

**House of Representatives Inquiry into the impact of the global financial crisis on regional Australia and the role of the Commonwealth Government in ensuring that Australia is equipped to respond**

**Submission by the NSW Legal Assistance Forum**

**Introduction**

The NSW Legal Assistance Forum (NLA Forum) is a CEO-level Forum comprising:

- Legal Aid NSW;
- the Law Society of NSW;
- the NSW Bar Association;
- the Combined Community Legal Centres Group (NSW);
- the Aboriginal Legal Service (NSW/ACT);
- the Law and Justice Foundation of NSW;
- the Public Interest Advocacy Centre;
- the Public Interest Law Clearing House NSW
- the NSW Attorney General's Department; and
- LawAccess NSW.

The aim of NLA Forum is to continuously improve service delivery to socially and economically disadvantaged people through improved alignment of planning, program design and service delivery by providers of legal assistance services.

These aims are achieved through:

- collaboration and networking;
- identifying and incorporating the best available research;
- promotion of dialogue and debate;
- consultation;
- recognising and responding to emerging issues, policy and law reform;
- promotion of co-operative arrangements for effective service delivery; and
- coordination with other State Legal Assistance Forums.

Further information on NLA Forum and its work is available at [www.nlaf.org.au](http://www.nlaf.org.au).

NLA Forum thanks the House of Representatives Regional Development Committee for the opportunity to make the following submission in response to the Inquiry into the impact of the global financial crisis (GFC) on regional Australia and the role of the Commonwealth Government in ensuring that Australia is equipped to respond.

NLA Forum understands that the Committee is planning to hold consultations in regional

NSW in July 2009. NLAf would welcome the opportunity to arrange for regional service providers to address the Committee on the impact of the GFC on people in regional areas.

## **Overview**

This submission will focus on the Committee's term of reference relating to: "the development of sustainable essential services and social infrastructure designed to enhance the liveability of regional Australia." The term "regional" is understood to also include remote and rural areas.

A direct impact of the GFC has been a sharp increase in the unemployment rate across Australia. According to the Australian Bureau of Statistics, the proportion of unemployed persons in Australia has increased by 33.3 percent between March 2008 and March 2009. In NSW the proportion of unemployed persons has increased from 4.5 percent to 7 percent over the same period. There have also been widespread reports of wage cuts and reduced working hours as a result of the GFC. The impact will vary between regional areas with those dependent on particular – or single industries – most affected (BSL: 2009).

The purpose of this submission is to bring the following issues to the Committee's attention:

- Increased unemployment and reduced wages has led to a significant increase in legal need in regional areas, particularly in the areas of credit/debt, employment law and family law.
- Regional publicly funded legal service providers are reporting an increase in the complexity of matters faced by their clients. This is consistent with empirical research that individuals who experience one legal problem are likely to experience further and increasingly complex legal problems. These problems will usually be associated with other social, economic and health (including mental health) problems with a potentially significant end cost to government.
- Constraints relating to funding and capacity on existing services mean that unmet legal needs are not being adequately addressed.
- Increased and better coordinated social infrastructure is needed in regional areas to effectively address the legal and welfare issues that have been caused or exacerbated by the GFC.
- If left unaddressed, issues of social exclusion in regional NSW are likely to worsen in regional NSW and similar effects can be anticipated for liveability across regional Australia.

## **Increased Legal Need**

People in regional NSW can seek advice concerning their legal needs from publicly funded legal service providers (Legal Aid NSW, Community Legal Centres, the

Aboriginal Legal Service NSW/ACT). Advice is available through the LawAccess NSW telephone advice service. Legal advice is also available through private solicitors, some of which may also provide pro bono assistance.

