



THE GOVERNMENT OF NORFOLK ISLAND

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**SUBMISSION TO PRODUCTIVITY COMMISSION INQUIRY
ACCESS TO JUSTICE ARRANGEMENTS**

By the Chief Minister of Norfolk Island
as
Minister for Justice and Minister responsible for the
Legal Aid Act 1995 (Norfolk Island) and
the Legal Profession Act 1993

SUMMARY OF CONCLUSIONS

TAX INCENTIVES FOR PROVISION OF ACCESS TO JUSTICE TO REMOTE ISOLATED LOCATIONS AND EXTERNAL TERRITORIES

- (A) To increase productivity in remote isolated communities of Australia including external territories of Australia through provision of improved access to justice, arrangements be made to provide taxation incentives and deductibility for legal practitioners and law firms to:
- (i) travel to (including by air), be accommodated at, and provide low cost legal advice and representation for members of remote isolated Australian communities and external territories; and
 - (ii) establish full time offices and staff inclusive of legal practitioners (even on a rotational basis) in remote isolated communities of Australia including external territories of Australia. (ref: Clause 49)

HECS REDUCTION / WAIVER INCENTIVES FOR DEVELOPMENT OF LEGAL PRACTITIONER TRAINING AND POST ADMISSION EXPERIENCE IN RURAL AND REMOTE ISOLATED COMMUNITY OR EXTERNAL TERRITORY LEGAL PRACTICE

- (B) Increasing productivity through provision of access to justice should also include arrangements for incentives by way of reduction or waiver of HECS or similar tertiary study fees and charges as well as reduction or waiver of Court admission charges and fees for those persons studying law who are prepared to commit in writing by deed of agreement or contract to undertake post admission practice by residing and practising law in remote isolated communities of Australia including external territories of Australia (preferably under supervision of appropriately experienced legal practitioners already practicing in the remote locations)(ref: Clause 50)

PROVISION OF EXTRA FUNDING FOR SPECIFIC OR SPECIALIST LEGAL ASSISTANCE SCHEMES AND EXISTING REMOTE COMMUNITY STATUTORY LEGAL AID FUNDS TO ENHANCE ACCESS TO JUSTICE AND REDUCE PRODUCTIVITY LOST TO TIME OFF WORK FOR PERSONS IN DISPUTE

- (C) Productivity of legal assistance schemes and statutory funds should be enhanced by way of funding of specialist legal assistance schemes for rural and remote isolated locations of Australia where the cost of obtaining competent legal advice and representation (especially from accredited

specialist lawyers) and obtaining access to competent experienced barristers / counsel can be higher or more prohibitive than may be the case for capital and provincial city community members across Australia.(ref: Clauses 51 & 56)

INCLUSION OF REMOTE AND RURAL COMMUNITY / EXTERNAL TERRITORY PRACTICE AS A CONTINUING PROFESSIONAL DEVELOPMENT REQUIREMENT FOR LEGAL PRACTITIONERS AND TAX DEDUCTIBILITY THEREOF

- (D) The inclusion of a requirement in Continuing Professional Development (CPD) schemes across all Australian legal practice regulatory systems that includes the mandatory provision by legal practitioners and law firms of a specific level of low cost or reasonable cost legal advice and representation services in remote isolated communities and/or external territories of Australia should be considered by relevant legal professional regulatory bodies and legal services Commissioners across Australia. (ref: Clause 52)
- (E) Exemptions from or recognition of compliance with such CPD requirements might be provided where legal practitioners and law firms provide evidence that they are already providing and continuing to provide legal advice and representation in remote isolated communities or external territories on a regular basis. (ref: Clause 52)

REDUCTION OF COURT FEES AND CHARGES / FILING FEES FOR PERSONS LIVING IN RURAL AND REMOTE ISOLATED COMMUNITIES OR EXTERNAL TERRITORIES

- (F) That consideration be given by all Federal courts, tribunals and similar bodies to providing changes to court rules and procedures to allow for automatic reduction or waiver of filing fees and charges and hearing fees for persons (as well as for law firms and practitioners) residing ordinarily in remote isolated communities and in external territories of Australia. (ref: Clauses 20 & 53)

