

Law Council of Australia

HELP debt reduction and indexation relief for legal practitioners working in rural, regional and remote locations

Position Paper

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1. Introduction

As at the 2021 Census, one-third of the Australian population resided outside of a greater capital city.¹ However, in 2022, only nine per cent of solicitors practised in a rural, regional or remote (RRR) location.² Additionally, since 2011, RRR areas have experienced relatively little employment growth for solicitors (14 per cent), in contrast to suburban areas (85 per cent), city areas (67 per cent) and overseas locations (63 per cent).³

These statistics indicate that the recruitment, retention and succession of legal practitioners in RRR areas presents an enduring challenge in Australia. Beyond these statistics lies the reality that this workforce shortfall adversely impacts access to justice and, by extension, human rights for individuals living in legally underserved communities. More broadly, lawyers in RRR areas—particularly small towns—are often the mainstay of many vital community and service organisations, and are crucial to the longevity and connectedness of their communities.

The Law Council of Australia is deeply concerned that individuals in certain RRR areas are unable to access timely legal assistance, advice and/or representation for critical matters. These include, for example, youth and adult criminal law matters, family law, child protection and family violence matters, discrimination, social security matters, credit and debt, consumer issues, tenancy matters and wills and estates. If insufficiently addressed, these matters can have far-reaching human rights and social implications for individuals and their families, and can also negatively impact the functioning of the justice system.⁴

Levels of socio-economic disadvantage appear to increase as geographic remoteness increases.⁵ Consequently, barriers to accessing justice intersect with, and exacerbate, existing disadvantage, especially for First Nations people, people from diverse cultural and linguistic backgrounds and people with additional needs, such as disabilities. Significantly, without the assistance of qualified legal practitioners who can give effect to the legal needs of First Nations people who live in RRR communities, the ability of these disenfranchised groups to have agency or legitimately pursue self-determination—a fundamental right under the International Covenant on Economic, Social and Cultural Rights—is limited.⁶

The Law Council recognises that the COVID-19 pandemic has produced tangible benefits for access to justice in RRR areas due to the increased use of technology, including improvements to the functioning and use of virtual courts and the extension of virtual filing systems and remote witnessing requirements.⁷ However, technological barriers continue to exist in RRR areas, including inaccessible or unreliable phone and internet connections, a lack of digital literacy, and an inability to afford the necessary devices, necessitating the ongoing provision of face-to-face legal assistance wherever possible.

¹ Australian Bureau of Statistics ('ABS'), Location: Census 2021 (Web Page, June 2022) <<https://www.abs.gov.au/statistics/people/people-and-communities/location-census/latest-release>>.

² Urbis, 2022 National Profile of Solicitors, Law Society of New South Wales (Report, April 2023) <<https://www.lawsociety.com.au/sites/default/files/2023-05/2022%20National%20Profile%20of%20Solicitors%20-%20Final.pdf>> 3.

³ Ibid.

⁴ Louise FitzRoy, Regional lawyer shortage could jeopardise access to justice says Law Council, ABC News (Online, 5 November 2015) <<https://www.abc.net.au/news/rural/2015-11-05/rural-and-regional-lawyer-shortage-threatens-access-to-justice/6915136>>.

⁵ ABS, Socio-Economic Indexes for Areas (SEIFA), Australia (Web Page, April 2023) <<https://www.abs.gov.au/statistics/people/people-and-communities/socio-economic-indexes-areas-seifa-australia/2021>>.

⁶ *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 1.

⁷ Law Council of Australia, National Strategic Plan: Rural, Regional and Remote Lawyers and Communities (13 November 2020) <https://lawcouncil.au/files/pdf/policy-statement/RRR_NSP.pdf> 18,

In 2023, 9.4 per cent of the Australian population is deemed 'highly excluded' from digital services, meaning that approximately 2.5 million people do not have access to affordable internet, or do not know how to use it.⁸ While technology can somewhat assist in improving access to justice and addressing legal need in RRR areas, there remains a clear and urgent need for increased availability of in-person legal services, particularly for localities that have high rates of digital exclusion.⁹

In June 2023, the Regional Australia Institute reported that cost-of-living pressures are driving job dissatisfaction in all major capital cities and that two in five urban workers would be convinced to move to an RRR area if a financial incentive was involved.¹⁰ The Law Council therefore supports a Commonwealth policy to incentivise appropriately qualified legal practitioners to live and work in RRR locations.

The Law Council recommends that a Higher Education Loan Program (**HELP**) debt reduction and indexation relief initiative be introduced for qualified individuals who work in an eligible RRR area for a specific period of time. This scheme would be administered by the Commonwealth Department of Education, as the agency with responsibility for higher education policy, regulation and programmes.¹¹

This Position Paper:

- examines several models that have been introduced by the Commonwealth to increase the numbers of health care workers and teachers living and working in RRR areas;
- recommends a suitable incentivisation model for legal practitioners—a HELP debt and indexation relief program; and
- undertakes a financial impact analysis of the preferred model.

2. Background

In 2017 and 2018, the Law Council undertook a national, comprehensive review into the state of access to justice in Australia for people experiencing significant disadvantage, titled the Justice Project.¹² Part of the Justice Project's Final Report focused on the legal needs of Australians located in RRR areas and examined the systemic and practical barriers for individuals in these communities who seek to engage with—or are otherwise exposed to—the justice system.¹³

The Final Report considered how shortages of appropriately skilled lawyers in RRR areas contributes to unmet legal need in these communities.¹⁴ Of particular note is that scarcities of locally available lawyers impact access to justice, such as when conflicts of interest can limit the pool of lawyers available to act in a particular matter. This has resulted in residents of RRR communities being denied access to legal representation at critical junctures,¹⁵ such

⁸ Australian Digital Inclusion Index, Key findings and next steps (Web Page, 2023) <<https://www.digitalinclusionindex.org.au/key-findings-and-next-steps/>>.

