



Law Council
OF AUSTRALIA

*From the Office of
the President*

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The Hon Julia Gillard MP
Minister for Education
PO Box 6022
House of Representatives
Parliament House
Canberra ACT 2600

By email: Julia.Gillard.MP@aph.gov.au

Dear Minister,

RECRUITMENT AND RETENTION OF LAWYERS IN RURAL, REGIONAL AND REMOTE AREAS

The Law Council of Australia ('**Law Council**') wishes to raise its concerns regarding the shortages of lawyers in rural, regional and remote ('**RRR**') areas. The Law Council believes that ongoing problems in recruiting and retaining lawyers in country Australia are negatively impacting on the ability of individuals residing in RRR areas to access legal services. We have actively addressed this issue in the past 12 months and are now calling on the Government to take a number of initiatives to respond to this shortage.

The results of the Law Council's Rural, Regional and Remote Areas Lawyers Survey indicate that law firms in RRR areas undertake larger quantities of legal aid work than their city counterparts. The majority of these firms also provide legal services on a pro bono basis. Therefore, if the issue of shortages of lawyers in these areas is not addressed as a matter of priority, access to justice by those living in RRR communities will be even further impaired. The Law Council believes that the impending crisis in access to justice, together with the diminished availability of other essential services such as health care, is likely to have detrimental effect on the infrastructure of these communities. The consequence of the compounding effect of these factors is that many RRR communities, particularly those in rural and remote areas, will cease to exist.

On 18 September 2009, I and other representatives of the Law Council met with the Attorney-General, Robert McClelland, to discuss our concerns. At this meeting, the Attorney-General requested that we make a formal submission identifying the issues and the Government initiatives which may assist in addressing the shortage of lawyers in RRR areas. On 25 September 2009, the Law Council made the requested submission, which is enclosed for your reference.

The purpose of this letter is to raise with you, in your capacity as the Minister for Education, one of the Government initiatives the Law Council is urging the Government to consider, namely repaying completely or partially HECS-HELP or FEE-HELP liabilities for legal practitioners who practice in RRR areas for a certain number of years. Under this initiative, the Federal Government would commit to paying off the legal practitioner's HECS-HELP (or FEE-HELP) debt either partially or in full for those practitioners who

practice in RRR areas for a certain number of years following the completion of their degrees. Alternatively, Government could implement a scheme which waives fringe benefits tax for those employers who offer to pay (either partially or in full) the HECS-HELP debt of their employee. Further information regarding this initiative is provided below.

Repaying, completely or partially, HECS-HELP (or FEE-HELP) liabilities

You may be aware that this type of repayment scheme was established by the Federal Government in 2000-2001 as an incentive to attract doctors to work in rural and regional areas of Australia. At the 2020 Summit similar recommendations were proposed as a potential strategy to encourage a range of professionals to live and work in RRR areas, thereby helping to build community capacity and sustainable communities. The Government has provided in principle support for this recommendation.

The Law Council notes that consideration must be given to what would be classified as a RRR area for the purposes of such a scheme. It appears that difficulties in attracting and retaining legal practitioners exist in varying degrees of severity according to the remoteness of the area in question. However, other large centres, such as Darwin, are also encountering significant problems in attracting lawyers. A tiered system which distinguishes between rural centres and more remote locations may ensure that a greater level of compensation is provided to those lawyers who seek employment in areas that are experiencing the greatest difficulties.

A range of policy options concerning HECS-HELP (or FEE-HELP) may be considered by the Federal Governments in order to encourage and promote RRR practice to legal practitioners. Such options would necessarily involve extensive collaboration and involvement with universities. The options included below are progressive, that is, each option represents a greater benefit to the professional from the option preceding it. It is important to note that adequate exit mechanisms for each of the options discussed below would also need to be considered.

1. Partially government-subsidised university places. Under this regime, the Federal Government would commit to paying part of the practitioner's HECS-HELP (or FEE-HELP) debt for those practitioners who in turn commit to practicing in RRR areas for a predetermined number of years following the completion of their degrees. The government may additionally choose whether this would only apply to graduates, or whether the regime would apply to any legal practitioner who decided to take up employment in a RRR area, irrespective of any legal employment in the metropolitan area.
2. Fully government-subsidised university places. Under the regime, the Federal Government would commit to paying the entire HECS-HELP debt incurred by practitioners for the completion of their law degrees for those practitioners who in turn commit to practising in RRR areas for a predetermined number of years. A number of options are open to government in introducing such an initiative:
 - (a) The practitioner's HECS-HELP (or FEE-HELP) liability is to be waived in the instance when the practitioner has completed a predetermined number of years in RRR practice. In the Law Council's view, if this option is adopted, the number of years should not exceed five.

