned that the preparation of the RIS document has become a very academic exercise with too little emphasis on the consultation element.” As largely a cost-benefit exercise, RISs may provide little opportunity to explore the social or equity impact of proposed new and amended legislation. This was also raised within the Review, which indicated that, “Concerns exist about the ‘one-size-fits-all’ approach to cost-benefit analysis (CBA) in Victoria. Not all issues (particularly social issues) can be addressed and appropriately evaluated within an economic framework or can even be quantified”.<sup>303</sup>

While their use as a law reform tool is limited, it can be argued that Regulatory Impact Statements as part of a ‘policy development process’ are a political process and with that, may have significant limitations and biases. A NSW report *By the People For the People?* succinctly states that, “Law reform consultation occurs primarily at executive discretion and is influenced by wider political circumstances. A combination of policy intent, political constraints and executive judgement underpin the highly variable way in which opportunities to participate in law reform manifest. Together, they determine whether participation opportunities exist, are limited to particular stakeholders or specific groups, or are available to the general public.”<sup>304</sup>

As indicated by the above reviews, the ability of the RIS process to effectively consult with regional communities in relation to the impact of legislation using existing mechanisms presents difficulties. Whatever consultation mechanisms are used by government in relation to laws, policies and programs which impact on the equitable delivery of justice system services, there needs first to be a recognition by government that there may be a particular or varying impact on regional communities, and a commitment to respond to these differences. This lack of recognition of regional impacts has been described as ‘spatial blindness’.<sup>305</sup>

In developing informed policy, programs and process, Federal and State governments have recognised a need to consult with regional communities at some levels. Regional Development Australia (RDA) has established nine Advisory Committees in Victoria; four of which are in metropolitan regions. Regional Development Victoria (RDV) runs a range of infrastructure, skills, housing and other community development programs and provides eight Victorian Business Centres and has ‘a presence’ at a further eight regional towns. An emphasis of both RDV and RDA is on regional economic and infrastructure development programs. While a number of national and Victorian reports over the last three decades have raised access to justice issues as having a significant impact on regional communities, no strategic response has been development through RDV or RDA. This suggests a lack of recognition of the impact of the provision of justice system services on regional communities and their economies.

Since 2009, the Department of Justice has rolled out aspects of its administration to regional Victoria. Its Regional Management Model<sup>306</sup> establishes offices in five regional ‘Justice Service Centres’, “to respond effectively to the need for improved access to justice services,

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303 Ibid 3.

304 Natalina Nheu and Hugh McDonald, Law and Justice Foundation of NSW, ‘Report by the People For the People, Community Participation in Law Reform’ (November 2010) 15.

305 See GHC Rural Proofing Review UK April 2008 CRC website “Many policy makers in central government do not think rural not just because they think urban but because of ‘spatial blindness’” <<http://www.ruralcommunities.gov.uk/files/Final%20040408.pdf>>.

306 See Victorian Department of Justice, Victorian Department of Justice Annual Report 2009-2010 (2010).

(and) extend the department's reach to regional communities."<sup>307</sup> This goes some way to providing an opportunity to connect with those communities in which justice system services are being delivered, although a process of engaging with those 'communities' is not detailed.

The Coalition Government is currently in the process of establishing a Courts Executive Services, involving the re-appointment of approximately 200 Department of Justice staff to this independent entity, which will have the responsibility for managing the administration of all State Courts and Tribunals.<sup>308</sup> This removes the administration of the courts from the Department of Justice and the recently established regional 'Justice Service Centres', maintaining it as a centrally managed Department.

Outside the existing institutions of parliament and executive government however, there is little in the way of formal structures and mechanisms to accommodate a need for more effectively alerting government to the divergent needs of regional communities in the provision justice system services, or when developing or reforming laws in Victoria. While regionally based industry sectors, the legal profession, community based services and individuals can, and do, raise issues with government on these matters, there currently exists no representative 'voice' for users of justice system services in regional Victoria. This presents difficulties at both a formal consultation level using existing mechanisms established by government, and also in generally alerting government to the impact on regional communities of legislation, policies and programs, and in influencing their development.

## Establishing and independent voice

As demonstrated by both Australian and overseas initiatives, governments can and do recognise the adverse affects of 'centralised decision making' on regional communities and have established mechanisms, with varying degrees of success, which acknowledge and respond to variations between the needs of metropolitan regional communities. In 1996, the NSW government created a Cabinet Memorandum requiring a Rural Communities Impact Statement (RCIS)<sup>309</sup> and later, a set of corresponding Guidelines to "enable a comprehensive assessment of the potential impacts on rural and regional communities of proposed changes to the policies or programs of Government agencies. These Guidelines are intended to establish a framework of general principles within which agencies can undertake rural communities [sic] impact assessments on a consistent basis. It is now required that all State Government Departments and Authorities undertake a RCIS to support proposals submitted to Cabinet for changes that could impact on rural communities in New South Wales".<sup>310</sup> The effectiveness of NSW RCIS process is not known, however the commitment to their development indicates a recognition that consideration ought to be made of the impact of legislation policies and programs on regional NSW.

In 2005 a major commitment to building an awareness of, and governmental response, to the needs of regional communities was instigated by the UK government, with the establishment of the Commission for Rural Communities (CRC), which became an independent body in 2006. The CRC had a statutory function to:

- Advocate for rural England: acting as a voice for rural people, businesses and communities;

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307 Department of Justice, *Regional Locations*, Department of Justice  
<<http://www.justice.vic.gov.au/wps/wcm/connect/justlib/DOJ+Internet/Home/About+Us/Regional+Locations/>>.

308 Robert Clark MP, *Coalition to Slash Court Delays*, Robert Clark MP (23 November 2010) <<http://www.robertclark.net/news/coalition-to-slash-court-delays/>>.

309 NSW Department of Premier and Cabinet, Ministerial Memoranda, *M1997-05 Guidelines for the Preparation of Rural Communities Impact Statements* (27 March 1997) <[http://www.dpc.nsw.gov.au/publications/memos\\_and\\_circulars/ministerial\\_memoranda/1997/m1997-05](http://www.dpc.nsw.gov.au/publications/memos_and_circulars/ministerial_memoranda/1997/m1997-05)>.

310 Government of New South Wales, *Guidelines for the Preparation of Rural Communities Impact Statements*, Government of New South Wales Office of Rural Communities <[http://www.dpc.nsw.gov.au/\\_data/assets/word\\_doc/0008/1223/Guidelines\\_Rural\\_Communities\\_Impact](http://www.dpc.nsw.gov.au/_data/assets/word_doc/0008/1223/Guidelines_Rural_Communities_Impact)>.

- Provide expert advice: giving evidence-based, objective advice to government and others; and
- Act as an independent watchdog: monitoring and reporting on the delivery of policies nationally, regionally and locally.<sup>311</sup>

With a focus on disadvantaged groups, the CRC made significant inroads, creating innovative responses to economic and social issues in rural England. As a result of the 'Global Financial Crisis', the activities of the CRC have been significantly curtailed and the CRC is no longer an independent body, but a division of the Department of Environment, Food and Rural Affairs; a consequence which severely curtails its independence and effectiveness.

An important tool, developed and refined through the activities of the CRC, is 'Rural Proofing'.<sup>312</sup> Rural Proofing is a part of the UK policy-making process which also applies to both the design and delivery stages of programs and services, and is a formal part of the Government's Impact Assessment guidance. A *Rural Proofing Toolkit*<sup>313</sup> produced by the CRC, provides a step-by-step process designed to 'complement and enhance' other existing appraisal systems. It guides government departments that apply policies through the steps of policy development, proofing and evaluation processes to "ensure that the policies are implemented fairly and effectively".

Similarly the Canadian Government, through its Rural Secretariat, works with key government departments and agencies "to improve the quality of life in rural communities so these regions can compete in the global economy. The Secretariat also ensures that federal policies and programs respond to the needs of these communities".<sup>314</sup> This is done through several means including the use of 'Rural Teams'; a combination of relevant departmental staff and key stakeholders in each Territory; and a 'Rural Development Network', a federally centralized network of Federal and Provincial/Territory Departments. Like the Rural Proofing concept, the Rural Secretariat base their reviews of government policies and programs on a 'Rural Lens'<sup>315</sup>; a set of criteria used to determine the relevance, impact and benefits of initiatives. The Rural Secretariat is currently funded to 2013.

The New Zealand government also has a Rural Proofing process to assess the impact of policies and programs on rural communities at the development and implementation stages.<sup>316</sup> The Rural Proofing model is administered by the New Zealand Ministry of Agriculture and Forestry.

To date, Victoria and Australia remain without a mechanism that specifically acknowledges and assesses policies and programs that may have a specific impact on regional Victoria or Australia. A Rural Proofing model has been proposed for Victoria recently, as the Number One Recommendation within the 2010, Victorian Parliamentary *Inquiry into the extent and nature of disadvantage and inequity in rural and regional Victoria*.<sup>317</sup> The recommendation did not include a proposed structure but suggested, "that this Recommendation can be implemented innovatively by making use of those currently contributing to leadership bodies in rural and regional Victoria. The challenge for the State Government is to establish a body that gathers

311 Commission for Rural Communities, *About Us*, Commission for Rural Communities (31 March 2011) <<http://ruralcommunities.gov.uk/about/>>.

312 For further information on Rural Proofing see <<http://ruralcommunities.gov.uk/rural-proofing/>>.

313 CRC Rural Proofing Toolkit <<http://ruralcommunities.gov.uk/files/rural%20proofing%20toolkit.pdf>>.

314 Government of Canada, *About Us – What is the Rural Secretariat?*, Canada's Rural Partnership (23 December 2008) <<http://www.rural.gc.ca/RURAL/display-afficher.do?id=1230067130367&lang=eng>>.

315 Government of Canada, *The Rural Lens*, Canada's Rural Partnership (30 July 2009) <<http://www.rural.gc.ca/RURAL/display-afficher.do?id=1246383722421&lang=eng>>.

316 New Zealand Ministry of Agriculture and Forestry, *Rural Proofing* (15 March 2011) <<http://www.maf.govt.nz/agriculture/rural-communities/rural-proofing>>.

317 Rural and Regional Committee, Victorian Parliament, *Inquiry into the Extent and Nature of Disadvantage and Inequity in Rural and Regional* (2010) <[http://www.parliament.vic.gov.au/images/stories/committees/rrc/disadvantage\\_and\\_inequality/report/20101014\\_for\\_web.pdf](http://www.parliament.vic.gov.au/images/stories/committees/rrc/disadvantage_and_inequality/report/20101014_for_web.pdf)>.

current leadership and that is given the capacity to scrutinise government policy and legislation in an independent way”.<sup>318</sup> To date, the author is unaware of any action taken by the State Government to implement this recommendation.

The concept of Rural Proofing has its limitations. There first needs to be a recognition that there are variations in existing circumstances between regional communities, and an ability to respond to those variations. There also needs to be a structure and commitment across all levels of government to implement this concept. The Organisation for Economic Co-operation and Development (OECD) presents an approach that recognises and responds to variations in opportunities and circumstances of regional communities, within a context of regional economic development. An OECD Directorate for Public Governance and Territorial Development report<sup>319</sup> states that “countries have promoted a new paradigm of regional policy that aims at helping each region, whether wealthy or not, to maximise its own comparative advantages in a positive sum game that contributes to national objectives.”<sup>320</sup> It further states that, “partial progress has been achieved by 'proofing' the impact of sectoral policies on different types of regions and adapting the policy content to specific regional needs. New strategies for spatial planning have been adopted on the basis of a more regionalised approach.”<sup>321</sup> The report further states that at the central government level, “collaborations should be made across interministerial bodies and full-fledged ministries (or specialised units in ministries). In turn, vertical collaboration has made progress in the use of contracts across levels of government as tools to implement co-ordinated public investment strategies.”

The issue of poor integration and implementation across government in policy and program development is demonstrated by a 2008 review of the UK Rural Proofing process, the GHC Rural Proofing Review.<sup>322</sup> Poor implementation, according to the report, was in part due to a lack of understanding of the process, a limited awareness of the responsibility to implement Rural Proofing, competing priorities, resource barriers and the “obvious barrier (being) ‘spatial blindness’.” ‘Spatial disadvantage’ was explained within the report in the context of, “Some (government bodies) find that understanding a differential spatial effect of a policy is more apparent in some than other policies just as there is patchy understanding of the rural dimensions of a policy. Rural Proofing tends to be recognised in some policies more than others though few would use the term Rural Proofing to describe what they do.”<sup>323</sup>

The range of barriers detailed within the Rural Proofing review, are not exclusive to the practice of executive government in the UK. Without a mandatory requirement to implement, with sanctions applying where this does not occur and an independent review process involving service stakeholders maintaining scrutiny, policy and legislation impact assessment processes are likely to lose focus and momentum. The recognition that effectiveness in delivery of justice system services will also have a major impact on the economic and social health of regional communities is perhaps also poorly understood.

The suggestion of an independent body, which would reflect the policy and legislative needs of regional Victorians and oversee an impact assessment process, was raised with *Postcode Justice* survey participants. Per Figure 20 below, when asked if *An independent authority should be established to provide well-informed advice to government and ensure that policies and legislation reflect the real needs of people living and working in rural and regional Victoria*, 74% of

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318 Ibid 327.

319 Organisation for Economic Co-operation and Development, Directorate for Public Governance and Territorial Development, ‘Investing for Growth, Building Innovative Regions – Policy Report’ (March 2009) <<http://www.oecd.org/dataoecd/60/41/42531964.pdf>>.

320 Ibid 4.

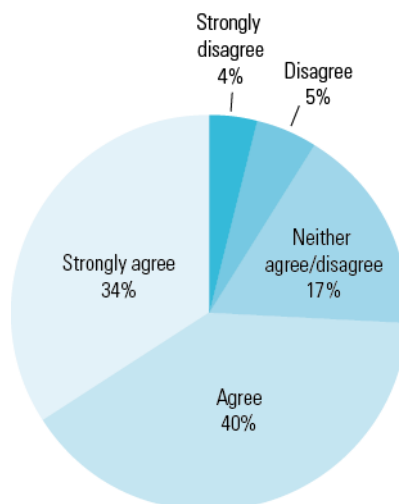
321 Ibid 5.

322 Commission for Rural Communities, *GHC Rural Proofing Review – UK April 2008*, Commission for Rural Communities (April 2008) <<http://www.ruralcommunities.gov.uk/files/Final%20040408.pdf>>.

323 Ibid.

participants agreed. Only 9% or 8 of the 84 respondents to this question disagreed, while the remaining 17% (14) neither agreed nor disagreed. This represents strong support from participants for such an independent assessment body.

Figure 20 Independent Authority Needed: Combined Responses



(Graph 48 in Appendix 7)

The national regional health services field has for some time recognised a disparity in provision of services to regional Australia and the need for strong and united representation to government. In 1991, during a National Rural Health Conference the concept of a National Rural Health Alliance (NRHA) was created. Since then it has built a large, active organisation with broadly representative membership and innovative programs. As part of its Core Values, the NRHA has a basic but clear message, stating that “The gap between rural and metropolitan health can be closed with national commitment and the allocation of a ‘30 per cent fair share’ of resources and attention to the 30 per cent who live in rural and remote areas.”<sup>324</sup> Its positive and productive relationship with the Commonwealth government is also demonstrated in its Core Values statement: “The core support the Alliance receives for its work from the Australian Government is testimony of the partnership between the government and non-government sectors that is bringing greater equity and access for rural people”.<sup>325</sup> This model, and other areas of service delivery which have established representative bodies, could be used as an exemplar in the development of an independent and representative rural law and justice organisation.

Recent initiatives including a proposed Victorian Centre for Rural Regional Law and Justice, and a National Rural Law and Justice Alliance<sup>326</sup> provide a valuable impetus in addressing the need for an independent and united regional ‘voice’ in improving the delivery of justice system services to regional Victoria.

<sup>324</sup> National Rural Health Alliance, *About Us – Vision and Core*, National Rural Health Alliance <<http://nrha.ruralhealth.org.au/about/?IntCatId=2>>.