⁹ See, e.g. Erin Parke, Australia's digital divide means 2.8 million people remain 'highly excluded' from internet access, ABC News (Online, 16 October 2022) <<https://www.abc.net.au/news/2022-10-16/australia-digital-divide-millions-cannot-access-internet/101498042>>.

¹⁰ Regional Australia Institute, Nearly half of all urban workers would move to regional Australia for a better salary (Media Release, 4 July 2023) <https://www.regionalaustralia.org.au/Web/Media/Media-Releases/2023/Nearly_half_of_all_urban_workers_would_move_to_regional_Australia_for_a_better_salary.aspx>.

¹¹ Commonwealth of Australia, *Administrative Arrangements Order*, 3 August 2023.

¹² Law Council of Australia, The Justice Project (Web Page, 2018) <<https://lawcouncil.au/justice-project/final-report>>.

¹³ See the Law Council of Australia, The Justice Project: Rural, Regional and Remote (RRR) Australians (Final Report, August 2018) <<https://lawcouncil.au/files/web-pdf/Justice%20Project/Final%20Report/Rural%20Regional%20and%20Remote%20%28RRR%29%20Australians%20%28Part%201%29.pdf>>.

¹⁴ *Ibid* 3, 24-46.

¹⁵ *Ibid* 29-30.

as for bail applications, family law matters and National Disability Insurance Agency reviews.

The Final Report also recognised that not all RRR areas are the same, and that the kinds of legal needs experienced within, and between, different RRR communities vary.¹⁶ In approaching any solutions, it is therefore important to consider which RRR areas have the highest levels of disadvantage and legal need, as well as what mix of private and public legal practitioners will be required to appropriately respond to this need.

In addition, shortages of private legal practitioners in RRR areas adversely impacts the availability of legal aid and pro bono assistance in these locations.¹⁷ This is because the Australian legal assistance sector particularly relies upon the ‘mixed model’ of service delivery in the RRR context,¹⁸ which enables legal aid commissions to draw on the experience of the private profession, in addition to in-house expertise.¹⁹

In November 2020, with the assistance of its expert advisory RRR Committee, the Law Council released its National Strategic Plan for RRR Lawyers and Communities (**Strategic Plan**),²⁰ which was informed by its findings from the Justice Project and occurrence of subsequent crises, including the bushfires in the summer of 2019 and 2020 and the COVID-19 pandemic. These events caused irrefutable shifts in legal practice and access to justice issues nationally, while also revealing the unique areas of vulnerability for RRR communities when such emergencies occur.²¹

Consequently, one of the key tenets of the Strategic Plan was the development of policy options to promote the recruitment, retention and succession of legal practitioners in RRR areas.²² This resulted in the development and launch of the Law Council’s ‘Digital Treechange’ initiative in September 2021,²³ which enables a legal graduate or legal practitioner to undertake a trial period working remotely for an RRR-based legal practice before making the decision to relocate.

Since mid-2022, the RRR Committee has examined various options to directly incentivise legal practitioners to relocate to RRR areas and stay for a longer period of time to assist with the supervision of junior lawyers, as well as to facilitate succession planning. One such option has been to promote financial incentives, which has culminated in the development of this Position Paper.

3. Financial incentivisation models

In its 2019 Report, the Senate Select Committee into the Jobs for the Future in Regional Areas noted that ‘Governments can be important catalysts for regional transitions to occur in an appropriate timeframe’.²⁴

¹⁶ Ibid 10, 32

¹⁷ Ibid 3.

¹⁸ Law Council of Australia, The Justice Project: Legal Services (Final Report, August 2018) <<https://lawcouncil.au/files/web-pdf/Justice%20Project/Final%20Report/18%20-%202018%2009%20-%20Final%20-%20Legal%20Services%20%28Part%20%29.pdf>> 12-13.

¹⁹ Ibid 12.

²⁰ Law Council of Australia, National Strategic Plan: Rural, Regional and Remote Lawyers and Communities (13 November 2020) <https://lawcouncil.au/files/pdf/policy-statement/RRR_NSP.pdf>.

²¹ Ibid 12.

²² Ibid 15-17.

²³ Law Council of Australia, RRR Digital Treechange (Web Page, 2022) <<https://lawcouncil.au/rrr-law/tools-for-practitioners-and-law-practices/rrr-digital-treechange>>.

²⁴ Senate Select Committee into Jobs for the Future in Regional Areas (Report, December 2019) <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Jobs_for_the_Future_in_Regional_Areas/RegionalAreas/Report> 47.

This observation was expanded upon in 2022 by the Senate Community Affairs References Committee (**Senate Committee**), which noted in its Interim Report that the Commonwealth has several policy levers at its disposal to influence the supply and distribution of professionals in Australia, including education and training policy, immigration policy, financial incentives, and other programs to encourage workers to relocate to particular locations.²⁵

In identifying potential relocation incentivisation options for legal practitioners, the Law Council's RRR Committee has examined schemes which have primarily sought to encourage health care professionals to live and work in RRR areas. The reason for this approach is that there are clear parallels between the health and legal sectors in RRR areas. There are difficulties attracting and retaining appropriately qualified professionals in both fields,²⁶ and these workforce shortages inevitably impact equity of access to essential services which can significantly affect a community's wellbeing and quality of life.

