**Department of Justice and Regulation Victoria**

**Access to Justice Review**

**Submission from the Centre for Rural Regional Law and Justice**

**School of Law**

**Deakin University**

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**1. Introduction: About the Centre for Rural Regional Law and Justice**

The Centre for Rural Regional Law and Justice (CRRLJ) is located in Deakin University's School of Law. Through its engagement in applied research, education and advocacy it seeks to address issues of rural and regional disadvantage in accessing justice and legal systems. It was formed in 2012 and operates to fulfil its stated mission:

*The Centre for Rural Regional Law and Justice will enhance access to improved justice systems and services for rural and regional Australians, with a particular emphasis on rural and regional Victorians, through research, engagement and collaborations with relevant communities, professions and industry.*

The CRRLJ has undertaken a range of research projects in relation to its mission, beginning with the Centre’s foundational report, *Postcode Justice: Rural and Regional Disadvantage in the Administration of the Law in Victoria*,[[1]](#footnote-1) which identified a broad array of issues for further research and action. Some of these issues have been pursued in subsequent work of the CRRLJ, including an examination of conflicts of interest for rural and regional legal practice,[[2]](#footnote-2) the experiences of women surviving family violence and their access to the justice system in regional and rural Victoria.[[3]](#footnote-3) The Centre has also developed resources to assist organisations to use digital technologies to enhance legal education in regional and rural communities,[[4]](#footnote-4) undertaking an evaluation of an integrated education/healing model for indigenous women prisoners in Alice Springs[[5]](#footnote-5) and is in the process of completing two further applied research projects: a comparison of sentencing outcomes in the Magistrates Court of Victoria between regional and metropolitan locations, and a project establishing and researching a Medical-Legal Partnership in the context of mental health services in regional and rural Victoria.

The CRRLJ also contributes to law reform and other public inquiries relevant to access to justice in rural and regional Australia. Inquiries to which the CRRLJ has contributed have included: the Victorian Rural and Regional Parliamentary Committee *Inquiry Into the Extent and Nature of Disadvantage and Inequity in Rural and Regional Victoria*, the Victorian *Royal Commission into Family Violence*, the Victorian Law Reform Commission reference on *The Role of Victims of Crime in the Criminal Trial Process*, the Productivity Commission's Inquiry into *Access to Justice Arrangements*, the Victorian Parliament Family and Community Development Committee Inquiry into *Social Inclusion of People with a Disability*, and the Australian Law Reform Commission's Inquiry into *Equality, Capacity and Disability in Commonwealth Laws*.

The CRRLJ has also been active in the delivery of legal education throughout regional and rural Victoria through its Learning and Development project, which commenced in 2012. The project delivers education forums on legal issues identified as relevant to regional and rural lawyers, human services and communities. During the three year project, over 2000 individuals and organisations across Victoria participated in the 23 forums, delivered synchronously across up to 14 regional locations. Collaboration have occurred in forum delivery with such diverse agencies as; the Legal Services Commissioner (Vic), Women's Legal Service Victoria, Smart Justice for Young People, Small Business Victoria, Justice Connect, Victoria Legal Aid, Office of the Public Advocate, VCAT, Environment Defenders Office and a panel of Victorian Ombudsman offices.

**2. Access to justice in rural and regional Victoria: broad issues**

The research undertaken by Coverdale identified some broad key issues relevant to access to justice for rural and regional Victorians. All of these relate to the Review's Terms of Reference. While these will be expanded upon throughout this submission, we note these broad issues by way of introduction. Some of the areas in which rural and regional Victorians experience disadvantage in their access to justice include:

* A lack of access to court programs that enable a 'problem solving' approach to the justice system, particularly in relation to criminal matters in the Magistrates' Court;[[6]](#footnote-6)
* Regional inequities in the availability of specialist courts across Magistrates' Court locations;[[7]](#footnote-7)
* Greater demands on regionally-based Magistrates to sit on matters across a range of jurisdictions, and therefore to develop and exercise a broader expertise;[[8]](#footnote-8)
* Limited availability of quality mediation services, particularly in relation to commercial and civil matters;[[9]](#footnote-9)
* Poorer standards of physical amenities in courts, including in relation to security and safety, and particularly in smaller regional towns;[[10]](#footnote-10)
* Less user-friendly procedures in the management of sitting dates for circuit courts in the County Court, including lack of adequate notice of hearing dates and longer hearing delays;[[11]](#footnote-11)
* Limited regional hearings of the Victorian Civil and Administrative Tribunal (VCAT);[[12]](#footnote-12)
* A perceived bias to custodial sentences in regional and rural areas, and a lower incidence of community-based sentencing options;[[13]](#footnote-13)
* A lack of access to community-based programs and services to help prevent offending and re-offending;[[14]](#footnote-14)
* A general lack of access to lawyers;[[15]](#footnote-15)
* A greater incidence of conflicts of interest for legal practitioners;[[16]](#footnote-16)
* Greater demands of regional legal practitioners to be able to practice across a greater range of matters;[[17]](#footnote-17)
* Difficulties in accessing professional development programs for rural legal practitioners;[[18]](#footnote-18)
* Problems in relation to the application and administration of the law in towns located on or close to state borders;[[19]](#footnote-19)
* A lack of engagement of regional and rural communities in the development of laws, policies and programs.[[20]](#footnote-20)