FEDERAL CIRCUIT COURT OF AUSTRALIA

- (G) That additional resources by way of appointment of additional judges and staff as well as funding for establishment of regular circuit courts in remote isolated locations and in external territories of Australia for provision of access to justice in relation to federal and family law related disputes and administrative decision making reviews. (ref: Clauses 20 & 53)

ADMINISTRATIVE REVIEW TRIBUNAL OF AUSTRALIA

- (H) That arrangements be made to automatically reduce or waive AATA filing fees and charges for aggrieved persons residing in remote isolated areas or external territories of Australia having regard to the often low levels of income and practical significant difficulties faced by such applicants in seeking administrative review of official decisions where they are often to be opposed by competent experienced legal practitioners representing the relevant official decision maker or Minister (e.g. waiver where a law firm or legal practitioner on an AATA remote community representation panel available to the AATA makes themselves available to represent and advise such applicant before the Tribunal at low cost to the applicant)(ref: Clause 20 & 53).

NATIONAL AUSTRALIAN LEGAL PRACTITIONER REGISTRATION SCHEME

- (I) That productivity barriers to the practice of the law in remote isolated communities and external territories of Australia may be reduced through the establishment of a National registration and admission scheme for legal practitioners so that the mutual recognition of legal practitioners to practice in remote isolated communities and in external territories of Australia is enhanced. (ref: Clause 54)

LEGAL PROFESSIONAL INDEMNITY INSURANCE

- (J) That productivity incentives for provision of access to justice be provided through statutory or mandatory reductions in cost of legal professional indemnity insurance for legal practitioners wherever legal practitioners are located, based and practicing in remote isolated communities and/or external territories of Australia. (ref: Clause 54)

- (K) That consideration be given to a national statutory scheme of legal professional indemnity insurance so that legal practitioners are covered for work done outside of the state or territory in which a local or state based insurance scheme may be available or may be prepared to provide cover (i.e. many state based or private insurance schemes limit cover only for work or practice of the law in the jurisdiction of the particular state or practice location but not for work done outside that state) (ref: Clause 54).

LAWCARE / LEGALCARE SCHEME

- (L) That a Lawcare or Legalcare scheme along similar lines to that of Medicare be developed to further aid the funding of legal assistance / access to justice arrangements as well as to promote better use of properly qualified and trained legal practitioners by all Australians for those situations where use of a lawyer is highly advisable or appropriate. A person should feel able to obtain an over the counter discount or subsidy for use of a legal practice or lawyer in the same way as they know they can obtain a Medicare subsidy or discount for use of a medical practice or doctor. (ref: Clause 55).

(a) DISCUSSION

NORFOLK ISLAND AS REMOTE ISOLATED ISLAND EXTERNAL TERRITORY FOR ACCESS TO JUSTICE

1. Norfolk Island is an external territory placed under the authority of the Commonwealth of Australia by Imperial Order in Council in 1914 following the enactment of the Norfolk Island Acceptance Act 1913 (Commonwealth).
2. The most current in a series of Commonwealth enactments confirming Commonwealth authority over Norfolk Island is the Norfolk Island Act 1979 (Commonwealth) which was substantially modified by the Territories Law Reform Act 2010.
3. As a consequence of significant downturns in tourism for Norfolk Island, the financial situation of many persons and businesses as well as for the Administration of Norfolk Island has been severely and adversely affected such that a series of emergency subsidy or subsistence funding agreements (known as Roadmap funding agreements) has been entered into between Norfolk Island and the Commonwealth of Australia.
4. The Administration of Norfolk Island is the governing body politic established under section 5(2) of the Norfolk Island Act 1979 (Cth).
5. As states have a 'government', territories of Australia (whether constituent or external) have 'administrations'.
6. At times, the term 'the Administration' has been used to refer generally to the government of Norfolk Island or to the public service of Norfolk Island.
7. Territory laws are no longer called 'ordinances' but are referred to as Acts or regulations.
8. Under section 3 of the Judicature Act 1960 (Norfolk Island), Norfolk Island still has applied to it all Imperial laws in force up to 25 July 1828 (Australian Courts Act 1828) subject to any repeals and modifications and further laws which have been enacted since. (see for example *Smith v Edward* [2006] NFSC 11 where Kiefel J (as she then was) of the Norfolk Island Supreme Court held that the Fraudulent Conveyances Act 1571 (13 Eliz 1, c 5) still applied to Norfolk Island - <http://www.austlii.edu.au/au/cases/nf/NFSC/2006/11.html>)
9. Norfolk Island has a limited population of on average around 2,000 people inclusive of permanent population of around 1,700.
10. Norfolk Island presently has around 3 full time lawyers with 1 of those usually not doing court work due to age and 1 of those being presently away for studies. A barrister who usually resides on Norfolk Island now primarily works in mainland Australia to obtain adequate income.
11. Only one of those lawyers presently operates a shop front full time legal office in Norfolk Island with that lawyer presently indicating that they are obtaining an annual income barely sufficient to support their legal practice and their family.