<sup>325</sup> Ibid.

<sup>326</sup> Two current initiatives are being developed to establish bodies which represent regional justice system service stakeholders. A proposal to scope the development of a Centre for Rural Regional Law and Justice has been provided to Deakin University by the Victoria Law Foundation. See Deakin University, *Victorian Law Foundation Grant for Centre for Rural Regional Law and Justice*, Deakin University Law School <<http://www.deakin.edu.au/buslaw/law/news/grant-rrlj.php>>.

A national Rural Law and Justice Alliance is also being developed following a recommendation of the National Rural Law and Justice Conference held in November 2010, see Deakin University, *National Rural/Regional Law and Justice Conference 19-21 November 2010*, Deakin University Law School <<http://www.deakin.edu.au/buslaw/law/rrjc/index.php>>.

## Appendix 1 - List of Interviewee Organisation Categories

Category of Organisation	Location	Number of participants
Lawyers in Private Practice	Ballarat, Yarrowonga, Mildura, Warrnambool, St Arnaud, Morwell, Sale, Warragul, Geelong	16
Generalist Regional Community Legal Centres	Mildura, Warrnambool, Ballarat, Bendigo, Wodonga, Morwell	10
Indigenous Legal Services	Melbourne, Mildura	9
Disability Legal Services	Geelong	1
Youth Legal Services	Melbourne	1
Victoria Legal Aid	Melbourne, Warrnambool, Ballarat, Horsham, Bendigo	5
Youth Services	Bendigo, Melbourne	3
Family Services	Mildura, Albury/Wodonga	2
Domestic Violence Services	Geelong, Mildura	2
Consumer Services	Mildura	1
Mental Health Services	Warrnambool, Camperdown	2
Magistrates' Court	2 Locations	2
Magistrate	1 Location	1
Prosecution Services	Melbourne	4
Barristers	Melbourne	2
Prisoner services	Melbourne	1
Peak Farming Body	Melbourne	1
<b>TOTAL</b>		<b>62</b>



## Appendix 2 – Lawyers' Survey



### Rural and regional disadvantage in the administration of the law

This survey is designed to test the proposition that people living in rural and regional Victoria may experience disadvantage when participating in the justice system. Your response will assist in better understanding how effectively the justice system operates in rural/regional communities. All responses will remain confidential.

By completing and returning this survey you will go into a draw, with the nominated charity of the winning entry receiving a donation of \$200. Please see end of survey for details.

Please return your completed survey by **Friday the 28<sup>th</sup> of May, 2010.**

#### 1. Background

a. My work address postcode ..... b. My Gender  Male  Female

c. My Age  20-35  36-45  46-55  56-65  66-75

d. Type of legal service/practice.

Community Legal Service  Private Law Firm  Victoria Legal Aid  Other.....

e. My principal area(s) of practice (tick as applicable)

Commercial/Business/Workplace relations  Criminal  Environment/Planning  Family

Immigration  Mediation  Personal Injury  Property  Taxation  Traffic/Motor Vehicle

Wills and Estates  Other.....

f. Including yourself, how many legal practitioners (practising partners and employee solicitors) work in your service/practice? (Please indicate full-time equivalent)

1  2  3-5  6-9  10-15  16 – 35  36+

#### 2. Court experience

a. Approximately how many court appearances do you make per year?

0-5  6-15  16-30  31-50  51+

b. Have you represented clients at metropolitan Melbourne courts in the last 5 years?

Yes  No

c. If yes, approximately how many appearances have you made at metropolitan Melbourne courts in the last 5 years?

0-5  6-15  16-30  31-50  51+

**The following are attitudinal questions and we ask that you respond on the basis of either your experience or general perception.**

For each of the following statements please indicate how strongly you agree or disagree, using the scale of 1 to 5, where 1 means strongly disagree, 2 means disagree, 3 means neither agree nor disagree, 4 means agree and 5 means strongly agree. You may wish to provide examples in 'additional comments' at the end of each section.

#### 3. Courts

Compared to their metropolitan counterparts, people attending rural/regional courts are more likely to experience:

a. Longer court hearings delays in some jurisdictions.

1  2  3  4  5  
(strongly disagree) (strongly agree)



If you agree/strongly agree, please indicate courts/jurisdiction where delays occur.

b. Limited or no local access to specialist Magistrates' Courts. These may include, but are not limited to; Drug Court, Industrial Division, WorkCover Division, Family Violence Division.

1    2    3    4    5  
(strongly disagree) (strongly agree)

c. Limited or no local access to some court programs. These may include, but are not limited to; Court Integrated Services Program (CISP), Credit Bail, the Criminal Justice Diversion Program, Mental Health Court Liaison Service and Youth Justice Court Advice Service.

1    2    3    4    5  
(strongly disagree) (strongly agree)

d. A poorer standard of physical amenity at local courts (condition, layout, facilities).

1    2    3    4    5  
(strongly disagree) (strongly agree)

e. A lower level of skill of judicial officers at local courts.

1    2    3    4    5  
(strongly disagree) (strongly agree)

If you agree/strongly agree, please indicate courts/jurisdiction where there is a lower level of skill.

f. Within some jurisdictions, a greater disadvantage resulting from the distance required to be travelled to attend court.

1    2    3    4    5  
(strongly disagree) (strongly agree)

If you agree/strongly agree, please indicate courts/jurisdiction where the distance required to be travelled to attend court creates a disadvantage.

Please add any additional comments on advantages/disadvantages for people attending rural/regional courts.

**4. Availability of justice system related services**

Compared to their metropolitan counterparts, people living in rural/regional Victoria are more likely to be disadvantaged in their participation in the justice system by limited local availability of:

a. Court related assessment/reporting services. These may include, but are not limited to; medical reports and psychiatric reports.

1    2    3    4    5  
(strongly disagree) (strongly agree)

b. Services and programs which may impact on justice system outcomes for clients. These may include, but are not limited to; disability/psychiatric services, accommodation services, drug and alcohol programs, youth support services, mediation services, relationship counselling services, anger management or domestic violence counselling programs victim/witness counselling services, interpreter services.

1    2    3    4    5  
(strongly disagree) (strongly agree)

c. Specialist legal and related advice and information services.

1    2    3    4    5  
(strongly disagree) (strongly agree)





# Appendix 3 – Human Services Survey



## Rural and regional disadvantage in the administration of the law

This survey is designed to test the proposition that people living in rural and regional Victoria may experience disadvantage when participating in the justice system. Your response will assist in better understanding how effectively the justice system operates in rural/regional communities. All responses will remain confidential.

By completing and returning this survey you will go into a draw, with the nominated charity of the winning entry receiving a donation of \$200. Please see end of survey for details.

Please return your completed survey by **Friday the 28<sup>th</sup> of May, 2010.**

### 1. Background

a. My work address postcode ..... b. Gender  Male  Female

c. My Age.  21-35  36-45  46-55  56-65  66-75

d. My work. Please tick the principal area(s) you personally work in. (tick as applicable)

- Accommodation  Advocacy/Support  Aged  Disability
- Drug/Alcohol  Family/Children  Health  Domestic Violence/Sexual Assault
- Immigration/Refugee  Financial Counselling  Women  Indigenous
- Psychiatric  Youth  Other.....

e. My principal role.

- Case/Project Worker  Manager/CEO  Supervisor/Team Leader
- Other.....

f. Do you or your service assist or advocate for clients participating in justice system issues, for example, assisting them in obtaining legal advice, attending court/tribunals, dealing with government departments/regulators on legal matters?

Yes  No

**The following are attitudinal questions and we ask that you respond on the basis of either your experience or general perception.**

For each of the following statements please indicate how strongly you agree or disagree, using the scale of 1 to 5, where 1 means strongly disagree, 2 means disagree, 3 means neither agree nor disagree, 4 means agree and 5 means strongly agree. You may wish to provide examples in 'additional comments' at the end of each section.

### 2. Availability of justice system related services

Compared to their metropolitan counterparts, people living in rural/regional Victoria are more likely to be disadvantaged in their participation in the justice system by limited local availability of:

a. Adequate legal and related advice and information services.

1  2  3  4  5  
(strongly disagree) (strongly agree)

b. Court related assessment/reporting services. These may include, but are not limited to; medical reports and psychiatric reports.

1  2  3  4  5  
(strongly disagree) (strongly agree)







Please provide any final comments.

.....

.....

.....

.....

.....

Thank you for taking the time to complete this survey.

By completing and returning this survey you will go into a draw, with the nominated charity of the winning entry receiving a donation of \$200.

Please nominate the charity\* you wish us to donate to .....

\*must be a charity registered in Australia with endorsement as a tax concession charity or income tax exempt fund (NAT 10651) and deductible gift recipient (NAT 2948).

Please return no later than **Friday the 28<sup>th</sup> of May, 2010.**

**Fax back:**

03 52272151

**Post:**

R. Coverdale  
Deakin University  
School of Law  
Waurin Ponds  
Victoria, 3217

If you have any additional comments or queries please contact the researcher, Richard Coverdale at [richardc@deakin.edu.au](mailto:richardc@deakin.edu.au).

## Appendix 4 – Survey Design Limitations

Prior to distribution, the surveys were piloted with a small sample group. Some amendments were undertaken to refine the survey questions and design. The surveys were subsequently undertaken on a ‘purposive sampling’<sup>327</sup> basis, with sample population selection based on their involvement in the justice system, and do not necessarily reflect the views of regional Victorians as a whole.

### Testing Interviewee Statements

The surveys were designed to test the extent to which the views of those 61 individuals interviewed were substantiated by other participants in the justice system working in regional Victoria. To do this, the surveys presented a number of statements within a *Likert scale* format (strongly agree, agree, disagree, strongly disagree), to test the issues raised by those consulted. It is noted that there are some risks associated with this method.<sup>328</sup> Five open-ended questions were also provided to enable participants to elaborate on the responses given. Statements being tested in the survey represented issues frequently raised by those interviewed, pertaining to disadvantage either they, or their clients, experience when participating in the justice system in regional Victoria. As such, the surveys did not present a neutral position but sought a response to issues raised. As a consequence, testing the extent of agreement to a statement rather than posing a neutral question may have influenced some participant responses.<sup>329</sup>

### Focus on Disadvantage

The survey’s focus on the shortcomings of justice system services in regional communities also limits the opportunity for participants to expand on potential advantages of participating in regionally located justice system services. For example, interviewees indicated that closer relationships between support services, personal awareness of regional circumstances by lawyers practising and Magistrates serving within smaller communities, can potentially benefit the outcome of participation within local justice system services. While the advantages raised by interview participants are presented within this report, there was little opportunity for participants to substantiate or expand on these through the survey and within this report.

### Distinction Between Perceptions and Knowledge

In both the lawyer and human service surveys, participants were asked to make a comparison; seeking their views on whether disadvantage was experienced by people living in regional Victoria, in comparison to their metropolitan counterparts, when dealing with the justice system. Survey participants could therefore either draw on their perception of how services, programs, facilities and systems available in their community compared to metropolitan Melbourne, or on their personal knowledge of such comparisons. While limitations exist with

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327 Sampling with a *purpose* in mind, where usually one or more specific predefined groups or characteristics are targeted. In this instance the selected groups included law firms and welfare/health sector organisations whose role includes or is likely to include assisting/advocating for clients participating in the justice system and living in rural and regional Victoria.

328 For discussion on limitations of Likert Scale survey see Ian Brace, *Questionnaire Design: How to Plan, Structure and Write Survey Material for Effective Market Research* (Likert Scale, 2004) 87–89.

329 For discussions on Response Bias and Acquiescence Bias see *Ibid.*

Jon A Krosnick, ‘Maximising Questionnaire Quality - Measures of political attitudes’ in John Robinson et al (eds) *Measures of Political Attitudes* (San Diego: Academic Press 1999).

this approach, it remains valid and valuable in providing an overview of issues and an understanding of the views held by people who work within the justice system in regional Victoria.

For some questions, perceptions are equally as valid as direct comparative experience. For example, an awareness of the lack of regional available court programs will impact on the equity of outcomes compared to metropolitan Melbourne. Survey participants cognisant of this will be aware of the consequences for their communities. In other instances, while there may be dissatisfaction with the level of service in regional communities, assumptions without a basis of experience of the comparative quality or level of services experienced in metropolitan Melbourne may be unhelpful, as both services and programs may be of equally poor quality. In most instances, the survey can therefore only signpost issues which require further investigation to substantiate.

Cross tabulation of survey responses provides an opportunity for determining if a position held is based on personal knowledge and experience, or on perceptions of participants. The Lawyer survey asks specific questions in relation to the areas of law in which they work and their court experience in both regional settings and metropolitan Melbourne, thus providing a clear understanding of the basis of their responses when asked questions about courts and related services and programs.

## **Appendix 5 – Reference Group**

Karen Bowley – Principal Lawyer, Hume Riverina Community Legal Service

Associate Professor Kevin O’Toole - Deakin University, School of International and Political Studies

Associate Professor Darren Palmer - Deakin University School of History, Heritage Professor

Anne Rees – Head of School, Deakin University School of Law

Jim Rutherford – Partner, Harwood Andrews Lawyers, Geelong and Society



## Appendix 6 - Sample Letter of Invitation to Participate (Survey)



Dear Sir/Madam,

Re: A request for your participation in a research project survey on 'Rural and regional disadvantage in the administration of the law'

You are invited to take part in a survey (attached) which is part of a research project being undertaken by Richard Coverdale and Dr Darren Palmer from Deakin University.

The research project, titled *Rural and regional disadvantage in the administration of the law*, is canvassing opinions and examples of disadvantage experienced by people living in rural and regional Victoria when participating in the justice system, compared to the experiences of those living in metropolitan areas.

This letter contains information about the research project. It explains the background and procedures involved in this project so that you can decide whether you wish to participate. Feel free to ask questions about any information in the document – our contact details are at the end of this letter.

### **Background to the project**

There is a basic obligation of the Australian justice system to provide all citizens with equal access to the law and its systems of administration. It is the contention of this research that rural and regional communities are disadvantaged when dealing with courts and other bodies which administer laws.

The research project, which was funded by the Victoria Law Foundation, will undertake consultations and a survey of a sample of lawyers, advocacy/welfare organisations and peak rural industry and community organisations in rural/regional Victoria.

You have been selected to participate in this research project either as a result of random selection from a public directory or because of the particular relevance of your organisations to matters associated with administration of the justice system in rural/regional Victoria. The results of this research will be published and distributed broadly in the form of a report and may also be used to help *researcher* Richard Coverdale to obtain a Master Degree by Research.

### **What is involved?**

Participation in the survey will involve responding to the attached survey.

The survey questions have been distributed to lawyers and welfare/advocacy services assisting clients in rural and regional Victoria.

The research project will be overseen by a Reference Group comprised of Deakin university academic staff, lawyers practicing in rural and regional Victoria and a representative of the Federation of Community Legal Centres. The reference group will review the progress of the research, consultation/survey findings and the analysis of data.

Privacy, confidentiality and risk associated with this research

There is no foreseeable risk associated with participating in the survey. You are not required to provide any personal details which would identify you in the survey. Any information you nominate in the survey which may identify you will remain confidential, subject to legal requirements.

All data, whether identifiable as that of a research participant or not, will be stored in a secure place at Deakin University for 6 years after final publication and then destroyed.

**Your participation**

Participation in any research project is voluntary. If you do not wish to take part you are not obliged to.

If you agree to participate, please complete the enclosed survey and return in the reply paid, self addressed envelope, also enclosed. By doing so, you indicate that you understand the information provided here and you give your consent to participate in the research project.

There will be no remuneration provided for your participation in the research and it is unlikely that there will be a direct benefit to you or your organisation in participating in this research. However through this research, we hope to focus government attention on areas in which policy and procedural changes and resource allocations are needed within the Victorian justice system. The research will also provide the groundwork for undertaking more detailed investigation of the issues arising.