Model A: Bonded student program

The first incentivisation model for consideration is a Commonwealth bonded student scheme equivalent to the Bonded Medical Program, which provides eligible students with a Commonwealth Supported Place in a medical course at an Australian university in return for a commitment to work in certain RRR areas.²⁷

The current initiative—the Bonded Medical Program—is a statutory scheme under the *Health Insurance Act 1973* (Cth), which requires bonded medical students to work in an eligible RRR area for three years, within 18 years of completing their university study, known as the Return of Service Obligation (**Obligation**).²⁸ The Obligation can be undertaken non-continuously, full-time or part-time, or as a fly-in/fly-out arrangement.²⁹

Prior to the commencement of the Bonded Medical Program on 1 January 2020, two legacy bonded medical programs were established—the Medical Rural Bonded Scholarship Scheme, which accepted participants between 2001 and 2015,³⁰ and the Bonded Medical Places Scheme, which accepted participants between 2004 and 2019.³¹

The Bonded Medical Program and its legacy schemes were designed to influence the distribution of primary health care professionals to address the shortfall of general practitioners (**GPs**) in RRR areas, noting that those living in remote areas experience

²⁵ Senate Community Affairs References Committee, Provision of general practitioner and related primary health services to outer metropolitan, rural, and regional Australians (Interim Report, April 2022) <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/PrimaryHealthServices/Interim_Report> 12.

²⁶ See, for example, Leon Georgiou, Doctor availability in regional Australia limited by declining workforce, ABC News (Online, 29 April 2022) <<https://www.abc.net.au/news/2022-04-29/regional-towns-face-doctor-shortage/101022348>> and Jamelle Wells, Calls for new ways to train and retain regional solicitors as shortage bites in NSW, ABC News (Online, 22 July 2022) <<https://www.abc.net.au/news/2022-07-22/retention-of-solicitors-needed-in-regional-nsw-as-shortage-bites/101257910>>.

²⁷ Department of Health and Aged Care, About the Bonded Medical Program (Web Page, July 2023) <<https://www.health.gov.au/our-work/bonded-medical-program/about>>.

²⁸ Ibid.

²⁹ Senate Community Affairs References Committee, Provision of general practitioner and related primary health services to outer metropolitan, rural, and regional Australians (Interim Report, April 2022) <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/PrimaryHealthServices/Interim_Report> 13.

³⁰ Department of Health and Aged Care, Medical Rural Bonded Scholarship Scheme (Web Page, June 2023) <<https://www.health.gov.au/our-work/medical-rural-bonded-scholarship-scheme>>.

³¹ Department of Health and Aged Care, Bonded Medical Places Scheme (Web Page, August 2023) <<https://www.health.gov.au/our-work/bonded-medical-places-scheme#participant-booklet-2016-to-2019>>.

significantly worse health outcomes than what is experienced in metropolitan areas.³² Eligible locations for the Bonded Medical Program are:

- locations that have been categorised by the scaling system known as the Modified Monash Model as level 2 (regional centres) to level 7 (very remote communities);³³
- locations which are deemed Distribution Priority Areas for GPs due to a shortage of medical practitioners;³⁴ and
- outer metropolitan Districts of Workforce Shortage for specialists, which are locations with poor access to specialists.³⁵

In April 2022, the Senate Committee published its Interim Report in relation to its inquiry into the provision of GP and related primary health services to outer metropolitan, rural and regional Australians.³⁶ The Report examined policies to distribute the primary health workforce in Australia and outlined evidence received from stakeholders in relation to the current and legacy bonded medical programs.

The Senate Committee reported that it 'received overwhelming evidence which showed that bonded medical programs are expensive, administratively burdensome and do not achieve their purported goals'³⁷ for the following reasons:

- Inquiry participants suggested that those who sign up to bonded medical programs do not intend to practise in an RRR area but use the program as a mechanism to secure a position in a medical course.³⁸
- There is a lack of evidence that such schemes result in longer term positive connections to rural life,³⁹ and there is frustration for medical practices as there is no long-term commitment when engaging a bonded student.⁴⁰
- Only a small proportion of bonded medical graduates complete their Obligation. As at March 2022, of the 13,521 total participants in the three schemes, more participants had withdrawn from the program (5.7 per cent) than had completed their Obligation (4.4 per cent).⁴¹

The Senate Committee presented the preliminary view that 'bonded medical programs are ineffective and should cease taking new applicants',⁴² noting feedback that such schemes were of questionable utility, while being expensive and administratively burdensome.⁴³ However, the prorogation of the 46th Parliament shortly after the release of the Interim Report meant that the Senate Committee was not in position to provide a comprehensive

³² Senate Community Affairs References Committee, Provision of general practitioner and related primary health services to outer metropolitan, rural, and regional Australians (Interim Report, April 2022) <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/PrimaryHealthServices/Interim_Report> 12.

³³ The Modified Monash Model defines whether a location is metropolitan, rural, remote or very remote: Department of Health and Aged Care, Modified Monash Model (Web Page, December 2021) <<https://www.health.gov.au/topics/rural-health-workforce/classifications/mmm>>.

³⁴ Department of Health and Aged Care, Distribution Priority Area (Web Page, March 2023) <<https://www.health.gov.au/topics/rural-health-workforce/classifications/dpa>>.

³⁵ Department of Health and Aged Care, District of Workforce Shortage (Web Page, July 2023) <<https://www.health.gov.au/topics/rural-health-workforce/classifications/dws>>.

³⁶ Senate Community Affairs References Committee, Provision of general practitioner and related primary health services to outer metropolitan, rural, and regional Australians (Interim Report, April 2022) <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/PrimaryHealthServices/Interim_Report>.

³⁷ Ibid 46.

³⁸ Ibid 38-39.

³⁹ Ibid 39.

⁴⁰ Ibid 40.

⁴¹ Ibid.

⁴² Ibid 46.

⁴³ Ibid 39.

Final Report.⁴⁴ The Senate Committee's remarks are consistent with the following anecdotal feedback obtained by the Law Council's RRR Committee in the course of 2023:

- During the six years between a student applying to participate in the scheme and completing their studies, their circumstances would often change (i.e., relationship changes, educational opportunities, caring responsibilities) which meant they were longer able to complete their Obligation.
- Participants can 'buy out' of their Obligation relatively easily once fully qualified.
- Enabling a fly-in/fly-out arrangement does not enable residents to see the same doctor regularly, presenting challenges for RRR communities in accessing continuity of care.
- There is a need for greater education for participants about life in eligible RRR areas under the scheme.