NLAF membership comprises all public legal assistance providers in NSW, LawAccess NSW as well the three main pro bono service providers (namely the Law Society of NSW Pro Bono Scheme, the NSW Bar Association Legal Assistance Service and the Public Interest Law Clearing House). NLAF also works closely with the Legal Aid NSW Cooperative Legal Service Delivery (CLSD) Program which is a partnership of regional legal service providers and community organisations operating across eight regions of NSW (South Coast, Central Coast, Central West, Broken Hill, Northern Rivers, Albury/Wagga, Central Tablelands and Hunter).

Information from NLAF members and the CLSD network has pointed to significant increased legal need in certain areas of law as a result of the GFC. This has been accompanied by a trend of increased complexity in the matters in relation to which assistance is sought, as well as an increase in the case work required.

NLAF members have identified employment law and credit/debt issues as the areas of law where increased demand has been the greatest. Other areas of high demand are family law matters (divorce, child residence/contact, child support and child protection), domestic violence, social security/Centrelink matters, and homelessness.

NLAF has collated the following preliminary statistics on economic, housing and family issues to support its submission to the Committee. Information is being collected on an ongoing basis and NLAF is able to provide additional information to the Committee if requested. It should be kept in mind that many individuals will experience multiple legal issues.

### **Economic/Housing Issues**

NLAF members have reported significant recent increase in demand for advice from clients in regional NSW in the areas of credit/debt, tenancy and employment law.

The CLSD Program has identified that financial hardship and mortgage stress are issues for each of the eight regions where it operates. Financial Counselling Services (FCS) that participate in CLSD report an increase in demand for services and a notable change in the socio-economic demographics of the clients they see. While FCSs conventionally assist people in receipt of benefits, most FCS report a marked increase in the "working poor". This is corroborated by social/human service providers such as charities and neighbourhood centres who report an increase in demand for emergency support services (food, housing, clothing) from people who are not from these services' traditional client-base.

The Combined Community Legal Centres Group (the peak body for NSW CLCs) has reported that community legal centres (CLCs) in regional areas are seeing a significant increase in inquiries relating to credit/debt issues. In addition, advice is being sought in areas of previous low demand, such as repossessions, bankruptcy and mortgage issues. There has also been a significant increase in the demand for financial counselling services attached to CLCs.

LawAccess NSW (a NSW Government telephone service that provides legal information and advice) reported a 30 percent increase in information and advice sessions concerning credit/debt matters over the three months from January to March 2009 compared to the same period in 2008. 37.59 percent of all the 48,448 information and advice sessions provided by LawAccess NSW over that period were to persons in regional NSW.

As with other centres, the Northern Rivers CLC notes both an increase in the complexity of matters as well as the fact that they are being contacted by clients who would not previously have accessed free legal advice services:

*“For instance on 23 April 2009 the first three appointments were for:*

- 1) Advice regarding a request to a bank to transfer home loan from fixed rate to variable because the client was in arrears with no prospect of meeting the ongoing repayments;*
- 2) Advice regarding a mortgagee’s power of sale and the likelihood the property would be sold for less than market value; and*
- 3) Client considering bankruptcy for debts to three banks.*

*In the first two of these matters, the properties subject to the mortgages were quite valuable and the clients were both employed however they clearly did not have the capacity to now service their loans. Prior to the GFC we would not have expected clients in their position to have sought free legal advice about their finances from our service.”*

According to Legal Aid NSW, the number of consumers under financial stress and seeking legal aid assistance, has significantly increased in the past three years, including in regional areas. Legal Aid NSW has rolled out a program of mortgage stress forums, including in regional areas, in response to this. Legal Aid NSW has also produced a mortgage stress handbook, and is also producing a DVD on mortgage stress. The ability of Legal Aid NSW to provide legal assistance to people experiencing mortgage stress is, however, limited. The Australian Government does not currently provide any funding for legal aid in relation to mortgage stress.