**Ethical guidelines**

This project will be carried out according to the *National Statement on Ethical Conduct in Human Research* (2007) produced by the National Health and Medical Research Council of Australia. The ethics aspects of this research project have been approved by the Human Research Ethics Committee of Deakin University.

If you have any complaints about any aspect of the project, the way it is being conducted or any questions about your rights as a research participant, then you may contact:

The Manager, Office of Research Integrity, Deakin University, 221 Burwood Highway, Burwood Victoria 3125, Telephone: 9251 7129, Facsimile: 9244 6581; [research-ethics@deakin.edu.au](mailto:research-ethics@deakin.edu.au).  
Quote project number: BL-EC 36/09

If you require further information, wish to withdraw your participation or if you have any problems concerning this project you can contact the researchers:

Yours sincerely,

Richard Coverdale  
School of Law  
Deakin University  
Waurm Ponds, Vic. 3217  
Email: [richardc@deakin.edu.au](mailto:richardc@deakin.edu.au)  
Ph: 03 52272245

Dr Darren Palmer  
School of History Heritage and Society  
Deakin University  
Waurm Ponds, Vic. 3217  
Email: [darren.palmer@deakin.edu.au](mailto:darren.palmer@deakin.edu.au)  
Ph: 03 52272283

## Appendix 7 - An Analysis of Survey Findings

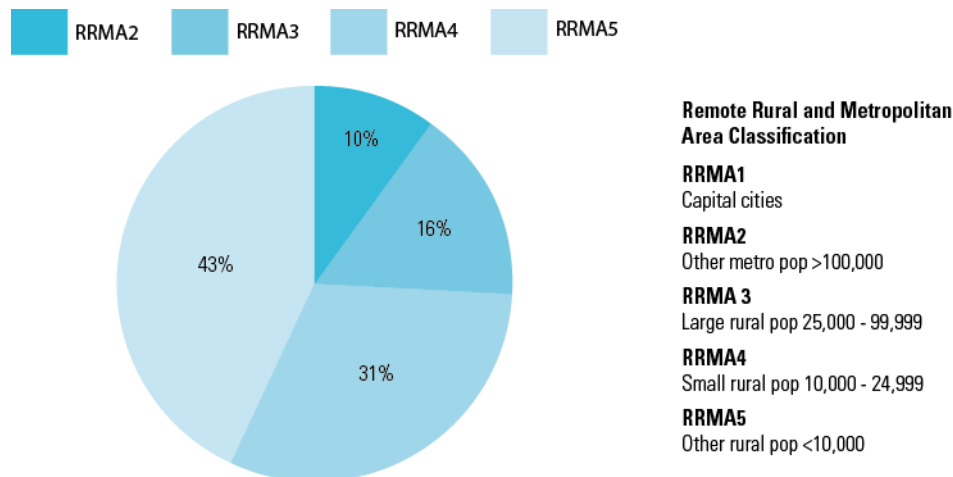
This appendix will provide an analysis of the survey findings, highlighting trends and issues.

### Respondent Locations

The Lawyers' survey and Human Service Organisation survey varied slightly in their questions to accommodate the issues and circumstances relevant to each group. Five-hundred surveys were distributed across regional Victoria. A total of 117 completed surveys were returned; a response rate of 23.4%.

Respondents were asked to provide the postcode of their workplace. Based on the Rural Remote and Metropolitan Area Classification (RRMA), seventy-four per cent (84) of those who completed the survey were based at small regional centres with population less than 25,000, while the remaining 26% (30) were from larger regional centres, including 11 respondents (10%), from the largest regional centres of Geelong, Ballarat and Bendigo.

Graph 1 Location Remoteness – Combined Responses



Survey questions were based on feedback from the 62 regional legal practitioner and human service organisation interviewees. A survey process was used to determine the extent of agreement, or otherwise, to the issues raised by interviewees and to provide an opportunity for the exploration of additional issues and perspectives from regional lawyers and human service organisations participating in the justice system.

The survey results represent a snapshot of opinions based on the perspective and experience of participants from different locations, working within different disciplines and across different sectors.

Surveys were undertaken anonymously and no details of individual participants have been recorded.

### Participants' Background

#### Lawyers

Where comparisons are available with national data it would appear the survey sample of lawyers is reasonably representative, well-informed and experienced. Approximately 60% were between 45 and 65 years of age and a majority had sufficient court experience to make

informed judgements on courts and court processes based on their personal experience of their local courts. Fifty-seven per cent represented clients at least 16 times per year, and 28% representing clients at least 51 times per year. Over 70% averaged at least 6 court appearances per year.

The survey sample of lawyers also indicated an informed basis for making comparisons with Melbourne courts, with sixty per cent of participating lawyers having represented clients at Melbourne courts in the last 5 years; of which 52% having represented clients 16 or more times in that period, and 26 % having at least 51 appearances over that period.

Lawyer survey participants also represented various areas of practice, across for example, commercial (32%), family (51%), criminal (29%), property (45%) and wills/estate planning (53%), reflecting a broad range of experience and differing jurisdictions. As the data indicates, many worked within 'generalist' practices across several areas of law.

### **Human Service Agencies**

Of the 52 survey participants drawn from human service agencies such as youth services (15%), mental health services (8%), drug and alcohol services (9%), and family/children's services (11%), 81% were directly involved in justice system related client advocacy services. Forty-four per cent of service representatives surveyed were cross-discipline, working with clients with multiple issues, many of which involved them in various jurisdictions from criminal, family and domestic violence law; and across a range of the justice system services from preventative programs to sentencing issues.

A large majority of both lawyer and human service survey participants (74%) were based at regional centres with populations of 25,000 or less. Of these, 45% of lawyers and 41% of human service organisation respondents were located at smaller rural centres with populations of 10,000 or less.

### **General Observation: Responses from the Two Survey Groups**

Both lawyer and human service participants consistently agreed to most of the surveys statements on disadvantage. Overall however, human service organisation participants were more resolute in their responses to the survey questions than participating lawyers. Of the eleven Likert scale survey questions (strongly agree, agree, neither agree nor disagree, disagree, strongly disagree), which were asked of both lawyers and human service organisation participants, the latter group were more likely to 'agree'/'strongly agree' with a statement and less likely to provide a 'neither agree nor disagree' or 'disagree'/'strongly disagree' response to a statement.

On average, across all survey statements seeking a response using a Likert scale, 55% of lawyers agreed or strongly agreed with the statements, compared with 77% of human service organisation participants; 26% 'neither agree nor disagree' compared with 16% of human service organisation participants; and 18% disagreed or strongly disagreed compared with 11% of human service organisation participants.

The reasons for this trend throughout the survey responses cannot be immediately identified. However, this may reflect a general propensity for lawyers to apply a measured objectivity, verses an empathetic approach by human service agencies (who potentially have a more direct and ongoing relationship with their clients and their clients' experiences of the justice system).

Within each of the two groups there is also a variance. As indicated above, lawyer survey participants principal areas of practice varied from commercial law, criminal law, environmental and planning law, traffic/ motor vehicle and personal injury, with family law

and wills/estate planning, and property law being the most prominent. Not all of these jurisdictions will require the same degree of participation within courts or close engagement with other institutions and infrastructures of the justice system. It therefore follows that not all will have practice-based experience when responding to the majority of survey questions relating to courts and court processes and the availability of 'therapeutic' or 'restorative' justice programs and services which focus on criminal jurisdictions. This may also in part, account for the variance in the fixed perspectives and responses held by human services organisations and lawyers participating in the survey.

The issues discussed in the following pages reflect the findings of the research interviewees and the survey responses. The order of topics does not indicate an overall priority given to an issue but is loosely based on a mix of criteria. This includes the number of survey participants responding in the affirmative to a statement or question, the frequency of interviewee comments on particular matters, and an overall sense of the magnitude of an issue, based on the author's understanding of the issue's impact, drawing on both interviewee comments and the literature review.

## **Summary: Survey Findings**

### **Lawyers' survey**

Of the 65 lawyers, the greatest majority, 88% (57) were from private law firms, 9% (6) from Community Legal Centres, and 3% (2) from Legal Aid regional offices. National figures based on ABS 2002 data indicate approximately 90% of solicitors are in private practice, 5% in government services, public prosecution and patent offices, 3% in Legal Aid and 2% in Community Legal Centres.<sup>330</sup>

Nearly 60% of practitioners were between 46 to 65 years of age, with approximately 20% in each of the, 21 to 35, and 36 to 45 age groups. While no national ABS data can be found on the average age of practising solicitors this overall sample group was slightly older than a recent Law Council of Australia survey, which drew on a sample of 1185 regional law firm participants nationally; 65% of its respondents were 49 years and under.

The size of practices varied with 31% single practitioner firms, 12% with 2 (equivalent full-time) lawyers, 18% with 3 to 5 lawyers, 20% with 6 to 9 lawyers and 19% with 10 or more lawyers. While national ABS data does not undertake a similar breakdown of combined partners and employee solicitors, it does indicate a significant majority of practices (69%) in Australia have only one principal/proprietor.

Sixty-eight per cent of lawyer survey participants were male and 32% female; slightly fewer females than the national average of 33.6%.<sup>331</sup>

As identified by participants' workplace postcodes, lawyers who responded to the survey came from a range of locations, with 72% (45) drawn from areas with populations of less than 25,000; of which 45% with populations of 10,000 or less. The remaining 28% (18) were located at the large regional centres of Geelong, Ballarat and Bendigo. ABS statistics indicate that approximately 20% of all solicitor practices are located in regional areas.<sup>332</sup> No further detailed ABS data is available by level of remoteness.

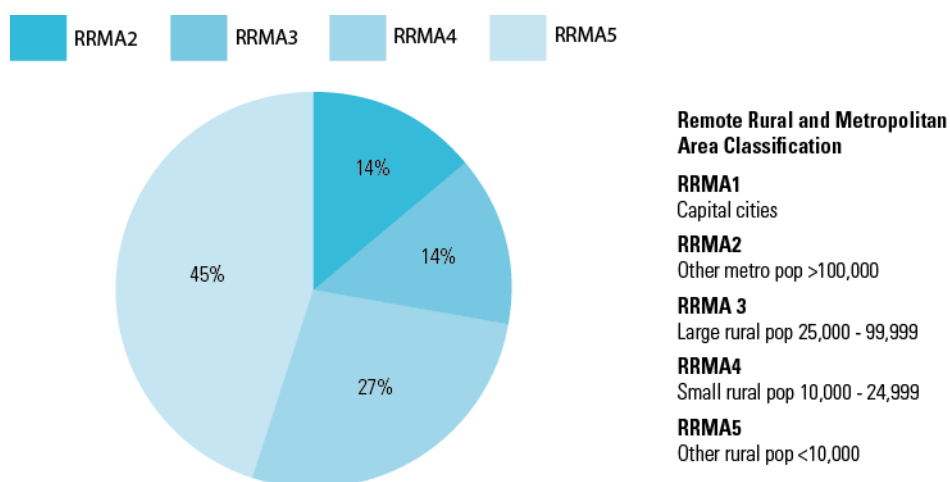
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330 Australian Bureau of Statistics, Catalogue 8667.0 - Legal Practices, Australia, 2001-02.

331 Ibid.

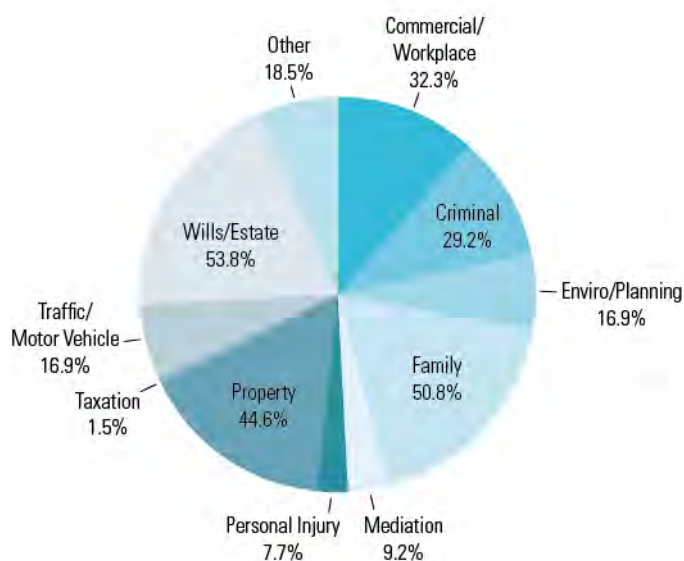
332 Ibid.

Graph 2 Location Remoteness – Lawyers respondents



The following pie chart indicates the principle areas of practice of survey participants. Sixty-five per cent of lawyers indicated more than one principle area of practice, with several indicating 3 to 5; the percentage figures do not therefore represent a proportion of 100%. The largest practice areas are Wills and Estate Planning (54%), Family Law (50%) and Property Law (45%). Twenty-nine per cent of lawyers practiced in criminal law. Those who indicated 'other' generally referred to a sub-category of those categories listed.

Graph 3 Principal Practice Areas – Lawyers' Survey



### Court appearances

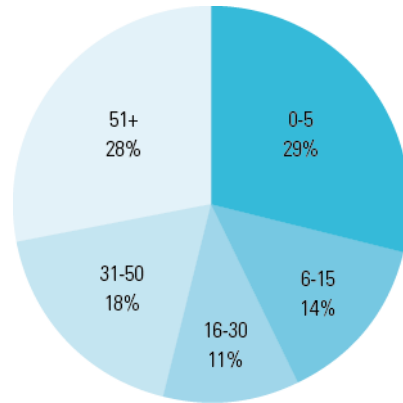
Survey questions sought participants' views on a number of issues related to court experiences and comparison between justice system services in regional Victoria and metropolitan Melbourne. While the validity of perceptions should not be solely based on comparative experience at regional and Melbourne courts, the following indicates the majority of practitioners were able to draw on a their experience of both court settings. The Magistrates' Court deals with approximately 97% of all court matters in Victoria.<sup>333</sup> It can

<sup>333</sup> Productivity Commission, above n 68.

therefore be assumed that the majority of court appearances by survey participants will be at the Magistrates' court.

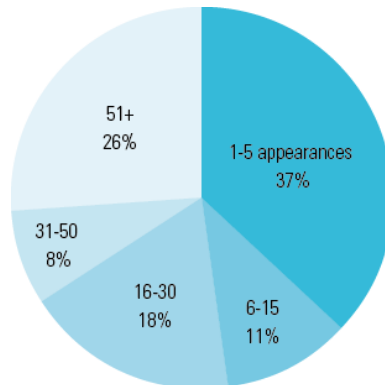
Over 70% of participating lawyers appeared at court regularly, with 46% appearing at least 31 times per year, and 28% appearing more than 50 times per year.

**Graph 4** Frequency of Court Representations – Lawyers' Survey



When asked if they had represented clients at Melbourne courts in the last five years, 60% (39) indicated they had. Of these, 53% had represented clients at Melbourne courts on 16 or more occasions, with 26% representing clients 51 or more times over the last 5 years. The pie chart below provides a further breakdown of responses.

**Graph 5** Frequency of Melbourne Court Appearances by Participating Lawyers



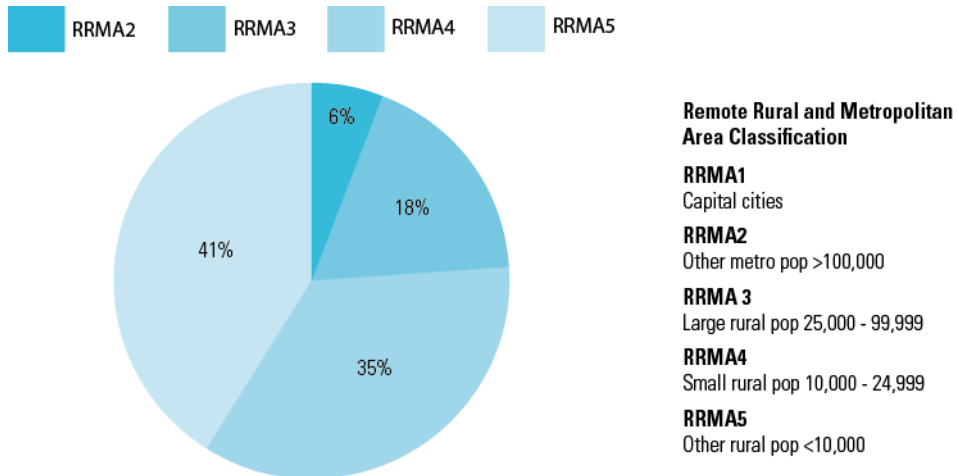
### Human service organisations surveys

Fifty-two human service organisation representatives responded to the survey and were drawn from a range of levels within agencies, including caseworkers (47%), supervisors (22%), and managers/CEOs (31%).