Model B: HELP debt reduction and indexation relief program

The second incentivisation model for consideration is a HELP debt and indexation relief scheme, relating to both HECS-HELP and FEE-HELP loans, established under the *Higher Education Support Act 2003* (Cth) (**HES Act**) and administered by the Department of Education.

Health practitioners

The *HELP for Rural Doctors and Nurse Practitioners* initiative was announced as part of a package of rural health workforce measures in December 2021.⁴⁵ The *Higher Education Support Amendment (2022 Measures No. 1) Act 2023* (Cth)—which provides the legislative basis for the scheme—received Royal Assent in February 2023, and the Department of Education finalised the 'HELP Debtor (Health Practitioner) Guidelines' in August 2023.⁴⁶ The Guidelines outline the detailed eligibility requirements, arrangements for the administration of the program and the obligations for participants to access the benefits of the program.⁴⁷

This initiative enables eligible doctors and nurse practitioners who work in particular RRR areas to partially or fully reduce their outstanding HELP debt. According to the Revised Explanatory Memorandum for the Higher Education Support Amendment (2022 Measures No. 1) Bill 2022 (**HES Amendment Bill**):

*This measure is intended to encourage initial employment and retention of health practitioners to work in rural, remote or very remote areas of Australia, addressing issues of equity and access to healthcare in these areas.*⁴⁸

⁴⁴ Senate Community Affairs References Committee, Provision of general practitioner and related primary health services to outer metropolitan, rural, and regional Australians (Final Report, June 2022) <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/PrimaryHealthServices/Final_Report>.

⁴⁵ The Hon Dr David Gillespie MP, More GPs for local clinics to recruit, new package to attract doctors to rural (Media Release, 10 December 2021) <<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F8508539%22>>.

⁴⁶ HELP Debtor Guidelines (Health Practitioners) 2023.

⁴⁷ Ibid.

⁴⁸ Revised Explanatory Memorandum, Higher Education Support Amendment (2022 Measures No. 1) Bill 2022, 5.

Individuals must meet the eligibility criteria and their obligations to complete the required amount of eligible work in rural, remote or very remote locations, using Modified Monash Model classification levels 3 (large rural towns) to 7 (very remote communities).⁴⁹ The rate of HELP debt elimination depends on the length of the individual's relevant tertiary degree and the amount of time they spend living and working in an eligible area.⁵⁰

This initiative also allows for the waiver of indexation—which is based on the Consumer Price Index over a two-year period—on an eligible participant's outstanding HELP debt for the period they live and complete eligible work in an RRR area.⁵¹

Eligibility for prospective participants commenced on 1 January 2022, with any updates to outstanding HELP debts of participants to be processed annually through the taxation system following a successful application.⁵² Once program obligations are achieved (living and working in an eligible area for the minimum required amount of time, for a minimum number of hours per week), any compulsory repayments that have been made from 1 January 2022 to that point will be refunded, and any outstanding debt will be partially or fully eliminated.⁵³ The scheme is not retrospective, in that it does not allow for the reimbursement of HELP debts paid, either partially or in full, prior to that date.⁵⁴

As at November 2023, this scheme is not yet accepting applications. According to the website of the Department of Health and Aged Care:⁵⁵

The Department of Education is currently working to establish the arrangements to support prospective participants to submit an application and these will be advised as soon as possible. The Department of Health and Aged Care will continue to provide advice and appropriate support during development and implementation of the Program.

Teachers

The *HELP for Rural Doctors and Nurse Practitioners* initiative is an extension of the existing *Very Remote Teachers Initiative* which commenced in 2019 under the HES Act. This scheme allows teachers who work in eligible 'very remote' areas for four years full time (or the pro-rated part-time equivalent in a six-year period) to have their accumulated HECS-HELP and/or FEE-HELP debt reduced.⁵⁶ Eligible teachers can also apply for waivers of indexation on their HELP debt for each day of teaching while they are employed as a teacher in a very remote area of Australia on or after 14 February 2019.⁵⁷

Of note, this scheme does not employ the Modified Monash Model, which measures remoteness and population size,⁵⁸ to classify eligible locations for participants to teach in.

⁴⁹ Department of Health and Aged Care, *HELP for Rural Doctors and Nurse Practitioners* (Web Page, September 2023) <<https://www.health.gov.au/our-work/help-for-rural-doctors-and-nurse-practitioners>>.

⁵⁰ Department of Health and Aged Care, *HELP debt reduction for rural doctors and nurse practitioners* (Fact Sheet, 2023) <https://www.health.gov.au/sites/default/files/2023-09/fact-sheet-help-for-rural-doctors-and-nurse-practitioners_0.pdf>.

⁵¹ Department of Health and Aged Care, *HELP for Rural Doctors and Nurse Practitioners* (Web Page, September 2023) <<https://www.health.gov.au/our-work/help-for-rural-doctors-and-nurse-practitioners>>.

⁵² *Ibid.*

⁵³ Department of Health and Aged Care, *HELP debt reduction for rural doctors and nurse practitioners* (Fact Sheet, 2023) <https://www.health.gov.au/sites/default/files/2023-09/fact-sheet-help-for-rural-doctors-and-nurse-practitioners_0.pdf>.

⁵⁴ *Ibid.*

⁵⁵ Department of Health and Aged Care, *HELP for Rural Doctors and Nurse Practitioners* (Web Page, September 2023) <<https://www.health.gov.au/our-work/help-for-rural-doctors-and-nurse-practitioners>>.

⁵⁶ Department of Education, *Higher Education Loan Program (HELP) Frequently Asked Questions* (Web Page, July 2023) <<https://www.education.gov.au/higher-education-loan-program/fact-sheets/frequently-asked-questions-help>>.

⁵⁷ *Ibid.*

⁵⁸ Department of Health and Aged Care, *Modified Monash Model* (Web Page, December 2021) <<https://www.health.gov.au/topics/rural-health-workforce/classifications/mmm>>.