There has also been an increase in approaches to tenancy advice services. For example, the Illawarra Area Tenants Service has reported a significant increase in advice requests over the past 12-18 months due to the increased demand for rental properties in the areas, mortgage stress and the shrinking pool of public housing stock. The Tenancy Advice and Assistance Scheme in Lismore reports an increase in the severity of the circumstances of the clients who are seeking advice, often accompanied by a lack of alternative housing options. The Illawarra CLC is receiving an increasing number of requests from the NSW Consumer Trader and Tenancy Tribunal to assist individuals currently before the Tribunal or in conciliation. Through the CLSD, other regional areas are also reporting the detrimental impact of financial hardship and mortgage stress on availability of public and private rental housing, as well as decreased capacity of some clients to keep up with rental payments when under increasing financial stress.

The increased demand for advice (and training for lawyers) on employment law issues has been identified as an issue across each of the eight regions covered by the CLSD Program. This area was also identified by the regional CLCs.

## **Family Law Issues**

There is evidence that the increased financial pressure is having a flow-on effect in the areas of domestic violence and family law.

The Northern Rivers CLC has noted anecdotal evidence that increased financial pressure on families has led to:

- increased difficulties in escaping relationship violence due to the lack of affordable alternative accommodation, or inability to sell properties;
- increased family stress due to financial pressures; and
- ex-partners having to leave the region in search of work, resulting in related child support/contact issues.

Shoalcoast (Nowra) CLC has reported a 13 percent increase in demand for advice in family law matters for the six months to 15 April 2009 compared to the same period the previous year with the most affected areas being in child residence/contact and child protection. Family law continues to be the largest advice area for the North and North West CLC (Armidale) and it is expected that there will be an increase in problems affecting relationships as the financial crisis worsens. Illawarra (Wollongong) CLC has reported a 91 percent increase in child support advice and a 21 percent increase in child support casework in the first three months of 2009, compared to the previous three month period.

## **Problem Clustering**

The evidence concerning both increasing legal need as a result of the GFC as well as the clustering and interrelationship of legal problems is consistent with recent Australian and international research.

In its March 2006 report *Justice Made to Measure*, the Law and Justice Foundation of NSW found that certain legal events tend to co-occur. The clusters form either as one issue leads to another problem (eg unemployment and credit/debt) or because particular types of individuals are vulnerable to a range of issues. Multiple legal problems will also increase the complexity of the legal issues experienced – a point supported by the comments made by the regional service providers. The report also found that some disadvantaged people may have an increased vulnerability to particular legal issues. Professor Tony Vinson has identified that most regional areas of NSW have high levels of disadvantage. For example six out of the 40 areas of highest disadvantage by postcode in NSW are in the Northern Rivers Region (Vinson: 2007).

Recent UK research also supports the view that the current increase in legal problems is a product of the GFC. The English and Welsh Civil Justice Survey is an ongoing survey which has completed over 10,000 household interviews in the UK between 2006 and 2009. An overview of the findings was presented by Professor Pascoe Pleasence at seminars in Sydney and Melbourne in March 2009. A key finding was that people who became unemployed showed a marked increase in prevalence of legal problems as well as an increase in the prevalence of multiple problems compared to people who remained employed. The UK research also found that a five percent

increase to the existing budget for public legal services was needed to meet the increased demand as a result of the GFC. (Pleasance: 2009). It should be noted, however, that the UK already spends far more per capita on legal aid services than Australia.

A similar study – the Australian Legal Needs Survey – is currently being conducted by the Law and Justice Foundation of NSW for National Legal Aid. This report will provide a picture of legal need across Australia, including in regional areas and for specific demographic groups. It is expected that some results will be available from late 2010, with the main reports (national and for each state/territory) released in the second half of 2011. The report is expected to provide findings consistent with the UK research, and the Foundation’s previous legal needs survey of NSW.

UK research has also established a link between legal and health (including mental health) issues (Pleasance: 2009) leading to increased pressure on public services and cost to government.