The majority of participants (64%), were between 36 and 55 years of age and female (72%). When asked if they, or their service, assist or advocate for clients participating in the justice system including obtaining legal advice, attending court/tribunals or dealing with government departments/regulators on legal matters, 81% (42) indicated that they did.

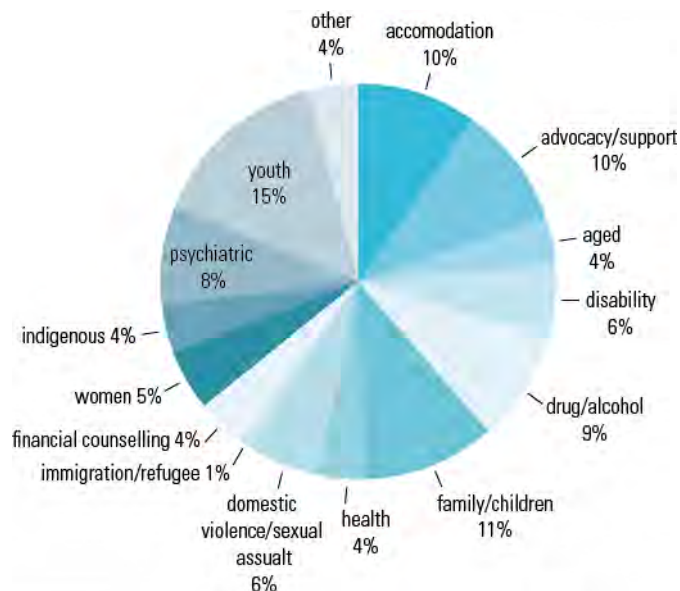
Identified by the postcode nominated within the survey as their work postcode address, 76% (39) of human service organisation respondents worked in smaller communities with populations of less than 25,000. The remaining 9 respondents (24%) were located within the large regional centres of Geelong, Ballarat and Bendigo.

Graph 6 Location Remoteness – Human Services Survey



There are a range of organisation types that fulfil a role in supporting and advising clients involved in the justice system. The chart below provides a breakdown of the principal areas participants worked in. Twenty-three (44%) of the 52 participants indicated they were involved in more than one area, reflecting the nature of human service organisations as being large multidisciplinary services. A distinction was not made between those services assisting clients in civil or criminal matters as many provide advocacy and support to clients across all areas of the law that they may be involved in.

Graph 7 Principal Practice Areas – Humans Services Survey



## Combined survey responses

In a number of areas the same survey questions were asked of both lawyer and human service organisation participants. These related to their experience of local courts, court programs and local justice system related services. These questions were based on issues identified by the 60 participants in the research interviews.

Survey participants were asked for their views based on a comparison with metropolitan Melbourne i.e. *“In comparison with their metropolitan counterparts, do people living in rural/regional Victoria ...”* The questions were put to survey participants, with the option of presenting their views in a Likert scale format, as; Strongly agree, Agree, Neither agree nor disagree, Disagree and Strongly disagree.

The combined survey results identify significant issues of concern to both lawyers and human service organisation participating in justice system related services in regional Victoria. A more detailed analysis and discussion of issues raised are provided later in this report.

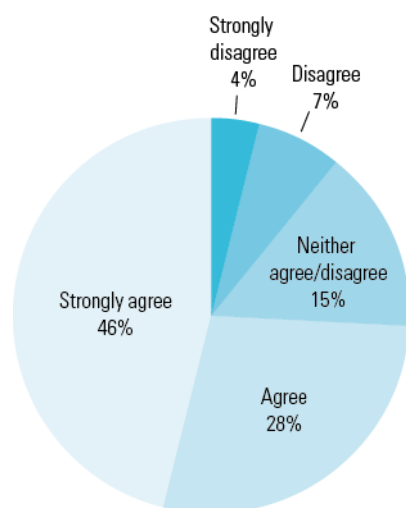
## Court processes, programs and outcomes

### Specialist courts

Several interviewees expressed concern regarding the accessibility of specialist courts for regional Victorians, such as the Magistrates’ Court, Drug Court, the WorkCover Division, the Industrial Division and the Family Violence Division.

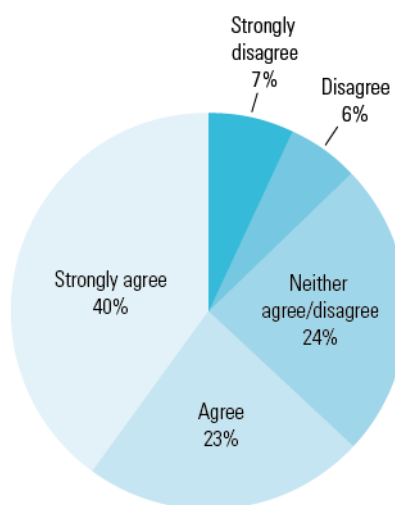
Survey participants were asked their views on the statement that *regional communities experience limited or no local access to specialist courts in comparison to their metropolitan counterparts*. Seventy-four per cent of participants (85) agreed that there was limited local access, with 46% strongly agreeing to this statement, while only 11% (12) disagreed or strongly disagreed (see Graph 8, below).

Graph 8 Limited Local Access to Specialist Magistrate Courts: Combined Responses

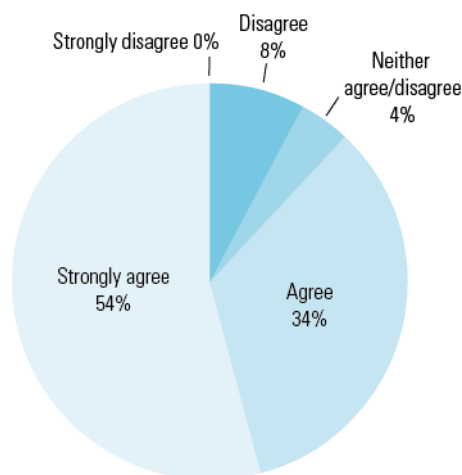


Human service organisations tended to hold stronger views on this question with 88% either agreeing or strongly agreeing to the statement, compared with 63% of lawyers. A significant number of lawyers however (40%), strongly agreed with the statement.

Graph 9 Limited Local Access to Specialist Magistrate Courts – Lawyers’ Survey



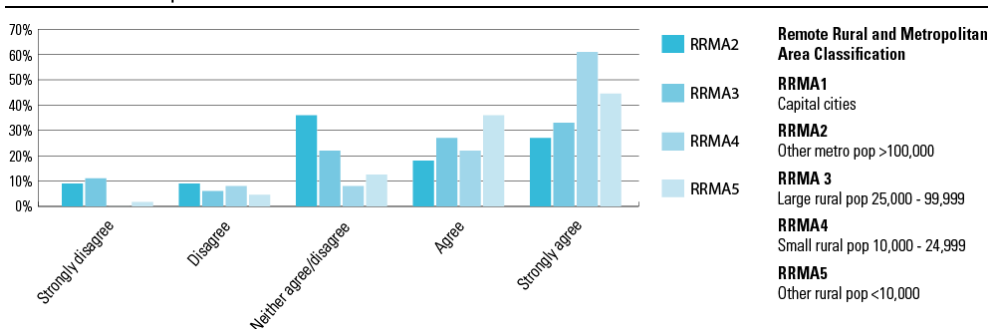
Graph 10 Limited Local Access to Specialist Magistrates Courts – Human Services Survey



Further examination indicates little difference between the views of lawyers principally involved in criminal and civil jurisdictions. There appears however, to be a correlation between responses to this question and level of court experience. Of the 40% of lawyers who strongly agreed with the statement, 37% averaged at least 5 court appearances per year, while only 3% of those who strongly agreed had less than 5 court appearances. Of the (30) lawyers with extensive court experience (averaging over 31 appearance per year), 60% agreed with the statement; 52% of whom strongly agreed.

The variation in location of survey respondents appears to also have a significant impact on responses. Perhaps, unsurprisingly, a clear trend is evident between the more sparsely populated areas and the degree of agreement with the statement that *there is limited or no local access to specialist courts for regional communities*, with for example, 61% of the RRMA4 cohort (populations of 10,000 to 24,999) strongly agreeing with the statement.

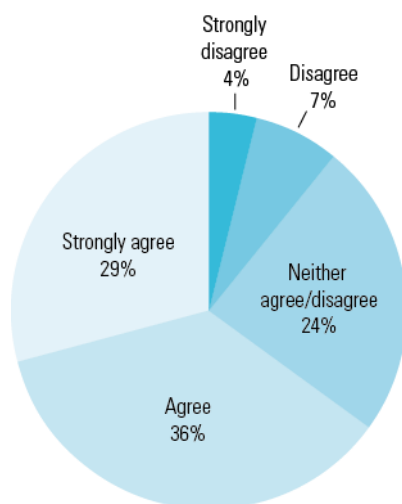
**Graph 11 Location by Position on Availability of Specialist Magistrates Courts – Combined Responses**



**Court-based programs**

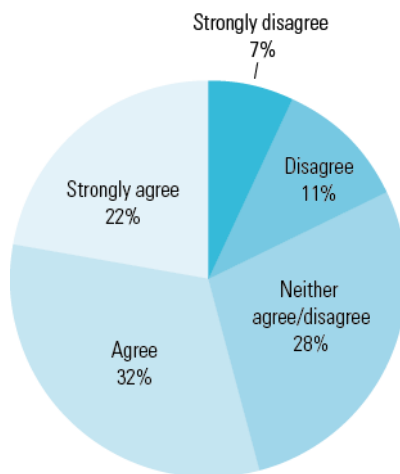
There are a range of court-based programs, which are initiatives of the Magistrates’ Court and only available at some court locations. These include for example, the Court Integrated Services Program (CISP), Credit Bail, the Criminal Justice Diversion Program, the Mental Health Court Liaison Service and the Youth Justice Court Advice Service. When asked if they felt that *their communities were more likely to experience limited local access to these programs in comparison to their metropolitan counterparts*, 65% of those surveyed agreed or strongly agreed, while only 11% disagreed or strongly disagreed.

**Graph 12 Limited Local Access to Magistrates’ Court Programs: Combined Responses**

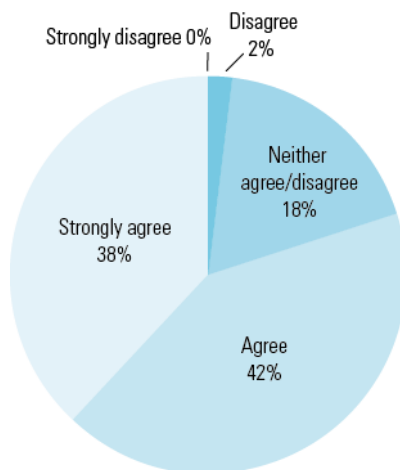


The views of human service organisation participants were again more adamant with 80% agreeing or strongly agreeing with this statement, compared with 54% of lawyers surveyed. A substantial number of lawyers (28%) neither agreed nor disagreed to this statement.

Graph 13 Limited Local Access to Magistrates' Court Programs – Lawyers' Survey



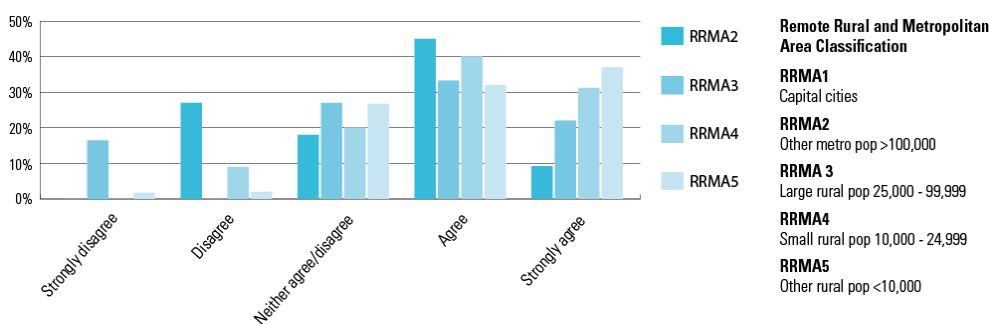
Graph 14 Limited Local Access to Magistrates' Court Programs – Human Services Survey



Again, there appears to be a correlation between the extent of participating lawyers' court experience and their position on this statement. Sixty-two per cent of those lawyers who strongly agree to the statement had extensive court experience (averaging over 31 appearance per year) compared with 38% of lawyers averaging 30 or less appearances per year.

While there is significant general agreement across those surveyed to the statement that regional communities were more likely to experience limited local access to court programs compared to their metropolitan counterparts, the correlation between the firmness of agreement and smaller communities, remains.

Graph 15 Location by Position on Access to Court Programs – Combined Responses



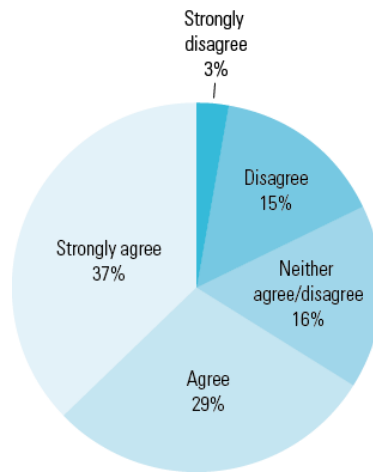
Additional comments by survey participants in relation to court programs include:

- Rural regions don't have access to programs which tend to be in metropolitan regions or regional cities. Too far to travel to.
- There is a lack of contact planning by correctional institutions who release offenders back into community - follow up and planning is needed for successful reintegration.
- I am a regional outreach diversion worker and attend to clients eligible for CISP or Credit Bail but services are not available at some country courts and there is no space provided to carry out assessments.
- Department of Corrections refuses to accept defendants eligible for Intensive Corrections Orders because they have no presence in Hamilton.
- *There are no full-time Juvenile Justice workers in Hamilton. Only a visiting weekly outreach service.*
- If there are visiting programs... there is nowhere set aside for them to meet with clients. Very limited availability of rooms often have to see clients outside...(the court).

### Local services and programs

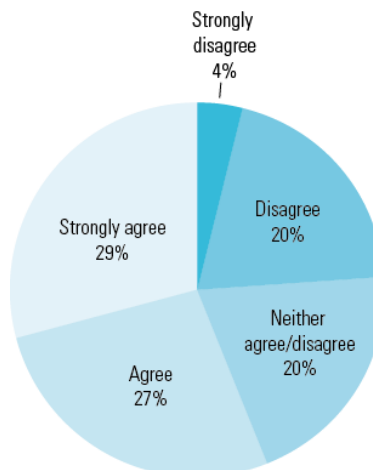
Interviewees and numerous reports indicate that the availability of services and programs which target 'at risk' groups have positive outcomes for clients, in avoiding involvement in the criminal justice system or improving outcomes when involved. When asked if they thought that *limited availability of local services and programs may impact on justice system outcomes for regional clients compared to people living in metropolitan Melbourne*, 66% (73) agreed and 18% (20) disagreed. Of those who agreed, 37% strongly agreed with the statement. Examples used in the survey of local services which may impact on justice system outcomes included disability/psychiatric services, accommodation services, drug and alcohol programs, youth support services, mediation services, relationship counselling services, anger management or domestic violence counselling programs, victim/witness counselling services and interpreter services.