Instead, the Australian Bureau of Statistics (**ABS**) Remoteness Areas Structure is used to determine ‘very remote’ areas,⁵⁹ with a list of eligible centre-based day care services, preschools and schools available on the Department of Education’s website.⁶⁰

The requirement that a teacher must work in a very remote location means that eligibility under the *Very Remote Teachers Initiative* is narrower than eligibility under the *HELP for Rural Doctors and Nurse Practitioners* scheme, which encompasses large, medium and small rural towns (e.g. Dubbo, Port Augusta and Renmark respectively), remote communities (e.g. Alice Springs and Mallacoota) and very remote communities (e.g. Coober Pedy and Thursday Island).⁶¹

4. Law Council position

As has been introduced for health practitioners and teachers, the Law Council considers that the Commonwealth should examine and employ, where appropriate, policy levers to address the insufficient numbers of legal practitioners in RRR areas where legal needs are greatest and facilitate improved access to justice for members of these communities.

Recommendation: Model B—HELP debt reduction and indexation relief

The Law Council specifically recommends that a HELP debt reduction and indexation relief scheme under the HES Act—equivalent to the *HELP for Rural Doctors and Nurse Practitioners* initiative—would be the most appropriate measure for the Commonwealth to incentivise legal practitioners to live and work in RRR areas.

Proposed eligibility requirements

The Law Council proposes that to be eligible under the scheme, a legal practitioner must both reside and work in an eligible RRR area, from a specific eligibility date. Their HELP debt would be reduced commensurate to the period of time spent living and working in an eligible RRR area.

As a first step, the Modified Monash Model should be employed to determine eligible RRR locations under such scheme,⁶² rather than the ABS Remoteness Areas Structure which determines what is a ‘very remote’ area for the purpose of the *Very Remote Teachers Initiative*. Given the substantial challenges in recruiting and retaining legal practitioners in a range of RRR areas, as outlined in the Strategic Plan,⁶³ it would likely be appropriate for Modified Monash Model levels 3 to 7 to be classed as eligible locations under any such scheme, equivalent to what is provided under the *HELP for Rural Doctors and Nurse Practitioners* initiative.

However, it is erroneous to assume that every regional centre (Level 2, such as Launceston), will more readily attract lawyers compared to, for example, medium rural towns (Level 4, such as Byron Bay or Merimbula). Consequently, there is a need for a nuanced discussion regarding access to lawyers in RRR areas, given the considerable

⁵⁹ ABS, Remoteness Areas July 2021 – June 2026 (March 2023) <<https://www.abs.gov.au/statistics/standards/australian-statistical-geography-standard-asgs-edition-3/jul2021-jun2026/remoteness-structure/remoteness-areas>>.

⁶⁰ Ibid.

⁶¹ Department of Health and Aged Care, Modified Monash Model (Fact Sheet, 2019) <<https://www.health.gov.au/sites/default/files/documents/2020/07/modified-monash-model-fact-sheet.pdf>>.

⁶² Department of Health and Aged Care, Modified Monash Model (Web Page, December 2021) <<https://www.health.gov.au/topics/rural-health-workforce/classifications/mmm>>.

⁶³ Law Council of Australia, National Strategic Plan: Rural, Regional and Remote Lawyers and Communities (13 November 2020) <https://lawcouncil.au/files/pdf/policy-statement/RRR_NSP.pdf>.

variability in RRR locations and the likelihood that different responses will be appropriate for different locations.⁶⁴

The Law Council therefore considers that other relevant data-based criteria be employed, in exceptional circumstances, to deem a particular area eligible under the scheme that would ordinarily be ineligible by virtue of being classified as a level 2 regional centre by the Modified Monash Model. Examples of additional relevant criteria could include, for instance, the ratio of solicitors to population,⁶⁵ environmental factors, such as climate, and the extent of legal need in a particular area.⁶⁶ The Law Council emphasises the importance of accurate and current data and indicia to assist with any analysis of whether exceptional circumstances may apply to justify the eligibility of an area under the scheme, should it be established.

In addition, as will occur under the *HELP for Rural Doctors and Nurse Practitioners* initiative,⁶⁷ the more remote the area that a lawyer practises in, the faster their HELP debt will be reduced, which may provide a targeted incentive for lawyers to seek work in those areas.

The proposed scheme will include an obligation to live and work in an eligible area for a set period of time before any debt is eliminated.⁶⁸ The Law Council suggests that the minimum required commitment to be eligible for the partial elimination of HELP debt should be at least two years. This period strikes an appropriate balance between minimising turnover and disruption in practice, while also ensuring that the minimum length of commitment will not deter practitioners from participating in the scheme.

The Law Council considers that, like the *HELP for Rural Doctors and Nurse Practitioners* initiative, the scheme should not be retrospectively applied for individuals who have worked in RRR areas prior to the eligibility date. This is intended to be a forward-looking policy to address the real and immediate need to motivate legal practitioners to work in RRR areas.

The Law Council acknowledges that suitable positions must be available, and adequately funded, for practitioners to fill for at least the minimum period of time, should they wish to benefit from this scheme. If a junior position is advertised, it is expected that adequate supervision will be available to support their development and ensure that residents of RRR areas are receiving high-quality representation that is responsive to their complex needs.

HELP debt relief as a financial incentive

While the Law Council's existing Digital Treechange initiative aims to overcome the 'barrier of the unknown' for individuals considering RRR practice,⁶⁹ it recognises that the anticipated financial and logistical barriers of relocating can deter an otherwise willing individual from pursuing this option.

⁶⁴ Law Council of Australia, *The Justice Project: Rural, Regional and Remote (RRR) Australians* (Final Report, August 2018) <<https://lawcouncil.au/files/web-pdf/Justice%20Project/Final%20Report/Rural%20Regional%20and%20Remote%20%28RRR%29%20Australians%20%28Part%201%29.pdf>> 32.