Many of these matters have been explored in subsequent research undertaken by the CRRLJ, and this will be referred to further throughout this submission when as relevant to particular elements of the Terms of Reference.

**3. Access to justice more specifically: the Review Terms of Reference**

Our submission will now address the Review's Terms of Reference more specifically.

**3.1 Availability of easily accessible information on legal assistance services and the Victorian justice system, including advice on resolving common legal problems**

Despite the increase in technology-facilitated provision of justice-related information and therefore of legal education materials to people who are geographically isolated, there continues to be a disproportionate lack of access to information in regional and rural communities. This has become particularly apparent to the CRRLJ through the course of its Learning and Development Program, where participants have commented on the lack of access they have to sometimes even basic information about law and justice issues concerning them. While more information is becoming available through the internet and through smartphone apps, the opportunities for people in regional and rural communities to engage actively with the information is still limited and sometimes the information itself, even when it is accessible, is somewhat metropolitan-centric in its focus.

Nonetheless, peak legal organisations are confronting these issues and have been working hard over recent years to develop and use digital technologies for delivering legal information to regional and rural communities. A research project undertaken by the CRRLJ in 2014 *Linking Law - Practical Guidelines for Delivering Law to Rural Victoria using E-Learning Technologies,* highlighted issues confronting the delivery of information technologies to rural and regional communities, the opportunities technologies offer and suggested solutions to improve delivery.[[21]](#footnote-21) Initiatives in the use of technologies need to continue to be supported, expanded, shared and co-ordinated if they are to even begin to meet the 'vast and often urgent' need for legal education and assistance in regional and rural Victoria.[[22]](#footnote-22) It is important to engage with local communities to identify their legal education and assistance needs, the issues they are facing and information gaps, and then to target programs to industry, services and communities accordingly.[[23]](#footnote-23)

The CRRLJ's experience in delivering its Learning and Development Program is testament to the large diversity of legal information needs in regional and rural Victoria. Forums are organised to match expressed needs of regional and rural practitioners, industries, services and communities and it has been impossible to identify dominant streams of need. Wherever there are topics relating to access to legal services, to how the Victorian justice system works, to how the law impacts on regional and rural communities, and to how to resolve legal problems, rural and regional communities are hungry for information. This has been reflected not only by the enthusiastic participation in the forums we have delivered, but also in the breadth of the questions and comments participants have contributed.

Exploiting the capacities of digital technologies is clearly an important means of delivering legal information to these communities but our own experience has also shown that it still has its limits. People have access to different platforms and these are not always compatible with one another. Even with the best preparation and attention to detail, the technology can still be unwieldly and inflexible, which can sometimes mean that people have difficulty hearing some of what is being said, or difficulty contributing to the discussion or, alternatively, find themselves contributing to the discussion when they did not mean to because they are still unfamiliar with operating the technology. Many of these problems will undoubtedly decrease over time but, until they do, it is vital to acknowledge these limitations and to therefore not assume that simply making information available through digital technologies is enough to ensure equity of access for people in regional and rural communities. This is before we even begin to address the issue of people who do not have access to any digital technologies at all, such as can be the case for people who are in very remote areas, or living lives of poverty or homelessness, or for whom access to computers may not be possible in a way that is secure and private, or who are disadvantaged through disability or language, or other issues that might affect their capacity to use digital technologies.

We therefore stress the need to continue to develop and expand other means of getting legal information to people in regional and rural communities. This particularly means targeting those sources of information that the people in those communities are already likely to access, such as local media and local community spaces. It also means actively engaging with local communities so that community leaders, and community services already with a local profile, can become conduits for information and referral.