Graph 16 Limited Local Availability of Services Impacting on Justice System Outcomes – Combined Responses

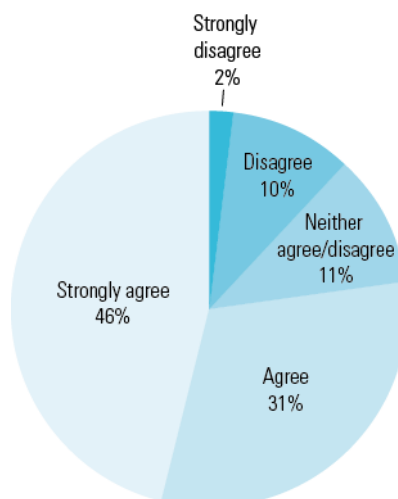


Seventy-seven per cent of human service organisations indicated agreement with the statement, with 46% strongly agreeing; while 56% of lawyers agreed, 29% of whom strongly agreeing.

Graph 17 Limited Local Availability of Services Impacting on Justice System Outcomes – Lawyers' Survey



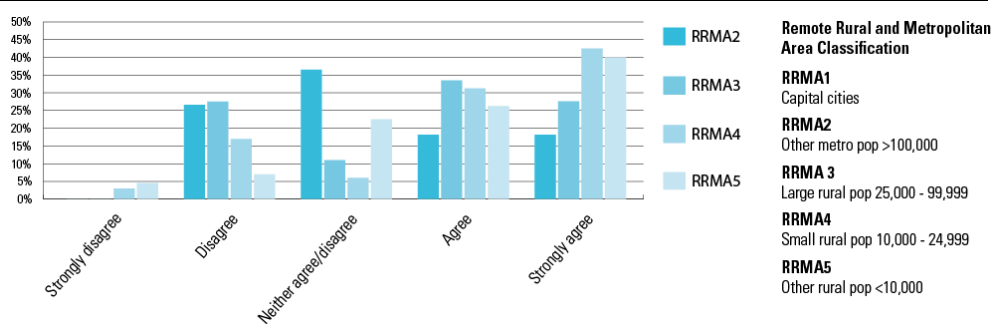
Graph 18 Limited Local Availability of Services Impacting on Justice System Outcomes – Human Services Survey



Some human service sectors held stronger views than others. For example, of the 11 respondents from psychiatric services 9 (82%) agreed, with 55% strongly agreeing, when asked if their *regional clients were disadvantaged compared to people living in metropolitan Melbourne in their ability to access local services and programs*.

Location of respondents affected their views in relation to the statement that *limited availability of local services and programs may impact on justice system outcomes for clients*. While there was general agreement with this statement, a position of disagreement was more frequently held by those in larger centres; while those from smaller communities predominantly held the position of strongly agreeing with the statement.

**Graph 19 Location by Position on Limited Local Availability of Services Impacting on Justice System Outcomes – Combined Responses**



Additional comments by survey participants in relation to local availability of services include:

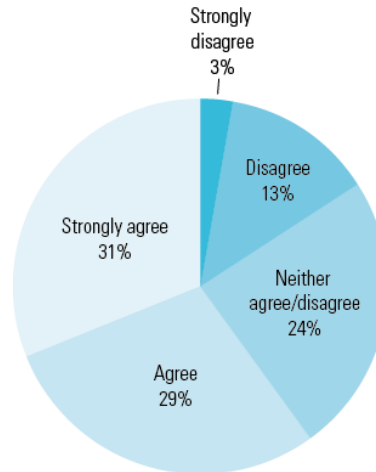
- These services are extremely limited in our local area as we are very under resourced. If available always long waiting lists.
- There are no youth support services in this area and we have an extreme housing crisis.
- Accommodation and mental health support are probably some of the most obvious areas of disadvantage.
- Limited choice and limited outreach capacities in relation to providing client support.
- Lack of these services disadvantages those who can't easily access them. Even trying to get basic counselling in St Arnaud is difficult with only one counsellor available.
- Poor funding, limited services, fewer service options.
- Other services not provided by us are further away making it impossible to access, as many clients don't have transport, so Treatment Plans are limited and do not reflect clients commitment to make changes.
- Services are virtually non existent. I have an intellectually disabled child who has been charged with sex offences. He is required to travel for over an hour to Bendigo and have his matter placed in sex offender list. Bendigo staff do not have the specialist knowledge to know what to do with this matter.

### Court related assessment and reporting services

When asked their views on the local availability of court related assessment and reporting services, with particular reference to independent specialist medical and psychiatric reports, an issue initially raised by research interviewees, 60% agreed or strongly agreed with the

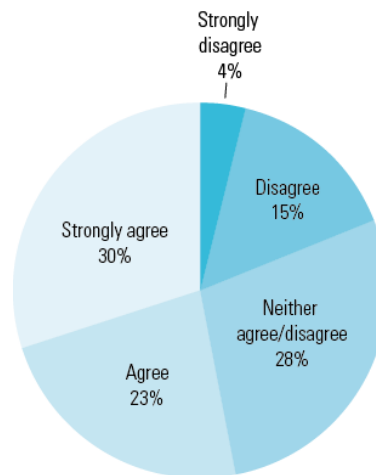
statement that *there was a lack of assessment and reporting services in regional Victoria, which as a result, disadvantaged their participation in the justice system in comparison to those in metropolitan areas.*

**Graph 20** Lack of Local Court Related Assessment and Reporting Services – Combined Responses

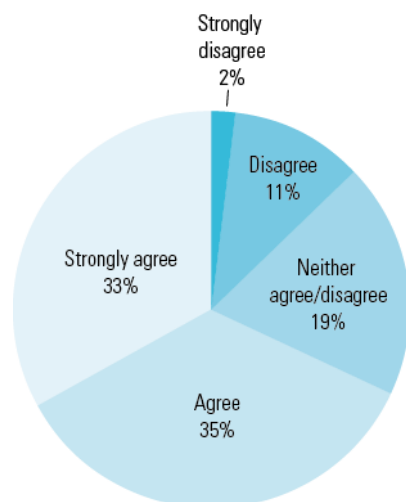


The breakdown between lawyers and human service organisations indicates that human service organisations had a more strongly held position, with 68% agreeing or strongly agreeing, while 53% of lawyers agreed or strongly agreed and 28% of lawyers neither agreeing nor disagreeing.

**Graph 21** Lack of Local Court Related Assessment and Reporting Services – Lawyers' Survey

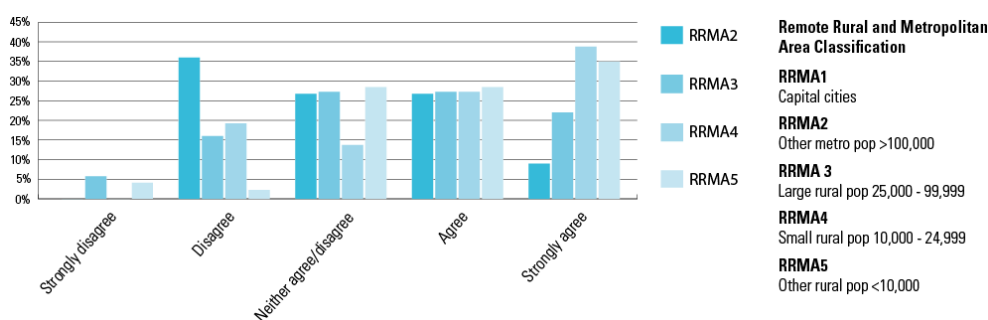


Graph 22 Lack of Local Court Related Assessment and Reporting Services – Human Services Survey



Positions held by respondents again varied depending on the size of their town, with stronger views held by those at locations with smaller populations. A comparison of lawyers' responses based on their RRMA location indicates similar trends to the combined graph below.

Graph 23 Location by Position on Court Related Reporting/Assessment Services – Combined Responses



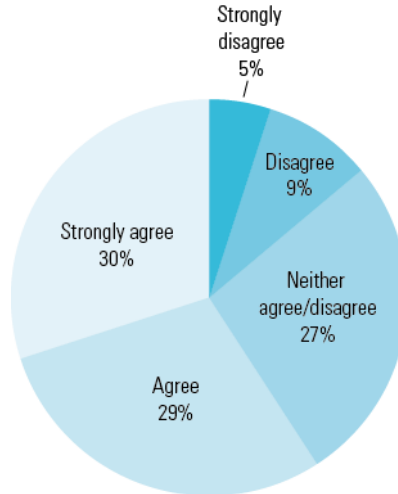
Additional comments by survey participants in relation to court related assessment and reporting services include:

- Medico-legal psychiatric services difficult to access...it can take months for appointment with any psychiatrist in Melbourne.
- Specialist reports eg Children's Court can only be done in Melbourne.
- Difficulty in accessing psychiatric reports are the results of Legal Aid not wanting to fund properly.
- (Psychiatric) reports completed in city, (takes) 4-8weeks, requires money, accommodation and transport to complete.
- There is a particular problem when seeking a Plea Mitigation as it is hard to get forensic psychologists outside Melbourne.
- Forensic care – State service, want quality control so people have to go to services they recommend which can mean significant travel.

## Court delays

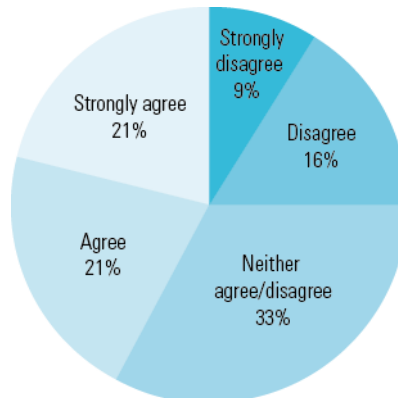
Delays in court hearings was an issue expressed by several of the interviewees canvassed for this research project. Combined responses indicated 59% of survey participants agreed that *rural /regional Victorians were disadvantaged by longer hearing delays than their metropolitan counterparts*.

Graph 24 Longer Hearing Delays – Combined Responses

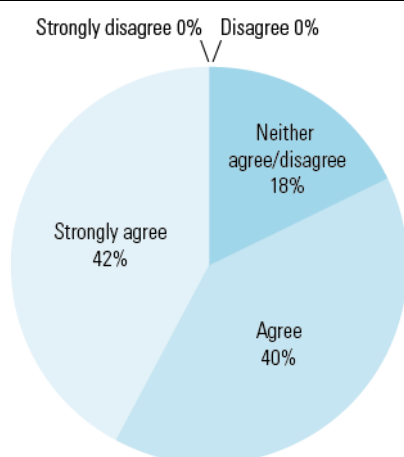


This combined percentage was strongly influenced by the views of human service organisations, with 82% supporting this statement; while less than half of the lawyers surveyed, 42% (or 26 of the 63 who responded to the question) agreed with the statement that *rural /regional Victorians were disadvantaged by longer hearing delays* and 33% of lawyers neither agreeing nor disagreeing.

Graph 25 Longer Hearing Delays – Lawyers’s Survey



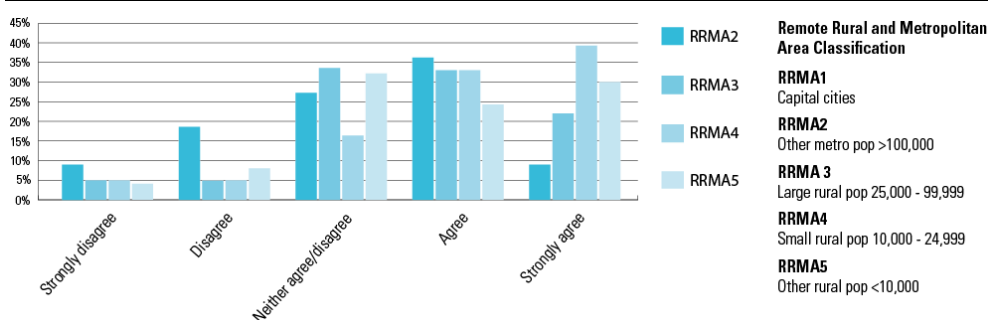
Graph 26 Longer Hearing Delays – Human Services Survey



Lawyers participating in the survey were asked to identify jurisdictions in which delays were experienced. The County Court, Civil Magistrates’ Courts, The Federal Magistrates’ Court and VCAT, were the most frequently cited.

While location appears to have influenced responses to this statement, particularly in relation to the proportion of those who strongly agreed, the trend is not as profound as is the case in previous graphs.

Graph 27 Location by Position on Hearing Delays – Combined Responses



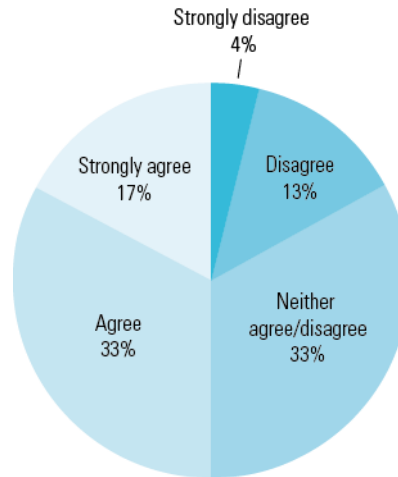
Additional comments by survey participants in relation to hearing delays include:

- In family law we have only three circuits a year of one week duration. These occur every four months. For the rest of the year clients have to either commence cases in the State Magistrates’ Court, where Magistrates are not well trained in family law and don’t like dealing with the cases, or travel to Melbourne Federal Magistrates’ Court - Family Court.
- Criminal matters get priority over civil, leading to increasing costs when adjourned part heard, counsel fees are accordingly higher.
- There is an over listing of cases for circuit courts which are of short duration. Not enough court dates, i.e. Cobram Magistrates’ Court sits two days per month.
- Of the two courts that hear family law matters, the Family Court does not have a circuit in Geelong and the Federal Magistrates’ Court only visits three to four times per year in one week blocks. 30 to 40 defended hearings are crammed into a five day circuit before one Federal Magistrate. Clients are treated like cattle and matters are often referred back to Melbourne anyway. It is for this reason that we often issue in Melbourne Courts.

### Pre-hearing settlement

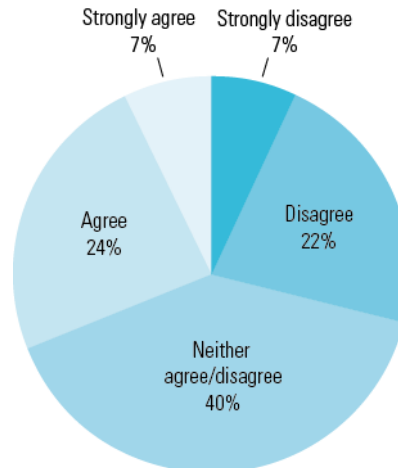
Some interviewees suggested that because of long hearing delays at regional courts, civil issues were being settled inequitably between parties prior to hearings. Survey responses did not strongly support this, with 33% of participants expressing uncertainty, although 50% supported the position that *delays resulted in unsatisfactory pre-hearing settlements*.

Graph 28 Unsatisfactory Pre-Hearing Settlements Because of Delays – Combined Responses

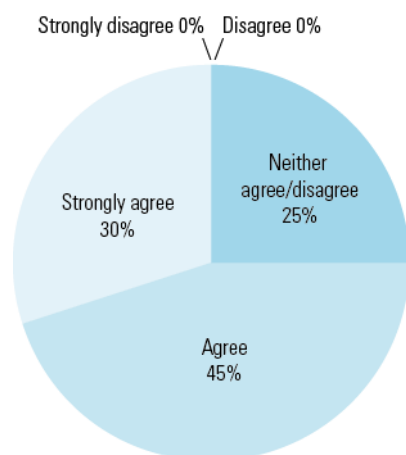


The responses of human service organisations and lawyers were significantly different on this statement, with 75% of human service organisations agreeing or strongly agreeing, while 31% of lawyers (28) were in agreement; only 4 of whom strongly agreeing.