⁶⁵ See, eg, Urbis, *2022 National Profile of Solicitors*, Law Society of New South Wales (Report, April 2023) <<https://www.lawsociety.com.au/sites/default/files/2023-05/2022%20National%20Profile%20of%20Solicitors%20-%20Final.pdf>> 8.

⁶⁶ See, eg, Victoria Law Foundation, *Public Understanding of Law Survey: Everyday Problems and Legal Need* (Volume 1, August 2023) <<https://victorialawfoundation.org.au/research/research-reports/the-public-understanding-of-law-survey-puls-volume-1>>.

⁶⁷ Department of Health and Aged Care, *HELP debt reduction for rural doctors and nurse practitioners* (Fact Sheet, 2023) <https://www.health.gov.au/sites/default/files/2023-09/fact-sheet-help-for-rural-doctors-and-nurse-practitioners_0.pdf>.

⁶⁸ *Ibid.*

⁶⁹ Law Council of Australia, *RRR Digital Treechange* (Web Page, 2022) <<https://lawcouncil.au/rrr-law/tools-for-practitioners-and-law-practices/rrr-digital-treechange>>.

The Law Council considers that financial incentives—in the form of a HELP debt reduction and indexation relief scheme—would assist in facilitating the recruitment and retention of legal practitioners in RRR locations. This would be consistent with findings from the Regional Australia Institute that two in five urban workers would be convinced to move to an RRR area if a financial incentive was involved.⁷⁰

Media reports indicate that students and graduates, as well as those who have been in the workforce for some time, are increasingly concerned about their HELP debts, along with the rates of indexation that are applied annually to these debts.⁷¹ Few students pay for tertiary courses upfront rather than using the HELP scheme. In 2021, approximately 90 per cent of students liable to pay a student contribution used HECS-HELP, and approximately 86 per cent liable to pay a course fee used FEE-HELP.⁷² According to the Australian Taxation Office, it took an average of 9.5 years for a HELP debt to be repaid in full in the 2021–22 financial year.⁷³ In 2023, the indexation rate for HELP debts was 7.1 per cent,⁷⁴ which will have added approximately six months to the average student’s repayment time.⁷⁵

There is limited data publicly available on the current HELP debts of law students and graduates. The most recent data is from the 2018–19 financial year, where the Department of Education reported that the median HELP repayment amount for law students in 2019 was \$4,875 and those who had studied law were estimated to take an average of 9.3 years to repay their HELP debt.⁷⁶

Noting that HELP debts are currently taking law graduates approximately a decade to pay off, more experienced practitioners—such as those with more than six years of post-admission experience—are likely to also have an interest in a HELP debt relief scheme, particularly if they have been out of the workforce for a period of time—for example, having taken parental leave. This will, importantly, facilitate the supervision and mentorship of junior practitioners in RRR areas, and will also assist in promoting succession arrangements for legal practices in these locations.

Compulsory HELP repayments are proportionate to income. For the 2023–24 financial year, repayments commence at 1 per cent when income passes \$51,550 and reach a maximum of 10 per cent when income reaches \$151,201.⁷⁷ The existence of a HELP debt reduces an individual’s saving and borrowing capacity, as compulsory repayments impact their take-home pay, with lending institutions considering student debt in the same way as

⁷⁰ Regional Australia Institute, Nearly half of all urban workers would move to regional Australia for a better salary (Media Release, 4 July 2023) <https://www.regionalaustralia.org.au/Web/Media/Media-Releases/2023/Nearly_half_of_all_urban_workers_would_move_to_regional_Australia_for_a_better_salary.aspx>.

⁷¹ See Lexy Hamilton-Smith, Growing calls for student HECS-HELP loan indexation to be abolished as inflation sends debts soaring, ABC News (Online, 3 April 2023) <<https://www.abc.net.au/news/2023-04-03/student-debt-rising-hecs-help-indexing/102125582>>; Gabriella Marchant and Evan Young, How HECS and HELP debts have helped entrench women’s economic disadvantage, ABC News (Online, 4 March 2023) <<https://www.abc.net.au/news/2023-03-04/hecs-help-debt-women-economic-disadvantage/101890892>>.

⁷² Department of Education, 2021 Section 5 Liability status categories (Web Page, February 2023) <<https://www.education.gov.au/higher-education-statistics/resources/2021-section-5-liability-status-categories>>.

⁷³ The Australian Taxation Office, HELP statistics 2021-22 (Web Page, September 2022) <<https://data.gov.au/data/dataset/higher-education-loan-program-help>>.

⁷⁴ Australian Taxation Office, Study and training loan indexation rates (Web Page, May 2023) <<https://www.ato.gov.au/Rates/Study-and-training-loan-indexation-rates/>>.

⁷⁵ Julie Hare, Student debt to rise 7.1pc, but it’s not all bad news, Australian Financial Review (Online, 27 April 2023) <<https://www.afr.com/policy/health-and-education/student-debt-to-spike-but-it-s-not-all-bad-news-20230426-p5d3fs>>.

⁷⁶ Department of Education, 2019-19 HELP report data extract (Web Page, August 2021) <<https://www.education.gov.au/higher-education-loan-program/resources/201819-help-report-data-extract>>.

⁷⁷ Australian Taxation Office, Study and training loan repayment thresholds and rates (Web Page, 2023) <<https://www.ato.gov.au/rates/help,-tsl-and-sfss-repayment-thresholds-and-rates/>>.

other personal loans and credit cards when evaluating that person's ability to service a loan.⁷⁸

Law degrees are currently among the most expensive tertiary courses in Australia.⁷⁹ As at 1 January 2023, the maximum student contribution amount for a student who has a Commonwealth Supported Place in a law course is \$15,142 per year, in contrast to education and nursing (\$4,124), engineering and psychology (\$8,301) and medicine (\$11,800).⁸⁰

In addition, the requirement for law graduates to complete the Graduate Diploma in Legal Practice (or equivalent) as part of their Practical Legal Training will typically result in an additional HELP debt of \$10,000 to \$16,000, depending on the provider and whether the student is domestic or international.⁸¹ Assuming these fees do not significantly change, a domestic student commencing a four-year undergraduate law degree in 2023 can expect to accumulate at least \$70,000 of HELP debt prior to their admission as a lawyer.