12. A lawyer based in NSW currently provides a visiting lawyer service for Norfolk Island with a part time office provided through an accountant's office.
13. Attempts in the past to establish more than 1 full time law practice in Norfolk Island have failed often due apparently to lack of adequate revenue / income from the limited number of clients due to low client capacity to pay invoices in full when rendered and/or from delays in finalisation of client payments for services rendered.
14. Norfolk Island has the following courts and tribunals as well as Review bodies:
 - (a) Supreme Court of Norfolk Island (sits and when needed – 3 judges of Federal Court of Australia appointed to sit as Supreme Court Justices)
 - (b) Court of Petty Sessions of Norfolk Island (sits 1 day each month except for Chief Magistrate's sittings – consists of Federal Circuit Court of Australia judge appointed as Chief Magistrate and local Justices of the Peace appointed as lay Magistrates – Chief Magistrate sits on island quarterly each year) has appellate or review jurisdiction in several areas including Healthcare scheme decisions, Registrar of Motor Vehicle licensing decisions, Goods and Services Tax Act 2007 (Norfolk Island) decisions among others – there is no small debts jurisdiction and civil monetary jurisdiction is limited to \$10,000 after which the Supreme Court has civil jurisdiction.
 - (c) Federal Circuit Court of Australia (sits as required whenever the Chief Magistrate is on Island and can convene the Court on Island as an FCCA Judge).
 - (d) Administrative Appeals Tribunal of Australia (filing fee is \$816 per application and has jurisdiction over administrative decisions specified in Schedule 4 to the Administrative Appeals Tribunal Regulations (Commonwealth) – applications are filed in Supreme Court of Norfolk Island registry and forwarded to AAT registry for processing – no AATA hearings have been conducted in Norfolk Island to date- no AATA applications have been lodged to date so far as the Administration is aware).
 - (e) Administrative Review Tribunal of Norfolk Island (filing fee is \$50 and deals with only those matters where an ART review is provided for in the relevant Norfolk Island statute – Chief Magistrate is the Presiding Member – mostly used for planning appeals).
 - (f) The Federal Minister with responsibility for Norfolk Island – has review jurisdiction under section 84 of the Immigration Act 1980 (Norfolk Island) for appeals against decisions and actions made or taken under the Immigration Act except in relation to Visitor Permits as well as appeal or review jurisdiction in some other laws of Norfolk Island such as under section 6(3) of the Education Act 1931.

- (g) Administrator of Norfolk Island – has review or appeal jurisdiction in relation to visitor permit decisions under section 85 of the Immigration Act 1980 (Norfolk Island) as well as review or appeal jurisdiction in relation to Social Services Act 1980 (Norfolk Island) decisions and also in relation to some decisions under the Education Act 1931 (Norfolk Island) among others.
- (h) Employment Conciliation Board – exercises an employment dispute resolution jurisdiction in similar manner to that of the Human Rights Commission or Fair Work Commission – non-resolution of an employment dispute results in a termination certificate being issued with the parties left to seek further relief from the Employment Tribunal of Norfolk Island – sits as and when required.
- (i) Employment Tribunal of Norfolk Island – is the Court of Petty Sessions sitting as the Employment Tribunal of Norfolk Island as and when required.
- (j) Mental Health Tribunal of Norfolk Island – sits as and when required.