Graph 29 Unsatisfactory Pre-Hearing Settlement Because of Delays – Lawyers' Survey

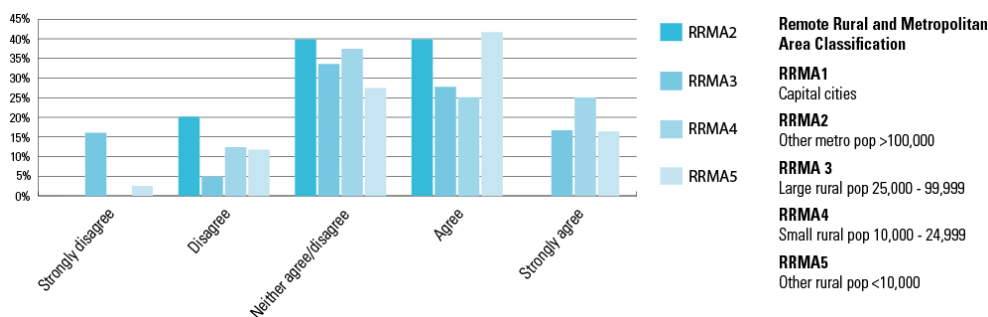


Graph 30 Unsatisfactory Pre-Hearing Settlement Because of Delays – Human Services Survey



An examination of the affect of location of survey respondents on their response to this statement indicates this has minimal overall impact on the position held.

Graph 31 Location by Position on Unsatisfactory Pre-hearing Settlement – Combined Responses



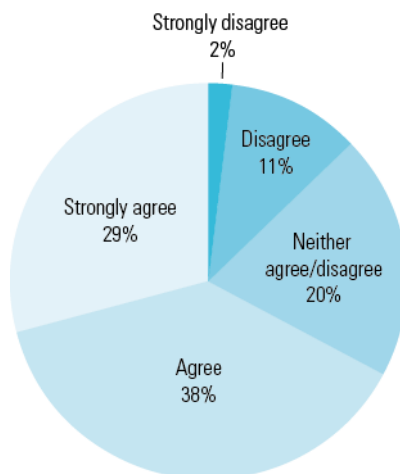
Additional comments by survey participants in relation to unsatisfactory pre-hearing settlements included:

- Adjourning civil matters part heard, often months after the initial court date, adds burden to civil litigants and pressure to settle matters on the first day, even if defending against an unmeritorious claim - commercial settlement!

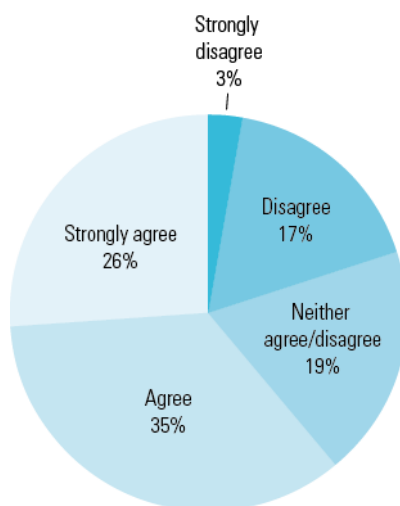
### Penalties

Participants were asked their views on whether regional clients were disadvantaged by court orders and penalties which did not adequately reflect the differing circumstances of people living in regional areas. This question was put in light of concerns raised by interviewees, and referenced examples including the impact of a mandatory loss of licence for vehicle offences in regional areas with no public transport, and the imposing of Shared Parenting Orders which restricted the capacity of primary carers in small communities to move to other locations. Sixty-seven per cent of participants (72) either agreed or strongly agreed with this statement compared to 13% (14) disagreed or strongly disagreed.

Graph 32 Orders/Penalties Do Not Reflect Circumstances of Rural Clients – Combined Responses

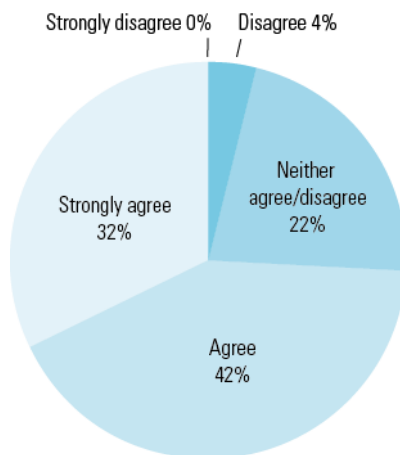


Graph 33 Orders/Penalties Do Not Reflect Circumstances of Rural Clients – Lawyers' Survey



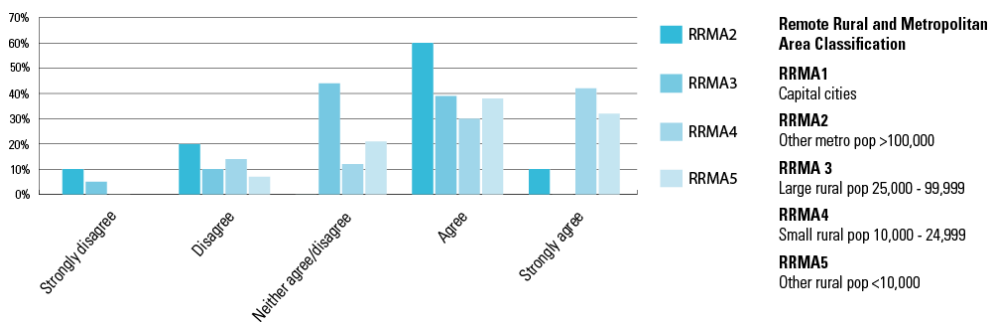
While 74% of human service organisations agreed or strongly agreed with the statement, 61% of lawyers agreed or strongly agreed.

Graph 34 Order/Penalties Do Not Reflect Circumstances of Rural Clients – Human Services



Again, location had an impact on the position held on this statement, with 75% (29) of respondents strongly agreeing originating from small towns (RRMA4 and 5 respondents). An examination of the location of lawyers who responded, indicates similar trends, with 66% of those coming from smaller communities strongly agreeing with the statement.

**Graph 35 Location by Position Held on Relevance of Penalties – Combined Responses**



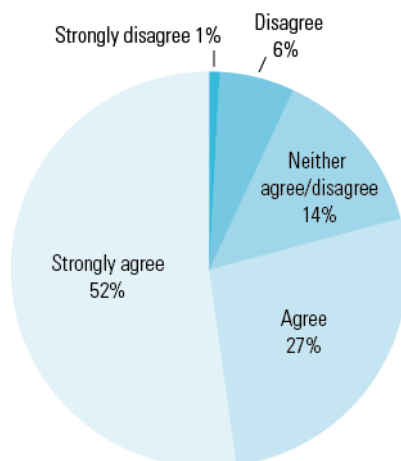
Additional comments by survey participants in relation to penalties and sentencing include:

- Magistrates are often faced with only being able to choose financial or custodial sentences due to lack of programs available in this area.
- The effect of loss of licence in rural areas where there is no transport infrastructure is catastrophic and not all synchronised with the effect of some in urban areas.
- Regional sentences sometimes appear to be disproportionate to those handed down in Melbourne.
- The Police and Office of Housing sometimes collude through local relationships around VCAT matters – improper contact and vague protocols at regional level result in disproportionate appearances before the court.
- Mandatory loss of licence at .07 in Victoria compared to NSW where many can be given a Bond up to .14. In some circumstances that loss of licence is a disproportionately (unfair) penalty.
- A person who has lost their licence and court wants attendance at programs (as part of) I.C.O. (Intensive Corrections Order) but person has no capacity to attend.
- Conservatism of rural juries resulting in lower convictions in cases involving violence against women. Variable response of police to women.
- Decision makers in planning matters in particular often lack rural and regional town knowledge and experience and their decisions and attitudes can alienate rural people.

### Distance to court

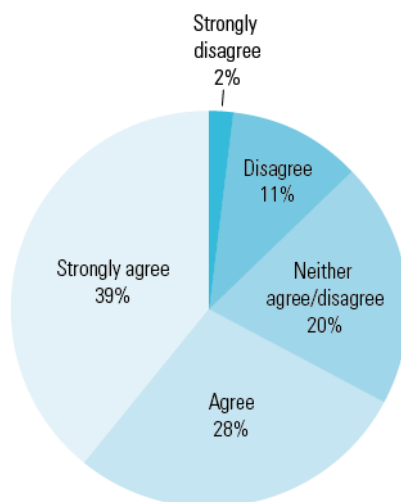
As one of the most frequently raised issues by interviewees, it was no surprise that the distance required to travel to court received a strong response from survey participants. Seventy-nine per cent (89) agreed or strongly agreed *that the distance required to travel to some courts resulted in a greater disadvantage to people living in regional locations*. Over half (52%) of those surveyed strongly agreed with this statement.

Graph 36 Distance Required to be Travelled to Court – Combined Responses

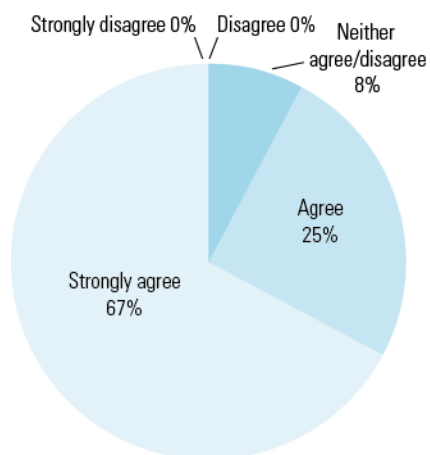


Ninety-five per cent of human service organisation participants supported this statement, with only 4 participants uncertain, and 67% of lawyers supporting the statement.

Graph 37 Distance Required to be Travelled to Court – Lawyers' Survey

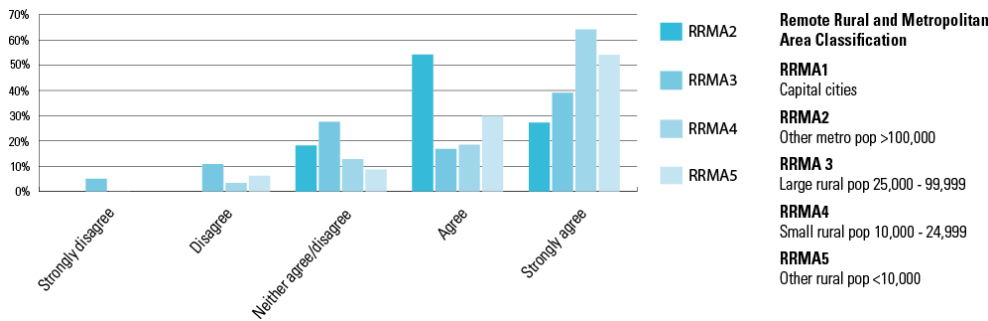


Graph 38 Distance Required to be Travelled to Court – Human Services Survey



Unsurprisingly there is a clear correlation between respondents from smaller communities and their position on the statement *that distance required to be travelled to some courts disadvantaged people living in regional locations*. Sixty-four per cent of those from RRA4 locations and 54% of those from RRA5 locations strongly agreed with the statement.

**Graph 39 Location by Position on Distance Required to be Travelled to Court – Combined Responses**



Additional comments by survey participants in relation to the requirement to travel to court include:

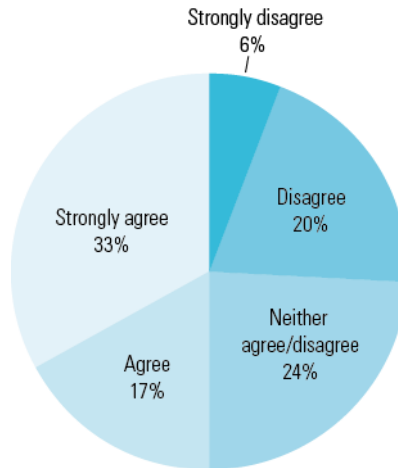
- People, especially those with mental health difficulties suffer great stress around hearings. For instance they have to catch a bus at 8am to get to court and if the hearing continues past 2 pm they are unable to return home. We are regularly working with vulnerable people who have had to hitch or sleep rough.
- Apart from distance, public transport is limited or non-existent which makes attending court almost impossible for some (e.g. single mum, no car who wishes to obtain an intervention order).
- Regions with small Magistrates circuits (eg 1-2 days per month) require travel for urgent matters (e.g. family law, family violence and children’s court matters).
- Family Law circuit comes occasionally, mainly heard in Dandenong which is 200km away.
- Matters get transferred to Melbourne by insurance companies etc, which imposes three hours travel on poorer clients.
- Distance frequently hinders access to services, limited services don’t reflect clients’ commitment to make changes.
- Defendant and plaintiffs find it difficult to travel from Hamilton to Warrnambool (venue for County Court and Federal Magistrates’ Court).
- Lack of public transport or so infrequent as to be no use to rely on to get to and from court.
- Lack of affordable accommodation options during and after court.
- The distance poses problems, lack of money, lack of Emergency Relief service. The local Salvation Army Emergency Relief is only open for 2 hours per week. They are the only ones who dispense petrol vouchers and train tickets.
- Due to the distance some people have to travel – they have fewer supports (family/loved ones, advocacy workers).

Additional comments relating to distance to court are also found in this report under ‘court delays, penalties and sentencing, and court related programs’.

### Physical amenity of courts

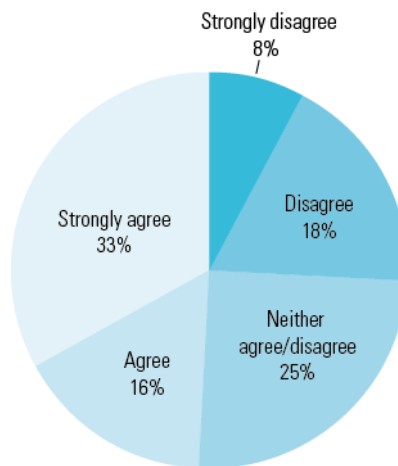
Courts vary across Victoria as to their physical state and capacity to respond to a growing demand. Survey participants were asked for their views on the standard of their local court's physical amenity in comparison to metropolitan courts. Fifty per cent of participants agreed to the statement that there *was a poorer standard of physical amenity at regional courts*.

Graph 40 Poor Physical Amenity – Combined Responses

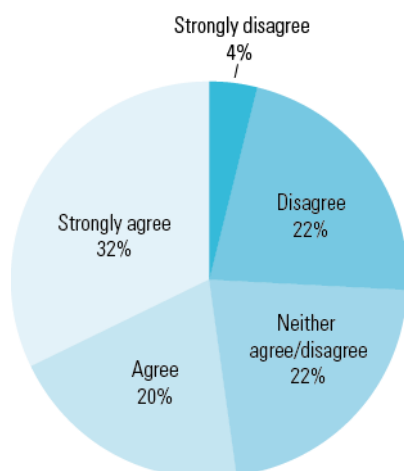


A breakdown between lawyers and human service organisation respondents indicates little variation between the two and in both cases, there was a higher proportion of those who strongly agreed compared with those who agreed. This is likely to reflect the varying conditions of courts at different locations.

Graph 41 Poor Physical Amenity – Lawyers' Survey



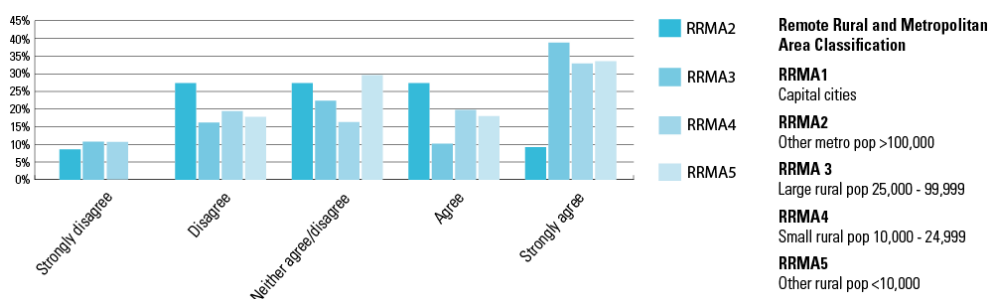
Graph 42 Poor Physical Amenity – Human Services Survey



Another pattern, although not as clear, is evident in relation to the location of respondents and their views on the amenity of their local courts. Once again, those from smaller communities more strongly agreed with the statement *that there was a poorer standard of physical amenity at regional courts compared with metropolitan Melbourne*. Overall, 52% of RRA5, 53% of RRA4, 50% of RRA3 and 36% RRA2 based respondents agreed or strongly agreed with the statement.