Given these financial considerations outlined above, the opportunity for a qualified legal practitioner to fully, or even partially, reduce their HELP debt is likely to provide a strong financial incentive to relocate to an eligible RRR area. Such scheme is likely to be particularly attractive to individuals who are already considering practising law in an RRR area for lifestyle reasons (i.e., reduced cost of living and lower commuting times),⁸² or have existing familial connections to such area, but would benefit from an additional incentive to relocate from a metropolitan area, where they may have studied and commenced their career.

This scheme would also encourage practitioners to stay living and working in RRR areas for longer than they otherwise would. For instance, it could incentivise graduate lawyers to stay in an RRR area after completing a graduate program. This increases the likelihood that individuals will develop strong connections to the community and subsequently 'lay down roots' in the area. It would also offer stability and a return on training investment to the legal practices that offer training and development programs to junior lawyers. In addition, this scheme may encourage interested mature-aged individuals—who are already living in an eligible area and looking to undertake further study—to study law rather than another discipline.

⁷⁸ Nicole Hegarty, Student debt indexation to have lifelong impacts on Australians' borrowing capacity, ABC News (Online, 31 May 2023) <<https://www.abc.net.au/news/2023-05-31/hecs-student-debt-indexation-borrowing-capacity-futurity-study/102409826>>.

⁷⁹ Jessica Black, From free university to \$15,000 a year for an arts degree – tracking the cost of Australia's higher education over three generations, ABC News (Online, 27 July 2023) <<https://www.abc.net.au/news/2023-07-27/generational-hecs-debt-university-access-higher-education-cost/102480290>>.

⁸⁰ Australian Government Study Assist, Student contribution amounts (Web Page, 2023) <<https://www.studyassist.gov.au/help-loans-commonwealth-supported-places-csps/student-contribution-amounts>>.

⁸¹ See, for example, College of Law, Practical Legal Training (Web Page, 2023) <<https://www.colaw.edu.au/learn-with-us/our-programs/practical-legal-training-programs>>; Leo Cussen Centre for Law, Program Dates & Fees (Web Page, 2023) <<https://www.leocussen.edu.au/practical-legal-training/about-our-plt/course-dates/>>.

⁸² Regional Australia Institute, As the cost-of-living bites, city dwellers consider a move to regional Australia (Media Release, 11 May 2023) <https://www.regionalaustralia.org.au/Web/Media/Media-Releases/2023/As_the_cost_of_living_bites_city_dwellers_consider_a_move_to_regional_Australia.aspx>.

Comparison to Model A

The Law Council does not recommend the establishment of a bonded student scheme equivalent to the model outlined above at Model A. Should such scheme be implemented for law students, the shortcomings that have arisen in the context of the Bonded Medical Program and its legacy schemes—as outlined in the Senate Committee’s 2022 Interim Report⁸³—would likely arise, rendering such scheme unfit for purpose while being administratively burdensome.

Conversely, the Law Council considers that a HELP debt reduction and indexation relief scheme is more suitable as a recruitment and retention tool as entitlement to such assistance is dependent on an applicant already working in an eligible RRR area. This means that, unlike the bonded student schemes, a HELP relief initiative cannot merely be used as a pathway to gain entry to a competitive tertiary course by those who do not intend to work in an RRR area.⁸⁴

Additionally, a person’s circumstances can significantly change in the years it takes to complete their tertiary course, which can affect their ability to eventually relocate to an RRR area, even if they intended to do so when they commenced their studies.

Financial impact

While the Law Council’s recommended model will have an impact on the Commonwealth budget, it is unlikely to require significant new expenditure. Rather, the proposed HELP debt reduction and indexation relief scheme would be primarily funded by the forgiveness of monies already expended by the Commonwealth in the form of such debts. In some cases, these debts will never be fully recouped, due to, for example, individuals leaving the workforce before their debt is entirely repaid, or the cancellation of a person’s debt upon their death.⁸⁵ Notably, the former Department of Education, Skills and Employment forecast in its Annual Report 2021–22 that 11.82 per cent of existing HELP debt is not expected to be repaid.⁸⁶

The Revised Explanatory Memorandum to the HES Amendment Bill provides that its financial implications are ‘expected to be moderate’.⁸⁷ The Revised Explanatory Memorandum further advises that the measure to reduce HELP debts for health practitioners is estimated to have an ‘underlying cash impact of \$27.2 million over the period 2021–22 to 2025–26’.⁸⁸ The Law Council is not privy to the methodology used to calculate this relatively small estimated cash impact. However, in his Second Reading Speech for the HES Amendment Bill in November 2022, the Minister for Education remarked that this measure is ‘expected to help around 850 medical practitioners a year’.⁸⁹

⁸³ Senate Community Affairs References Committee, Provision of general practitioner and related primary health services to outer metropolitan, rural, and regional Australians (Interim Report, April 2022) <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/PrimaryHealthServices/Interim_Report> 12-13, 38-40, 46.

⁸⁴ Ibid 38-39.

⁸⁵ See Noel Whittaker, Does your HECS debt die with you?, The Sydney Morning Herald (Online, 11 December 2019) <<https://www.smh.com.au/money/super-and-retirement/does-your-hecs-debt-die-with-you-20191209-p53i3c.html>>; Natasha Robinson and Michael McKinnon, Documents reveal the Government looked at recovering HELP loans from deceased estates, ABC News (Online, 14 June 2019) <<https://www.abc.net.au/news/2019-06-14/foi-reveals-student-loans-deceased-estate-recovery/11203258>> .