As the Migration Act 1958 (Commonwealth) and Child Support legislation does not apply to Norfolk Island, the relevant Commonwealth Immigration Review bodies and Child support review processes are not applicable to Norfolk Island (i.e. Norfolk Islanders are not taxpayers under Australian taxation laws if their income is solely derived in Norfolk Island and they are residing or working in Norfolk Island).

COST OF LIVING IN NORFOLK ISLAND AND AFFORDABILITY OF ACCESS TO JUSTICE

15. The costs of living in Norfolk Island and pressures on incomes of wage earners and social service recipients in Norfolk Island have been examined in a number of published reports and reviews in regard to Norfolk Island, some of which are as follows:
- (a) 1976 Nimmo Royal Commission
 - (b) 1997 Access Economics Report
 - (c) 1997 Commonwealth Grants Commission Report
 - (d) 1999 Human Rights and Equal Opportunities Commission (HREOC) Report
 - (e) 2001 Joint Standing Committee report on Health
 - (f) 2002 Focus economic report
 - (g) 2002 Joint Standing Committee report on Electoral arrangements
 - (h) 2003 Joint Standing Committee report on Governance
 - (i) 2003 Tax Options report
 - (j) 2004 Joint Standing Committee Annual Report
 - (k) 2005 Acumen Alliance report
 - (l) 2005 Joint Standing Committee report on Financial situation
 - (m) 2005 Treasury Submission to Joint Standing Committee
 - (n) 2008 Econtech Report
 - (o) 2008 Submission to Senate Select Committee on State Government Financial Management – Inquiry into State and Territory Financial Management
 - (p) 2009 Econtech Report

- (q) Financial Statements (various dates) of Administration of Norfolk Island and territory instrumentalities
- (r) Norfolk Island Census reports 1996, 2001, 2006, 2011 and addendum reports
- (s) NI Child and Family Services Review 21 August 2013
- (t) Population and Planning on Norfolk Island – Report No. 1 – 3 May 2011
- (u) Population and Planning on Norfolk Island – Report No. 2 – 29 August 2011
- (v) Deloitte Access Economics – Wellbeing Report – Norfolk Island – Department of Regional Australia, Regional Development and Local Government – 27 April 2011
- (w) Roadmap Factsheet – Extending Commonwealth laws to Norfolk Island – 2 May 2011
- (x) Community and School Survey Report 2012
- (y) Statements in the House of Representatives on Norfolk Island (various)
- (z) Statements in the Senate of Australia on Norfolk Island (various)
- (aa) Statements in the Legislative Assembly of Norfolk Island (various)
- (bb) Public Sector Remuneration Tribunal of Norfolk Island determination PSRT No. 1 of 2012 published 31 October 2013 (see annexures to that report and commentary therein on static level of public sector wages compared to retail price index figures and comparable wages on Australian mainland).

The above reports and reviews can be found at www.info.gov.nf under the heading "Statistics and Reports" or at www.ni.net.nf while the Australian parliamentary statements can be found in the relevant Commonwealth Hansard and the Norfolk Island parliamentary statements can be found in the Norfolk Island Hansard found at <http://www.info.gov.nf/hansard/>

16. The above reports and reviews arguably support the analysis if not the reality that the cost of living for many Norfolk Island community members is significant and certainly higher than is the case for many mainland Australians while the level of private sector and public sector wages and incomes has remained relatively static or not above the level of cost of living increases which have been identified.
17. Costs of transport for consumables such as food and fuel to Norfolk Island result in many instances in the majority of income received being allocated to cost of living expenses with little or nothing left for disposal on legal disputes and access to justice even in relation to offence matters before the courts.
18. Norfolk Islanders can in many instances be cash poor in terms of limited disposable income but asset rich in terms of ownership of or interests in the limited land in Norfolk Island where such land may often be regarded as family land held for the benefit of future family members. This belief has more recently come under pressure where such land has been the subject of mortgages which have fallen into default due to non-payment of mortgage repayments and where Banks and lenders have now moved to enforce the mortgages through sale of the security assets often at below

mortgage debt prices due to overvaluation of the worth of the mortgaged land. This has in some cases led to legal efforts by the defaulting borrowers to delay or prevent the land sales so far with little or no success thereby undermining the ability of families to preserve Norfolk Island land for future generations of those families.