### **Constraints on Publicly Funded Legal Assistance Services**

If people cannot afford to pay for private legal assistance, their ability to access legal assistance is dependant on whether they are eligible to receive assistance from a government funded public legal assistance service provider and the availability of those services.

Public legal assistance services in regional areas are not well placed to meet existing demand on services, let alone the increase in demand resulting from the GFC.

As stated by the Senate Legal and Constitutional References Committee in its June 2004 Report on Legal Aid and Access to Justice:

“Overwhelmingly the evidence suggests that the current arrangements throughout remote, rural and regional areas of Australia are inconsistent and inadequate, and generally fall well below acceptable standards for achieving geographic equity and uniform access to justice.” (Senate Report: 2004).

The situation has not changed.

In many areas of NSW there are currently substantial gaps in legal services which can only be remedied by the provision of additional resources. To a large extent the location of regional offices and their respective catchment areas has developed according to exigencies such as the location of local courts. However this is not the case across NSW and there are many areas with minimal access to publicly funded legal services including the Mid-North Coast, the Riverina and North West NSW. These areas are characterised by high Australian Bureau of Statistics indices of socio-economic disadvantage.

In areas which have services there are constraints on their ability to meet demand. The public legal assistance agencies in these areas (Legal Aid NSW, CLCs and the ALS) are all operating under significant funding constraints that impact on their capacity to provide legal assistance. In addition the guidelines under which these

organisations operate will necessarily preclude them providing legal assistance to some persons or for some issues (eg small business debts), despite the fact that in many cases the person seeking assistance will lack the capacity to pay for private legal assistance.

The increase in demand as a result of the GFC will involve differing issues for different service providers so will be addressed separately. It should be noted that these services work together to maximise the client base which can be assisted. A key objective of the NLAF is to better coordinate services for the benefit of socially and economically disadvantaged persons in NSW.

### *Legal Aid NSW*

The current level of funding for legal aid commissions, by necessity, has resulted in the means test thresholds being set at levels that exclude a significant number of people from qualifying for legal aid, including many people in low-paid work. As a consequence of the GFC, it is forecast that the rate of unemployment will continue to rise, and therefore, a greater number of people will fall within means test eligibility guidelines. Without increased funding to meet this demand, legal aid commissions will have no option but to consider tightening the eligibility means test thresholds. This will have the effect of further limiting the proportion of people who are able to access legal aid.

It should be noted that from mid-2009, there will be a phased transfer of credit regulation and legislation from the states and territories to the Commonwealth. Under existing legal aid funding arrangements, this will mean that responsibility for funding legal aid in these matters would shift to the Commonwealth but at this stage it is not clear whether the Commonwealth will allocate additional funding for these matters.

### *Community Legal Centres*

Community Legal Centres are operating under significant financial difficulties that impact on their capacity to retain staff and ability to perform core functions.

Increased demand has been met by:

- creating waiting lists or giving priority to those with the most pressing need (eg potential eviction) at the expense of needy but less urgent matters;
- reduction in community legal education and outreach services to potential clients to assist in the prevention or early identification of legal problems; and
- referral of complex matters to pro bono services (but these are limited)

The Centres have expressed concern that unmet need for legal services is rising due to the lack of capacity of centres.

### *Aboriginal Legal Service*

The GFC is also likely to impact on the needs of Aboriginal Australians. In the 1990-91 recession, the unemployment rate of Aboriginal and Torres Strait Islander people reached almost 28 percent, compared to 10 percent for the rest of the community. (BSL: 2009) Aboriginal people are disproportionately affected by job losses as they are the least credentialed and most casualised section of the workforce in regional areas.

While Indigenous legal services are best placed to provide culturally appropriate services to Aboriginal people, they have never had sufficient funding to establish a family or civil law practice that could meet the needs of Aboriginal people. The continued funding constraints on the Aboriginal Legal Service (ALS) means that there will be cuts in regional areas in 2009 and this will also reduce the level of representation for criminal matters which is available. This will mean a reduction in social services and social infrastructure at a time when unemployment is set to increase. If there are no ALS lawyers available to provide representation and seek diversion into drug and alcohol rehabilitation and other restorative services, the cycle of social disintegration and distrust will quicken.