⁸⁶ Department of Education, Skills and Employment, Annual Report 2021-22 (October 2022) <<https://www.education.gov.au/about-department/resources/2021-22-dese-annual-report>> 57.

⁸⁷ Revised Explanatory Memorandum, Higher Education Support Amendment (2022 Measures No. 1) Bill 2022, 5.

⁸⁸ Ibid 6.

⁸⁹ The Hon Jason Clare MP, Second Reading Speech for the Higher Education Support Amendment (2022 Measures No. 1) Bill 2022 (10 November 2022) <https://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/26230/0005/hansard_frag.pdf;fileType=application%2Fpdf>.

While the adoption of Model B would have some budgetary impact for the Commonwealth, the Law Council is not able to make an informed estimate of such impact at this preliminary stage. This is particularly because the equivalent *HELP for Rural Doctors and Nurse Practitioners* initiative has not yet commenced in a practical sense, and the Revised Explanatory Memorandum to the HES Amendment Bill provides little detail on this matter.

Nonetheless, the Law Council considers that the implementation and management costs of extending the existing incentivisation scheme under the HES Act to legal practitioners would likely be modest. There will likely be additional costs and resourcing requirements within the Department of Education, such as to monitor the scheme's progress and process applications. However, the necessary infrastructure, administrative requirements and guidance material should already be in place and therefore should not need to be substantively redeveloped at additional cost.

Moreover, should this incentivisation program for lawyers be eventually discontinued, the predominant Commonwealth expenditure that will have been incurred is the administrative and implementation costs which are being simultaneously incurred by the Department of Education through the *HELP for Rural Doctors and Nurse Practitioners* initiative.

More broadly, as recruitment difficulty is a serious constraint on economic activity,⁹⁰ incentivising professionals such as lawyers to work in RRR areas is likely to bring secondary economic benefits to the community in which those services are provided. The Regional Australia Institute reports that as at December 2022, 'legal, social and welfare professions' was the sixth most in-demand occupation in RRR areas, with 3,135 vacancies, an increase of 20 per cent from the previous year.⁹¹

Filling these vacancies may provide RRR areas with a significant economic boost. Moreover, new residents filling vacant jobs bring fresh knowledge, experiences and diversity to RRR areas, and may also be bringing a partner and other family members with them, which will further benefit these areas both economically and socially.⁹²

Just as each dollar of Commonwealth legal assistance funding has been found to deliver an equivalent benefit of \$2.25,⁹³ each dollar of HELP debt eliminated has the potential to contribute to significant productivity and social benefits nationally.

⁹⁰ Regional Australia Institute, *Regionalisation Ambition 2032: A Framework to Rebalance the Nation* (Report, October 2022) <<https://regionalaustralia.org.au/libraryviewer?ResourceID=100>> 27.

⁹¹ Regional Australia Institute, *Regional Jobs 2022: The Big Skills Challenge* (Report, May 2023) <<https://regionalaustralia.org.au/libraryviewer?ResourceID=105>> 13.

⁹² Regional Australia Institute, *Regionalisation Ambition 2032: A Framework to Rebalance the Nation* (Report, October 2022) <<https://regionalaustralia.org.au/libraryviewer?ResourceID=100>> 27.

⁹³ PwC (for National Legal Aid), *The benefits of providing access to justice* (Report, January 2023) <<https://www.nationallegalaid.org/resources/benefits-providing-access-justice/>>.

5. Conclusion and next steps

The introduction of a HELP debt reduction and indexation relief scheme, equivalent to what has recently been introduced for health practitioners under the HES Act, would be a welcome starting point to encourage qualified legal practitioners to relocate to—or remain in—eligible RRR areas by offering a substantial financial incentive, at minimal expense to the Commonwealth.

However, the Law Council acknowledges there are a variety of factors which affect the recruitment and retention of legal practitioners in RRR areas.⁹⁴ Any incentivisation model for legal practitioners to relocate to RRR areas must be complemented by arrangements which ensure there are an adequate number of funded legal positions available in these locations, particularly in the legal assistance sector. The independent review of the National Legal Assistance Partnership 2020–25 will provide a timely opportunity to address this specific challenge and ensure that RRR positions in the legal assistance sector are available long-term.

There also needs to be sufficient professional support for early career lawyers in RRR areas, noting that this proposal will be of particular interest to junior lawyers, who are typically more mobile and will have the largest HELP debts. In this respect, the longer-term success of this proposed scheme is largely contingent upon the ongoing health of the legal industry in relevant RRR communities.

In addition, for the potential benefits of this proposal to be fully realised, liveability needs in RRR areas must be addressed as a priority.⁹⁵ It is critical that there is improved investment in infrastructure and services, such as accommodation and childcare access, to assist legal practitioners who are interested in participating in the HELP debt relief scheme, while also supporting regional development. States and territories, including local governments, therefore have an important role to play in supporting and sustaining the recruitment and retention of legal practitioners in RRR areas, and thereby ensuring more legal need is met in these communities.

There is a clear need for a multifaceted approach and holistic support from all levels of government, as well as the legal profession, to address the chronic shortages of legal practitioners in certain RRR areas and the resulting barriers experienced by residents of these communities in accessing justice. While this policy cannot, on its own, address all unmet legal need in RRR areas, the Law Council is of the strong view that a HELP debt reduction and indexation relief scheme will assist in incentivising the recruitment, retention and succession of legal practitioners in these areas.

⁹⁴ Law Council of Australia, National Strategic Plan: Rural, Regional and Remote Lawyers and Communities (13 November 2020) <https://lawcouncil.au/files/pdf/policy-statement/RRR_NSP.pdf> 15-17.

⁹⁵ Regional Australia Institute, 2023-2024 Federal Government Pre-Budget Submission (January 2023) <<https://regionalaustralia.org.au/libraryviewer?ResourceID=101>>.