The variation in pattern across locations may reflect the varying standard of courts and their facilities across the state, with several around the state having undergone redevelopment in recent years.

Graph 43 Location by Position on Courts Physical Amenity: Combined Responses



Additional comments by survey participants in relation to the physical amenity of courts include:

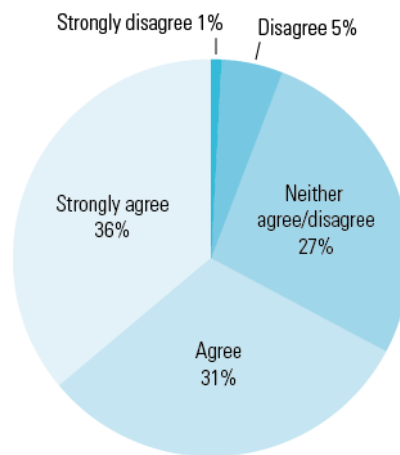
- People feel threatened and unsafe/intimidated in smaller regional courts. They often have to stand outside, behind the court as a group!
- No security (metal detectors/guards/limited police presence).
- Safety issues for women and children experiencing domestic violence. There is often no 'safe' waiting place, many become intimidated and leave or pull out of the process.
- Smaller circuit courts often have no interview rooms or waiting areas and no facilities for secure spaces or remote witness facilities.
- No court amenities to be able to confer with clients in a confidential location.
- No safe waiting areas. Less availability of support staff at court. No food or drink available at court.
- Court layout often means victims and alleged offenders sit in the same waiting area.

- Bendigo courts have no confidential meeting area, poor security, poor accessibility and poor acoustics.
- If there are visiting programs there is nowhere set aside for them to meet clients. Often have to see clients outside.
- Lack of privacy. The court is situated in the main street and many people have to wait outside prior to their hearing.

### Centralised development of legislation

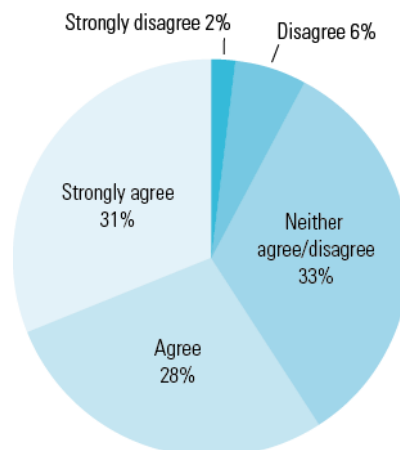
A criticism raised by interviewees was that legislation had little consideration of its relevance, effect or application to regional communities. When asked for their position on the statement *Legislation tends to be developed centrally without due consideration of its impact on rural and regional Victorians*, 67% agreed, with 36% strongly agreeing. A further 27% neither agreed nor disagreed, which suggests a degree of ambivalence for some in responding.

Graph 44 Legislation Developed Without Due Consideration for Rural/Regional Communities – Combined Response

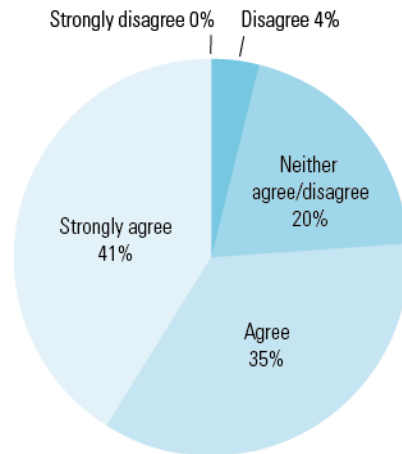


Comparisons between responses of lawyers and human service organisations participating in the survey indicate a stronger position held by human service organisations, with 76% agreeing or strongly agreeing, compared with 59% of lawyers; with 33% of lawyers neither agreeing nor disagreeing compared to 20 of human service organisation respondents.

Graph 45 Legislation Developed Without Due Consideration for Rural/Regional Communities – Lawyers' Survey

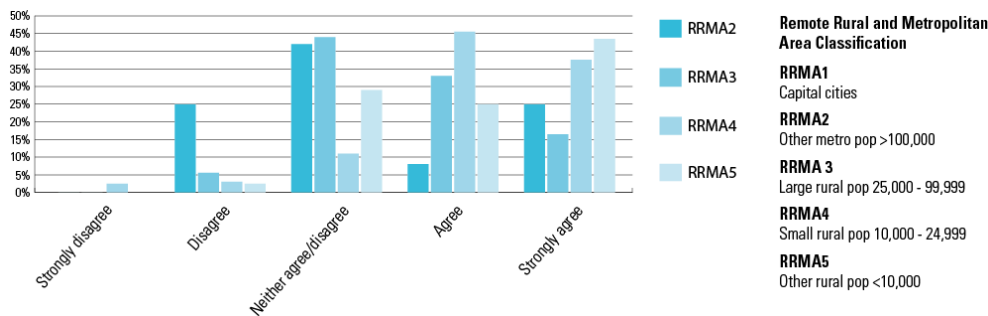


**Graph 46** Legislation Developed Without Due Consideration for Rural/Regional Communities – Human Services Survey



Again, a relationship exists between the respondents' location and the views held. Sixty-eight per cent of respondents from RRMA5 and 84% from RRMA4 locations indicated their agreement to the position that *Legislation tends to be developed centrally without due consideration of its impact on rural and regional Victorians*, compared with 33% of RRA2 and 50% RRA3 respondents. A greater degree of uncertainty or disagreement resulted from respondents in larger regional centres.

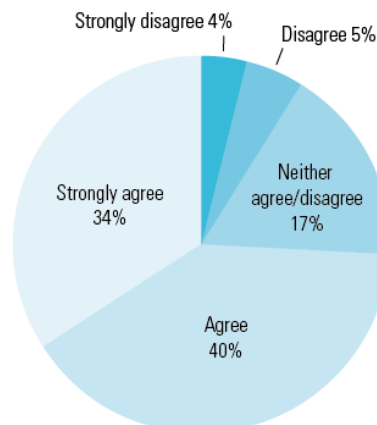
**Graph 47** Location by Position on Legislation Developed Centrally – Combined Responses



### The need for an independent review body

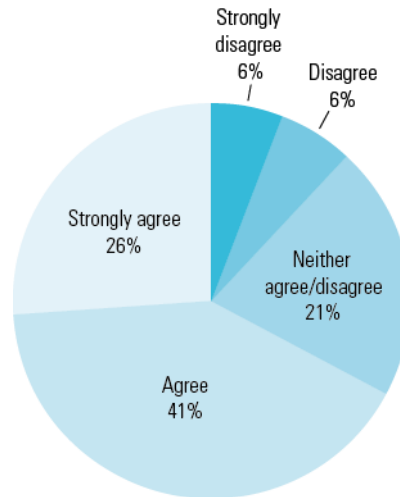
A proposal was put to survey participants that an independent authority should be established to provide well-informed advice to government to ensure that policies and legislation reflected the needs of people in regional Victoria. A significant majority of participants, 74% (84), agreed with this statement.

**Graph 48** Independent Authority Needed – Combined Responses

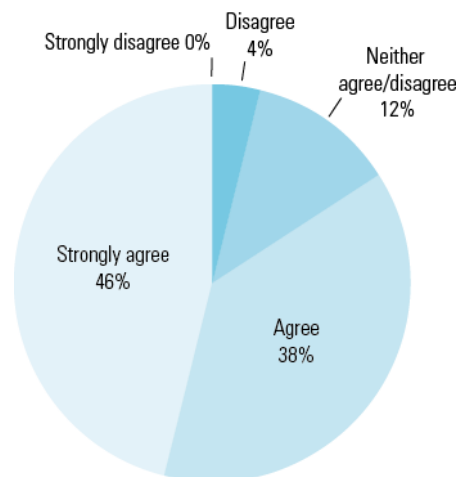


While few lawyers or human service organisations participating in the survey disagreed with the statement, the conviction of human service organisations was stronger with nearly half (46%) strongly agreeing compared with 26% of lawyers, while 21% of lawyers indicated they neither agreed or disagreed to the statement.

Graph 49 Independent Authority Needed – Lawyers’ Survey



Graph 50 Independent Authority Needed – Human Services Survey



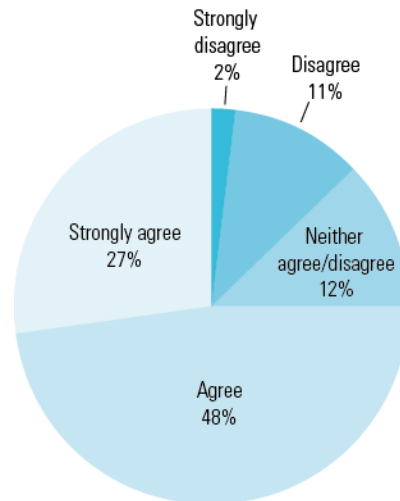
When comparing responses on the basis of location of respondents, no trends or distinctions were evident between differing RRA areas, with respondents across all areas generally supporting the statement that an independent authority should be established.

### Availability of legal advice and information services

Human service organisation participants were asked their views on the whether people living in regional communities were disadvantaged by *a limited local availability of legal and related advice and information services in their local communities, in comparison with metropolitan services*. Seventy-five per cent agreed with the statement.

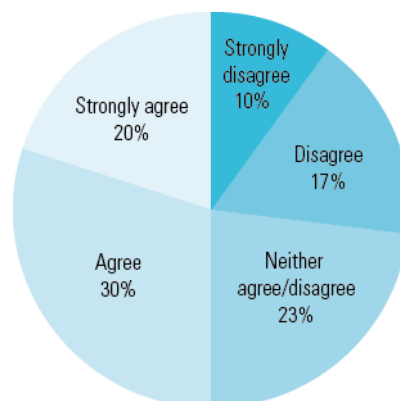
When comparing by each RRA area, those human service organisations that indicated there was greater difficulty for their services in obtaining accurate and independent legal assistance compared to their Melbourne counterparts, there was little variation between the areas.

Graph 51 Availability of Advice Services – Human Services Survey



Participating lawyers were asked a similar question, seeking their views *on the local availability of specialist legal and related advice and information services*. Fifty per cent agreed or strongly agreed, while 27% disagreed or strongly disagreed, with 23% neither agreeing nor disagreeing. Little variation was discerned between RRA locations in their responses to this question.

Graph 52 Availability of Advice Services – Lawyers' Survey



### Limitations on the ability to provide service

A number of statements were put to both lawyers and human service organisation survey participants in relation to issues that they believed adversely impacted on their capacity to provide services to clients, in comparison to similar services in metropolitan Melbourne.

Their responses indicate a range of issues exist for human services and legal services alike, in providing services to their regional clients, which they believe adversely compares with their metropolitan counterparts. An opportunity also existed for the inclusion of additional comments from survey participants, which reveals a number of additional issues.

## Human Service Organisations

While the response rate of participants working in the human services sector to the statement that *There are no greater impacts on my capacity to provide services in comparison to my metropolitan counterparts* was the same as that of lawyers (94% disagreeing with the statement), responses from this sector were generally less equivocal than lawyers, when asked to indicate the *areas in which they did perceive there to be a greater impact on their capacity to deliver services*.

Lack of public transport for clients (92%) received the largest number of responses; followed by the necessity to rely on telephone and online services, rather than face to face assistance (89%); limited accessibility of services which reduce the risk of involvement in the criminal justice system (75%); and the size of the geographic area required to be covered by the service (73%). Again, obtaining accurate information from government departments was the least frequently raised issue.

### Difficulties in providing services

Percentage who agree	Issue
73%	The geographic area required to be covered by our service to support rural/regional clients.
75%	Limited access for clients to services and programs that reduce the risk of involvement in the criminal justice system.
56%	Greater difficulty in obtaining accurate and independent legal assistance to enable us to adequately support clients.
58%	Limited access to professional development training for staff on relevant laws and legal process related matters.
92%	Lack of public transport and the distance required to be travelled by clients when seeking legal advice, attending court or using justice system related services.
23%	Greater difficulty in obtaining accurate information from government services/regulators.
89%	A greater reliance on telephone and online legal services which are of limited value in comparison to face to face assistance.
6%	There are no greater disadvantages for our organisation in comparison to metropolitan Melbourne organisations when supporting clients participating in the justice system.

### Additional survey comments – Human Service Organisations

- Often the perpetrator has been to a number of legal services and the victim experience conflict of interest when getting assistance.
- Geographic distance and lack of funds to support travel costs to court, which are significantly prohibitive. People forgo use of services. For example \$50 for a one way taxi fare to Ballarat. We are regularly working with vulnerable people who have had to hitchhike or sleep out.
- Much greater difficulty in accessing specialist legal assistance. Issues of conflict mean many people end up having to see the last lawyer available who doesn't have a conflict of interest. Not one of their choice.
- No full-time juvenile justice workers in Hamilton. Lack of contact planning by correctional institutions who release offenders back into community, follow up and planning needed for successful reintegration.
- More indigenous trained workers needed.
- Its always difficult for clinicians to attending training but with online alternatives its getting better.

- Remote areas don't have access to transportation and services. There is a heavy reliance on telephone contact.
- Difficult for clients to access services when the perpetrator has done the rounds, if only for information.
- Limited access to community legal services and solicitors.
- Socially disadvantaged can't afford professional legal advice. Legal aid is a social and community joke.
- For homeless young people distance to court often leads them to not appear. Need better education regarding VCAT on tenancy matters but no one willing to assist.
- Rural regions don't have access to same services as metro regions. Less training in regions and less capacity to attend training when avail due to isolated conditions.
- Youth are particularly disadvantaged in matters of criminal justice in Western Victoria. They often have no means of transport and no means of contact (often without phones etc). They are dislocated from family support networks and without case management cannot/do not have the capacity to comply.

### Legal services

The response of greatest significance related to the statement *that there are no greater impacts on my capacity to provide services in comparison to my metropolitan counterparts*. Ninety-four per cent of survey participants disagree with this statement. The areas in which they did perceive there being a greater impact on their capacity to deliver services are detailed in the table below.

The most frequently nominated issue by legal practitioners was the greater potential of conflict of interest (69%), followed by difficulty in attracting graduates and/or experienced staff (61%), and community expectation of their ability to respond to a broad range of legal matters (58%). Gaining information and assistance from government organisations was the least frequently nominated issues, with the remainder having similar prominence ranging from 36% to 44% of respondents.

#### Difficulties in providing legal services

Percentage who agree	Issue
44%	Reduced access to professional development programs.
36%	Greater difficulty in obtaining instructions and managing matters due to the geographic distance from some clients.
58%	The community's expectation that I am able to respond to a broader range of legal matters.
61%	Difficulty in attracting graduates and/or experienced staff to the firm/service.
69%	Greater potential for a conflict of interest as a result of the smaller number of legal practitioners/services available locally
37%	Difficulty in retaining barristers with appropriate experience.
40%	The greater likelihood of having a personal association with opposing parties in rural/regional towns.
37%	Greater public scrutiny as a result of local media and word of mouth in rural/regional towns.
19%	Greater difficulty in obtaining accurate information and assistance from government services and regulators.
6%	There are no greater impacts on my capacity to provide services in comparison to my metropolitan counterparts.

### Additional survey comments - Lawyers

- To run at a profit a mix of work need to weighted to property. Local court related issues take up too many wasted hours and provides little return to the practice.
- Conflict of interest among family law practitioners common.
- Inadequate legal aid funding.
- Pro-bono advice is virtually compulsory.
- Limited availability of locums, sick/recreation leave hard to take.
- Less access to justice than metro counterparts, disadvantage increased over past 2yrs.
- Smaller choice of other lawyers to refer work to. Smaller Communities - must always act in a way which reflects well on one personally and professionally, as your business seems to be the business of the entire community.
- Limited opposition to keep me up to the mark/distance to courts adds costs to clients.
- Invasive, degrading reporting by local media, including publication of defendants age and addresses/city counterparts don't face the same shaming.
- Complexity of legislation re: tax or environment, principals are the same for \$5000 property or \$10m, but \$10m can afford advice.
- Higher representation of Koori and Somalis/targeted immigration policy pushing migrants into small rural communities.
- Distance/costs, all calls are std. Post more than 4 days.