Further, if people are denied access to legal representation in regional and remote courts, there will be more instances of injustice and a reduction in the community's faith in the "rule of law". The view of the ALS is that the probable consequence will be an increase in social order offending, eg. affrays, riot and damage to property. The cohesiveness of regional communities will be sorely tested and an inevitable outcome will be an increased drift of population away from those areas and into the major metropolitan cities. This will adversely affect the economies of regional areas.

### *Private Lawyers/Probono*

For persons who cannot access publicly funded legal services due to eligibility criteria, an alternative is to seek private legal assistance. As a result of the GFC, there will be an increasing number of people who, although employed, will find it more difficult to make ends meet, and therefore, will not be able to pay for private legal representation. This is being seen already in the case of small business owners who have legal issues but cannot access legal advice from any of the public legal assistance providers.

Unless these people can secure pro bono support, they will not be able to access assistance. Pro bono, however, is limited and the expectation that private lawyers are in a position to fill this gap is unrealistic. This is particularly the case in regional areas where private practitioners themselves are already undertaking a large quantity of pro bono work in difficult economic conditions. NLAf notes that there is also a shortage of private solicitors practising in certain areas of law (including family law and civil law) in many regional areas.

### **Social Inclusion and Social Infrastructure**

Social inclusion is a policy platform of the Commonwealth Government. Legal advocacy and advice for socially and economically disadvantaged people is an

important and effective vehicle for promoting social inclusion, through assisting them to protect and enforce their legal rights. (Pleasence: 2009)

It is now more important than ever to have well funded public legal services to ensure increasing legal needs are met during the GFC, particularly given the evidence showing that legal problems can lead to stress, anxiety and deterioration in physical or mental health problems. This can have significant long term costs to government. The evidence that legal events recur, occur in clusters and act as triggers for further problems suggests the critical role that can be played by early intervention and quick and effective legal resolution in the prevention of flow-on effects (LJF: 2006). Increased resourcing to publicly funded legal service providers to provide early intervention and prevention services in regional areas is critical.

### **Access to Services**

NLAF recognises that the capacity to provide legal assistance needs to be accompanied by strategies to ensure that persons in need of that assistance are able to access the services. This is particularly the case in regional areas where issues of distance, transport and socio-economic factors can prevent persons accessing assistance. There is also strong evidence that many disadvantaged people seek to access legal assistance through non-legal service providers. (LJF: 2006)

NLAF recommends that when looking at models of social infrastructure for regional areas, consideration be given to encouraging integrated service models, whereby legal and non-legal service providers are co-located in an area that may enhance access by those in need. When considering how to address the increased complexity of legal issues as reported by regional legal service providers, increased funding is needed to enhance tailored legal education, information and assistance services to meet the specific needs of different groups and individuals (LJF: 2006).

### **Conclusion**

In summary, there has been a marked increase in identified legal need in regional Australia over the past 12 months, with many of the issues directly or indirectly related to the economic problems experienced as a result of unemployment and cash flow issues linked to the GFC. Evidence-based research suggests a clustering of legal problems and a link between legal and other problems. If these problems are not addressed at an early stage they are likely to lead to additional legal and social issues. This will impact on regional communities and involve significant costs to government.

### **Recommendations**

NLAF therefore recommends that the Commonwealth Government:

1. Provide increased funding to public legal assistance services in regional areas to enable them to meet the increased legal need caused by the GFC, including through advice, minor assistance and legal representation, community legal education and outreach programs tailored to the needs of highly disadvantaged communities.

2. Provide funding to develop new integrated models of legal service delivery, based on partnerships with health and social service agencies.

## References

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