19. For many Norfolk Island community members, access to justice depends on 3 factors:
 - (a) availability of a lawyer on island to deal with them at their convenience;
 - (b) availability of disposable household or personal income to meet the potential cost of engaging a lawyer as well as to meet the risk of any costs order which may be payable by them if they are unsuccessful; and
 - (c) the availability and complexity of procedures of the court or tribunal or Board before which any dispute they have is likely to be heard and the length of time before which a final result can be achieved having regard to the law of Norfolk Island which will be applicable to their dispute.
20. For many Norfolk Island community members, the payment of court filing fees (sometimes in the hundreds of if not at least a thousand dollars) for mainland courts and the Administrative Appeals Tribunal is a disincentive to many low income Norfolk Islanders from using such mainland courts or tribunals as is the potential cost (often many thousands of dollars) for engaging of a mainland lawyer or law firm on a time cost or per hour costs agreement.
21. Availability of a lawyer on island or being easily contactable without international call costs for lengthy consultations is a problem given that Norfolk Island is over 1,600 kilometres distant from the East coast of mainland Australia with only 1 effectively full time lawyer operating a shop front office at present and prepared to appear in Norfolk Island courts.

ASSESSMENT OF DEMAND FOR LEGAL SERVICES

- REAL COSTS OF LEGAL REPRESENTATION AND TRENDS OVER TIME

22. The repeal of section 55D of the Judiciary Act 1903 (Cth) has removed the automatic entitlement of lawyers registered on the High Court of Australia roll to appear in territory courts such as in Norfolk Island.
23. Despite that repeal, lawyers possessing a recognised legal practising certificate may still provide legal representation in Norfolk Island as 'visiting practitioners' under the Legal Profession Act 1993 (Norfolk Island).
24. 'Resident practitioners' under the Legal Profession Act 1993 are those lawyers who are permanent residents of Norfolk Island within the meaning of the Immigration Act 1980 and who possess a Norfolk Island Certificate of Entitlement to Practise from the Supreme Court of Norfolk island.

25. A very limited number of private sector legal practitioners are based in Norfolk Island and generally either operate their practice from a rented business office or from their home.
26. From a real cost of legal representation viewpoint, there are few choices for Norfolk Island community members in terms of ease of access to a lawyer actually available to speak with them in person and the cost for lawyers in terms of operation of a private sector legal practice in Norfolk Island is generally very high in terms of costs of shipment of computer systems to Norfolk Island, costs of staffing, storage costs for secure storage of files and documents, electricity costs and rental costs in addition to timely collection and payment of territory GST under the Goods and Services Tax Act 2007 (Norfolk Island) arising from services provided to clients.
27. In many instances, Norfolk Island clients due to the lower levels of wages received are generally unable to pay the level of fees usually to be charged on the mainland by lawyers holding decades of post-admission experience except perhaps by instalment payment arrangements being entered into with the lawyer.
28. Effectively, there is only one full time office front legal practice in Norfolk Island at present.
29. Many potential clients for legal services have expressed concern to private lawyers in Norfolk Island or to the courts that they cannot afford to secure private sector legal representation where their cost of living is so high as to consume much of their available income.
30. The number of Norfolk Island community members required or summoned to appear in court has appeared to generally increase with the downturn in the Norfolk Island economy and with such persons not paying their statutory healthcare levy or not paying other administrative levies or taxes or being prosecuted for offences involving failures to comply with the Goods and Services Tax Act 2007 (Norfolk Island).
31. Although Norfolk Island differs from mainland Australia in terms of having a 0.08% rather than 0.05% drink driving limit under the Traffic Act 2010 (Norfolk Island), Drink driving offences (often involving mid to high range Prescribed Concentrations of Alcohol [PCA] of over .1%) have been viewed as a serious offence in Norfolk Island requiring general deterrence as part of sentencing: see for example *Munro v Hatch* [2011] NFSC 1 per Lander J (as he then was) of the Norfolk Island Supreme Court at paragraphs [113] to [115] - <http://www.austlii.edu.au/au/cases/nf/NFSC/2011/1.html>
32. There has been a perceived general increase in the number of persons appearing before the Court of Petty Sessions on an unrepresented basis thereby placing a greater productivity and ethical strain upon the Crown Prosecutor as well as the court bench (often comprising mainly lay Magistrates taking time out of their own work days or lives to convene the court).