- (b) The student's HECS-HELP (or FEE-HELP) liability is reduced by a significant amount, for instance 50 per cent, once the practitioner has completed the first year of practice in RRR area. Following the first year, the liability is reduced incrementally, that is, 10 per cent of the initial debt each year the practitioner continues to practice in the RRR area. Thus, under this regime, the HECS-HELP (or FEE-HELP) liability would cease to exist after six years.

Example 1:

Year 1 debt remaining	$\$33,996 \times 0.5$ [ie 50%] = \$16,998
Year 2 debt remaining	$\$16,998 - (\$33,996 \times 0.1$ [ie 10%]) = \$13,598.4
Year 3 debt remaining	$\$13,598.4 - (\$33,996 \times 0.1)$ = \$10,198.8
Year 4 debt remaining	$\$10,198.8 - (\$33,996 \times 0.1)$ = \$6,799.2
Year 5 debt remaining	$\$6,799.2 - (\$33,996 \times 0.1)$ = \$3,399.6
Year 6 debt remaining	$\$3,399.6 - (\$33,996 \times 0.1)$ = \$0

Note: Variations of this model are possible. For instance, it is not necessary to reduce the sum by 10 per cent of the original debt sum. The remaining debt could be reduced by 10 per cent. Thus, in the example above the \$16,998 sum could be reduced by 10 per cent, meaning that a longer period would be required to pay off the entire HECS-HELP (or FEE-HELP) debt.

- (c) The practitioner's HECS-HELP (or FEE-HELP) liability is reduced incrementally with each year the practitioner spends in practice in a RRR area. For instance, the liability would be reduced by 20 per cent of the initial debt each year the practitioner remains in legal employment in the RRR area. Thus, under this regime, the HECS-HELP (or FEE-HELP) liability would cease to exist after five years.

Example 2:

Year 1 debt remaining	\$33,996
Year 2 debt remaining	$\$33,996 - (\$33,996 \times 0.2$ [ie 20%]) = \$27,196.8
Year 3 debt remaining	$\$27,196.8 - (\$33,996 \times 0.2)$ = \$20,397.6
Year 4 debt remaining	$\$20,397.6 - (\$33,996 \times 0.2)$ = \$13,598.4
Year 5 debt remaining	$\$13,598.4 - (\$33,996 \times 0.2)$ = \$6,799.2
Year 6 debt remaining	$\$6,799.2 - (\$33,996 \times 0.2)$ = \$0

Note: See explanation above in relation to Example 1 as to what impact any variations may have. It is also important to note that variations in the percentage of the debt reduced each year will lead to variations in time periods taken to pay off the debt.

- (d) The practitioner's HECS-HELP (or FEE-HELP) debt is frozen (not indexed with inflation) when they start work in a RRR area. There is no reduction to this amount beyond what the practitioner is obliged to pay out of their income for three years. After a certain number of years continuous service (for example, five years) in a RRR area, the debt is cleared.

3. Employer pays for the HECS-HELP debt of their employee. In this instance, the employer would not be subject to the fringe benefit tax (FBT) on the payment. The advantage of this option is that:
 - (a) The employer and/or employee control the timing of the benefit (and any claw back) so that it can be tailored to individual circumstances;
 - (b) The Government only subsidises part of the cost, being the FBT forgone, as opposed to waiving the whole HECS-HELP debt; and
 - (c) The employer can pass on the cost to the employee if the benefit is taken into account in the employee's "total remuneration".

There is precedent for this option in the public sector in organisations such as the Australian Taxation Office.

4. Area dependent HECS-HELP debt relief. In this instance, the reduction in HECS-HELP debt would depend on the classification of area as:
 - (a) Regional
 - (b) Rural
 - (c) Remote
5. Hybrid model of time and area. Under this model, the reduction in HECS-HELP debt would depend on both the time the person stays in a RRR area and the remoteness of the area. For example, those practicing in regional areas would be entitled to a smaller reduction of debt, when compared to those practising in remote areas.

The Law Council has already acted to address the situation and will continue to develop initiatives but need Government to support such initiatives in a multifaceted response to a real crisis in access to justice for RRR communities. The results of the enclosed Law Council Survey into RRR areas demonstrate this problem will only worsen in coming years.

I ask that you give consideration to the options detailed above and advise whether the Government will support any of these initiatives. I would welcome the opportunity of discussing these important matters with you.

Yours sincerely,



John Corcoran
2 November 2009