### Additional survey questions to lawyers

As a result of interviewee comments, three additional statements were put to regional lawyers participating in the survey, which drew on their expertise and knowledge.

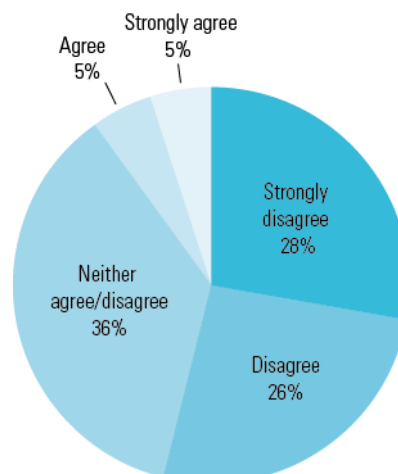
#### Level of skill of judicial officers

The statement, Compared to their metropolitan counterparts, people attending rural/regional courts are more likely to experience – A lower level of skill of judicial officers (generally Magistrates) at local courts was put to the lawyers.

The response to this statement was strongly in the negative, with 65% disagreeing; of whom 28% strongly disagreed. Thirty-six per cent neither agreed nor disagreed and only 10% (6) supported the statement.

A comparison between locations of respondents and the position held indicates little variation.

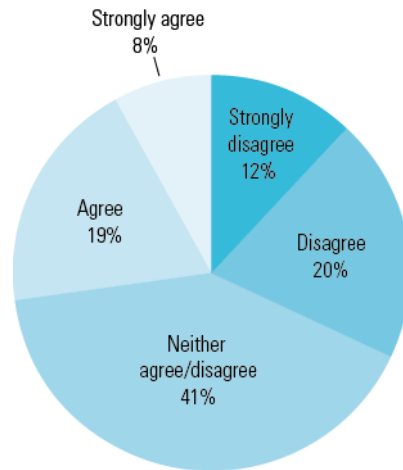
Graph 53 Lower Level of Judicial Skill: Lawyer's Survey



## Penalty options

The question: Compared to their metropolitan counterparts, people living in rural/regional are more likely to be disadvantaged by – Fewer penalty options available at rural regional courts for example Intensive Corrections Orders or Community Based orders, received a generally negative response with 32% disagreeing with the statement and 27% agreeing. The position of neither agreeing nor disagreeing received the highest number of responses of 41%.

Graph 54 Fewer Penalty Options for Rural Regional Clients: Lawyers' Survey

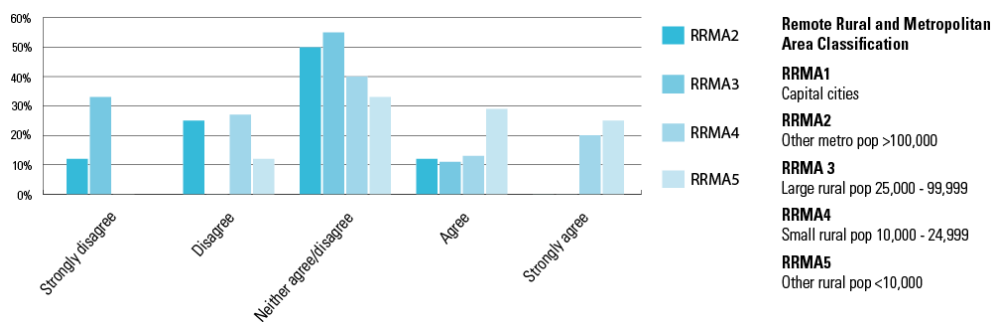


No trends could be gleaned from an analysis of responses on the basis of RRMA. Penalty options essentially relate to criminal matters. When a comparison was undertaken of responses from the 21 lawyers involved in criminal matters and the 39 who are not, the picture becomes clearer, with 55% of lawyers actively involved in criminal matters disagreeing with the statement and 30% agreeing. Fifty-four per cent of non-criminal lawyers neither agreed nor disagreed with the statement.

## Location

When examining differences between location of participating lawyers there is a greater extent of agreement from those located in RRMA4 and 5 areas, and greater disagreement from RRMA2 and 3 areas. This again, reflects a variation dependent on the size of the community at which the respondent is based. The relatively small number of RRA2 and 3 respondents (17) compared to RRA4 and 5 respondents (39) may limit the validity of this result.

Graph 55 Location by Position on Disadvantage by Distance to Correctional Facilities – Lawyers Survey





## Appendix 8 - Magistrates' Court: Selected Court Programs <sup>334</sup>

### Court Integrated Services Program (CISP)

The Court Integrated Services Program (CISP) was established in November 2006 by the Department of Justice and the Magistrates' Court of Victoria, to assist in ensuring that the accused receive support and services to promote safer communities through reduced rates of re-offending. The program currently operates at the Latrobe Valley, Melbourne and Sunshine Magistrates' Courts.

CISP aims to:

- provide short term assistance before sentencing for the accused with health and social needs
- work on the causes of offending through individualized case management
- provide priority access to treatment and community support services
- reduce the likelihood of re-offending.

The CISP provides:

- A multi-disciplinary team-based approach to the assessment and referral to treatment of clients.
- Three levels of support based on the assessed needs of the client; this may include case management for up to four months.
- Referrals and linkages to support services including drug and alcohol treatment, acquired brain injury services, accommodation services, disability and mental health services, as well as the Koori Liaison Officer program.

Eligibility criteria:

- Any party to a court proceeding can access the CISP by way of referral, including applicants, respondents and accused from all jurisdictions of the Magistrates' Court, such as the Family Violence Division.
- The accused is on summons, bail or remand pending a bail hearing.
- The program is available to the accused regardless of whether a plea has been entered or whether they intend to plead guilty or not.
- The accused must provide consent to be involved in the program.

### CREDIT Bail Support Program

The CREDIT Bail Support Program was created from the merge of two court bail programs. In December 2004, in consultation with the Department of Justice and Corrections Victoria, the Magistrates' Court combined the Court Referral & Evaluation for Drug Intervention & Treatment Program (CREDIT) and the Bail Support Program (BSP).

The CREDIT-Bail Support Program aims to achieve the following outcomes:

- Successful completion of bail by the accused who would otherwise be remanded in custody.

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<sup>334</sup> Details drawn from Magistrate Court Website, *Court Support Services* and *Specialist Jurisdictions* <<http://www.magistratescourt.vic.gov.au>> - accessed 25<sup>th</sup> February, 2010.

- Reduction in the number of accused persons remanded due to lack of accommodation and/or treatment or support in the community.
- Successful placement of the accused in drug treatment and/or rehabilitation programs.
- Long-term reduction in involvement of the accused in the criminal justice system.

Clients are provided with a range of services while on bail, including:

- assessment, and development of a plan for treatment and support
- case management for up to four months, including support and monitoring
- referrals and linkages to community support and treatment services.

Eligibility:

- Any accused eligible for a period of bail may be referred to the CREDIT/Bail Support Program for assessment.
- The Program is available to the accused regardless of whether a plea has been entered or whether they intend to plead guilty or not.

## **Mental Health Court Liaison Service**

The Mental Health Court Liaison Service (MHCLS) is a court-based assessment and advice service provided by Forensicare, the Victorian Institute of Forensic Mental Health.

The service, funded by the Department of Human Services, was first established at the Melbourne Magistrates' Court in November 1994. Due to the increasing demand on the service, positions have since been established at Ringwood, Heidelberg, Dandenong, Frankston, Broadmeadows and Sunshine Magistrates' Courts.

The aim of the MHCLS is to provide court assessment and advice services to Magistrates in relation to people, who may have a mental illness, appearing before the Magistrates' Courts. The objectives of the MHCLS program are:

- to undertake mental health assessments in order to determine the presence or absence of serious mental illness, and provide feedback based on these assessments to the court in a timely manner
- to assist the court in making well informed decisions in situations where factors related to serious mental illness need to be taken into account
- to provide advice and consultation about mental health issues to members of the legal profession, other relevant professionals and community agencies.
- to assist with accessing appropriate treatment, including liaison with Area Mental Health Services, when a person before the court is assessed as having a serious mental illness.
- to undertake liaison with Police, Victoria Police nurses and Forensic Medical Officers to ensure that the mental health needs of the accused in police custody are met.

In the metropolitan courts, Forensicare senior mental health clinicians provide the on-site services. In addition, an on-call consultant forensic psychiatrist is available to discuss issues.

## **Appendix 9 - Magistrates' Court of Victoria: Specialist Courts**

### **Drug Court**

The Victorian Drug Court is a division of the Magistrates' Court of Victoria. It provides for the sentencing and supervision of the treatment of offenders with a drug and/or alcohol dependency, who have committed an offence either under the influence of drugs or alcohol, or to support a drug or alcohol habit. The Victorian Drug Court initiative is a response to the failure of current custodial sanctions to adequately address drug use and related offending. The Court seeks to further improve the safety of the community by focusing on the rehabilitation of offenders with a drug or alcohol dependency and by aiming to develop increased stability for offenders, as well as providing assistance in reintegrating them into the community. The first Victorian Drug Court commenced in May 2002 and is located in Dandenong.

An eligible offender attending the Drug Court may be sentenced to a Drug Treatment Order (DTO) for two years. To facilitate the DTO, the custodial sentence for a drug or alcohol-related offence is suspended to allow for the treatment of the offender. The treatment and supervision of the offender is the responsibility of the Drug Court Magistrate, who will include specific conditions in the Order, which are intended to address the offenders' drug and alcohol dependency. A multi-disciplinary team consisting of a case manager, clinical adviser, dedicated police prosecutor, defence lawyer and specialist community correction officers, assist the Drug Court Magistrate in the supervision of offenders placed on a DTO.

### **Family Violence Court Division**

The Family Violence Court Division commenced sitting at the Magistrates' Court of Victoria at Ballarat and Heidelberg on 14 June 2005. The Family Violence Court Division is a division of the Magistrates' Court of Victoria. The aims of the division are to:

- make access to the court easier
- promote the safety of persons affected by violence
- increase accountability of persons who have used violence against family members and encourage them to change their behaviour
- increase the protection of children exposed to family violence.

The Family Violence Court Division also aims to make the process of applying for an intervention order easier, by having support services available to improve victims' safety and provide assistance in overcoming the trauma that is caused by family violence.

#### Family Violence Court Division

- Ballarat Magistrates' Court
- Heidelberg Magistrates' Court

#### Specialist Family Violence Service

- Melbourne Magistrates' Court
- Frankston Magistrates' Court
- Sunshine Magistrates' Court
- Werribee Magistrates' Court

## Koori Court

The Koori Court has been created under the *Magistrates' Court (Koori Court) Act 2002*. It operates as a division of the Magistrates' Court, which sentences Indigenous defendants. The Children's Koori Court was established under the *Children, Youth and Families Act 2005*.

The Koori Court provides an informal atmosphere and allows greater participation by the Aboriginal (Koori) community in the court process. Koori Elders or Respected Persons, the Koori Court Officer, Koori defendants and their families can contribute during the Court hearing. This helps to reduce perceptions of cultural alienation and to ensure sentencing orders are appropriate to the cultural needs of Koori offenders, and assist them to address issues relating to their offending behaviour.

The Koori Court is currently located at Bairnsdale, Broadmeadows, Latrobe Valley, Mildura, Shepparton, Swan Hill and Warrnambool Magistrates' Courts. Children's Koori Courts are located in Melbourne and Mildura.

## Neighbourhood Justice Centre

The Neighbourhood Justice Centre (NJC) was established in Collingwood, Victoria as a three-year pilot commencing in January 2007. The development of the NJC reflects a universal growing interest in addressing the underlying causes of criminal behaviour and disadvantage, as well as improving access to justice. The NJC is a community justice centre incorporating a multi-jurisdictional court, offering access to a range of services delivered to assist victims, defendants, civil litigants and the local community. All legal matters brought before the Centre will be heard and determined by the Centre's Principal Magistrate. An NJC Officer is appointed to the Centre to assist the Magistrate.

## Sexual Offences List

The Sexual Offences List (SOL) is a specially managed List of all cases relating to a charge for a sexual offence, in recognition of the unique features of such cases including the difficulties faced by complainants. A specially managed List will also provide a greater level of consistency in the handling of these cases.

The SOL operates as follows:

- Criminal proceedings that contain one or more sex offence are to be listed within the Sexual Offences List.
- The SOLs currently sit at the following Magistrates' Courts: Melbourne, Ballarat, Bendigo, Geelong, Latrobe Valley, Mildura and Shepparton.
- At Melbourne Magistrates' Court, the SOL sits each Friday, and hears matters involving sexual offences within both the summary and committal streams. Not guilty pleas and contested committals for sexual offences may be listed for hearing on any day of the week.

## Children's Court

The Children's Court of Victoria operates under the *Children, Youth and Families Act 2005* as a specialist court with two divisions to deal with matters relating to children and young people.

The Family Division hears:

- applications relating to the **protection and care** of children and young persons at risk

- applications for intervention orders.

The Criminal Division hears:

- matters relating to **criminal offending** by children and young persons.

The Children's Koori Court (Criminal Division) hears:

- matters relating to criminal offending by Koori children and young persons, other than sexual offences.

The Children's Court at Melbourne is the only region of the Court that sits daily in both Divisions. Magistrates in metropolitan courts sit as Children's Court Magistrates on gazetted days in the Criminal Division only. Magistrates in country areas sit as Children's Court Magistrates on gazetted days in both Divisions.

## Industrial Division

The Industrial Division of the Magistrates' Court deals with all claims brought under the *Workplace Relations Act 1996* (Commonwealth) and disputes by an employee against an employer (with the exception of WorkCover matters), concerning matters such as entitlements under a contract of employment, award or Australian Workplace Agreement. Matters may also be brought under the *Long Service Leave Act 1992*, the *Public Holidays Act 1993*, the *Outworkers (Improved Protection) Act 2003* or the *Occupational Health and Safety Act 2004*.

The jurisdictional limit of the Industrial Division is \$100,000. There is a small claims section of the Industrial Division, which deals with claims under \$10,000. The Industrial Division of the Magistrates' Court is located at the Melbourne Magistrates' Court. Hearings at other Court locations across Victoria may be arranged with the Registrar of the Industrial Division.

## WorkCover Division

The WorkCover division of the Magistrates' Court deals with claims brought under the *Accident Compensation Act 1985* and the *Workers Compensation Act 1958*. Such disputes relate to an employee against their employer or the Victorian WorkCover Authority regarding compensation for injuries incurred at work.

The jurisdictional limit of the WorkCover division is \$40,000 or no more than 130 weekly payments

The WorkCover division of the Magistrates' Court sits at Melbourne Magistrates' Court daily, and conducts circuit sittings in regional locations.

## Assessment and Referral Court (ARC) List

Assessment and Referral Court (ARC) List is a specialist court List developed by the Department of Justice and the Magistrates' Court to meet the needs of accused persons who have a mental illness and/or cognitive impairment. The List is a pilot program that commenced in April 2010 and will be conducted over a period of three years.

Following therapeutic jurisprudence principles, hearings are conducted in an informal manner with all participants, including the List Magistrate, sitting at a specially designed oval hearing table.

To be eligible:

- the accused is charged with a criminal offence that is not a violent, serious violence or serious sexual offence as defined by section 6B(1) of the Sentencing Act 1991
- the accused has one or more of the following:
  - a mental illness
  - an intellectual disability
  - an acquired brain injury
  - an autism spectrum disorder
  - a neurological impairment, including but not limited to dementia.

The ARC List sits at Melbourne Magistrates' Court two days per week.

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