PERSONS WHO CANNOT AFFORD LEGAL REPRESENTATION AND WHO DO NOT QUALIFY FOR LEGAL ASSISTANCE

33. Many members of the Norfolk Island community currently receive private sector wages which are at or just above the minimum wage rate in Norfolk Island.
34. Many persons have little or no spare income available for purchase of legal advice or representation (let alone budgeting and accounting advice or assistance) given the high cost of living in Norfolk Island.
35. Many persons in Norfolk Island see the public service in Norfolk Island as a more stable source of income than private sector businesses or employment.
36. Many persons employed in the tourism and hospitality industry in Norfolk Island are foreign nationals (e.g. Fijian) who are not in a position to argue with Norfolk Island employers given the limited number of employment positions available and the significant number of persons who may be seeking employment in Norfolk Island in order to leave the uncertainty of their home country or foreign place of residence.
37. There is little doubt, that some foreign national persons seeking to live and work in Norfolk Island possibly see Norfolk Island as some type of stepping stone or stage in their efforts to enter and remain in Australia.
38. Many members of the Norfolk Island community have expressed concerns to Members of the Legislative Assembly of Norfolk Island and to lawyers in Norfolk Island that the process for obtaining legal assistance through the Legal Aid legislation is perceived as cumbersome or a significant intrusion into their personal and financial affairs.

LEGAL ASSISTANCE LAWS AND FUNDING FOR NORFOLK ISLAND

39. The provision of legal aid and legal aid funding in Norfolk Island is governed by the Legal Aid Act 1995 (Norfolk Island).
40. Legal Aid funding is acquired by the Legal Aid Fund established under section 24 under the Legal Aid Act 1995 (Norfolk Island).
41. Sources of such funding are as follows:
 - (a) moneys paid into the Fund or recovered by the Administration under the Legal Aid Act;
 - (b) money paid into the Fund being appropriated from the Public Account for the purposes of the Legal Aid Act (i.e. from the annual territory budget appropriation statute);
 - (c) income derived from investment of moneys forming part of the Fund;
 - (d) moneys paid into the Fund by banks under section 25 (i.e. interest on solicitor trust accounts); and
 - (e) any other moneys paid to the Administration for the purposes of the provision of legal assistance or otherwise for the purposes of the Fund (this component includes any Commonwealth contributions).
42. Banks in Norfolk Island are not legally obliged to pay interest on a lawyers trust account into the Fund if the trust account is operated by the lawyer

for the exclusive benefit of a particular client or particular clients: see section 25(2), Legal Aid Act 1995 (Norfolk Island).

43. Section 25(1) of the Legal Aid Act 1995 (Norfolk Island) requires banks to pay into the Legal Aid Fund interest derived on trust accounts operated by legal practitioners, real estate agents and accountants in Norfolk Island.
44. The level of revenue received through section 25 payments has arguably declined in recent years as those with wealth and assets have perceived changes to Norfolk Island taxation systems as reducing their ability to minimise their taxation liabilities outside of Norfolk Island and most such persons have since departed Norfolk Island.
45. Norfolk Island is most certainly not a tax haven despite repeated and unfounded if not unfortunate comments to that effect in the media and by some Australian political figures.
46. It is believed that there has been a general decline or halt to the provision of Commonwealth of Australia funding for the Legal Aid Fund such that the Fund has significantly diminished.
47. The ability of the Legal Aid Fund of Norfolk Island to provide suitable and timely access to justice for Norfolk Islanders and those visiting Norfolk Island has therefore arguably greatly diminished as has the ability of the Fund to easily recover amounts paid to persons who have been legally assisted where such persons do not possess sufficient income to repay such legal aid amounts or such persons have departed Norfolk Island making recovery of legal aid debts on the Australian mainland both time consuming and costly especially if persons conceal their whereabouts from the Norfolk Island Legal Aid management.

(b) CONCLUSIONS

48. Essentially, the following needs to be considered as among the options for improvement of access to justice in remote isolated communities of Australia such as Norfolk Island so as to promote improved productivity in those communities both for users and for providers of justice services.
49. Taxation incentives to promote transfer and establishment of legal practitioner services in remote isolated communities of Australia inclusive of the external territories such as Norfolk Island.
50. Incentives for law students to consider committing contractually or through grants (similar to that done for the defence forces in terms of gaining of tertiary and trade qualifications) to doing post admission work and gaining a broad spectrum of experience and self sufficiency in their practice of the law in remote isolated communities through reductions or waivers of HECS and similar student debts and fees.
51. Consideration in the longer term to the establishment along similar lines to that of Medicare of a Lawcare or Legalcare system where persons attending at a lawyer's office for consultations and/or provision of representation services can have their legal fees subsidised in a manner similar to that of the Medicare card swipe system with funding provided

through a universal levy system. This may well promote use of lawyers for Wills, Powers of Attorney and other events in the lives of persons where use of a lawyer would arguably assist in reducing later disputes in matters such as home rentals and vehicle purchases among other things.

52. The inclusion of Continuing Legal Professional Development (CPD) components involving remote isolated location legal practice work or assistance would aid greatly in enhancement of Access to Justice for such communities from a broader cross-section of specialist and general practice lawyers across Australia.
53. While desiring to reduce any perception of discrimination across Australia, consideration needs to be given to adjusting or reducing current court fees and charges for persons whose post code or residence indicates they are ordinarily resident in remote isolated communities – this would be seen as an equalisation of the high cost of living and strain on incomes for those in such remote areas (especially Norfolk Island) against the ease and convenience with which persons in major and capital cities across Australia can access justice through solicitors and barristers having more practices and there being more court facilities in such major urban centres compared to remote isolated communities and external territories.
54. Easing of barriers to access to justice in terms of transferability of legal practices and lawyer skills across state and territory borders as well as to external territories of Australia would be greatly enhanced and promoted through the adoption of a national Australian Legal Practitioner Registration and Recognition System or scheme so as to further enhance the enforceability of the Australian Solicitor Conduct Rules to become the Australian Lawyer Conduct Rules. This may be further assisted by arrangements for reduction in the cost of professional indemnity insurance through a national professional indemnity scheme enabling lawyers to be fully covered for their legal work in any part of Australia or its external territories rather than being dependant on the scope of a state based indemnity insurance scheme.
55. Easing of barriers might also be achieved through development of a Lawcare or Legalcare system along similar lines to that of Medicare given that so many Australians at various points in their lives need and should be encouraged to consult with a properly qualified lawyer not just in regard to traffic or offence matters but also in regard to home and property purchases or sales and loan / guarantee of loan matters as well as obtaining appropriate Enduring Powers of Attorney and properly drafted Wills.
56. While it is recognised that Commonwealth contributions to state-based Legal Aid schemes are often limited these days to provision of assistance for Commonwealth related matters, this has effectively resulted in a substantial decline in Commonwealth contributions being available for external territory community members to obtain timely assistance in regard to matters involving territory laws. There should be an urgent amendment to such Commonwealth limitations on use of federal contributions to Legal Aid schemes operating in external territories as well

as for provision of assistance to persons living in remote isolated communities of Australia.

57. It is hoped the above submission goes some way to assisting the Productivity Commission in understanding at least some of the obstacles and difficulties faced by persons in remote isolated communities of Australia and in external territories such as Norfolk Island in accessing justice compared to those in the major urban centres of mainland Australia. This submission has focused on identifying possible solutions and options for improving access to justice across Australia and in all external territories wherever possible.
58. The Commission is respectfully invited (if time permits before production of its final Inquiry report) to visit Norfolk Island and hear the members and lawyers of this remote island community for itself in regard to access to justice issues.

Hon. Lisle Snell, MLA
Chief Minister of Norfolk Island
as Minister for Justice

27 May 2014