Unfortunately, the three year Learning and Development Program run by the CRRLJ and supported by peak state bodies and rural communities throughout Victoria, and which has contributed significantly to highlighting the issues and opportunities communication technologies offer in this field, will cease in March 2016 due to lack of funding.

**3.2 Options for diverting people from civil litigation and into alternative services where appropriate, such as a 'triage' model**

***and***

**3.3 Whether and how alternative dispute resolution mechanisms should be expanded so that more Victorians can make use of them**

Access to the alternative services into which people might be diverted from litigation, let alone access to triaging to enable that diversion, is significantly more difficult in smaller regional and rural communities than in the larger regional and metropolitan cities, both through the lack of accessible services and through some of the additional challenges that can arise for them in the regional and rural context.

ADR and mediation services have a particularly crucial role to play in this regard, and these can be particularly significant for smaller communities where mediated outcomes can be even more important than in larger cities.[[24]](#footnote-24) In smaller communities it is often more likely that disputing parties, particularly in commercial and contract-related matters, will need to continue to have relationships with one another after a matter has been resolved than is the case in larger towns and cities where clients and providers or contractors easily can, and often do, part ways after a matter is resolved. But in smaller communities, it is likely that the parties will continue to have to deal with one another – sometimes personally as well as professionally, because of the more insular nature of those communities. Resolving matters through the collaborative processes of mediation rather than through litigation can therefore be a critical element in enabling that relationship to continue in a functional and positive way. Access to these services in regional and rural areas is, however, limited and typically the services that manage disputes are required to work across, and therefore have expertise in, a larger range of matters than their city counterparts,[[25]](#footnote-25) as well as being more vulnerable to issues of conflict of interest through having prior knowledge of both parties in the dispute.[[26]](#footnote-26) Further, the relatively low profile and/or presence of ADR services in regional and rural communities will mean that many people involved in disputes do not even consider it as an option. Local engagement with ADR can only happen if the services are there to establish a presence and to connect with local communities through community education and outreach.

Good triaging can be especially important in rural and regional communities, simply because the need to channel a legal dispute into the right direction from the outset becomes so much more crucial when the services into which it must be channelled might only be available relatively infrequently. It therefore becomes important to avoid further delays, and directing the matter to the right place early on, including into ADR services, is an essential aspect of this. However, good triaging clearly calls for people who have a good and broad knowledge of how best to resolve a legal matter, as well as a good ability to work out how to navigate through these options in the regional and rural context of limited services, often available only sporadically throughout the year. This sort of process could conceivably be undertaken by a central service, but would obviously need to be one that has the knowledge of the local services, and the times in which they are available, to enable a matter to be triaged in a way that is as effective and efficient as possible.

The extent to which digital technologies can be useful for actual ADR processes is still only just beginning to be explored and, while it may offer some promise in terms of making ADR more accessible to regional and rural litigants, there is still some reluctance to use it because of perceptions that it is less capable than face-to-face ADR of dealing with the nuances of negotiation and interaction.[[27]](#footnote-27) This would suggest that if ADR services are to make further use of these technologies in the future, and it may well be sensible to do so, then there will be a need for all of the people using those technologies – particularly the ADR service providers – to become adept at working effectively within a different communication setting. It is not simply a matter of conducting exactly the same mediation or conciliation meeting as before – new protocols and strategies for conducting online mediation have to be adopted within the context of the digital platform.

It is also worth noting that while in some instances, face to face communications will be the most effective way in which disputes are mediated, sometimes this reduction of non-verbal communication cues can assist in the delivery of effective ADR. Eliminating distracting gestures, facial expressions, body posture and language which can sometimes get in the way of mutually agreeable resolution to a dispute.[[28]](#footnote-28)

**3.4 Potential reform to the jurisdiction, practices and procedures of the Victorian Civil and Administrative Tribunal (VCAT) to make the resolution of small civil claims as simple, affordable and efficient as possible**

As with other jurisdictions, access to VCAT is relatively poor for people in regional and rural areas compared to their city counterparts. In his 2009 review of VCAT, its then president, Justice Bell, strongly advocated its regionalisation not only in terms of improving access to the Tribunal for regional and rural litigants, but also to improve its efficiency and its engagement with local communities.[[29]](#footnote-29)

The CRRLJ supports His Honour's observations that a more regionally accessible VCAT will also be one that can engage in more local outreach, will be more embedded and visible in local communities, will provide more local employment opportunities, and deliver a service that is more locally accessible and relevant.

In regionalising VCAT we stress, however, the importance of doing so in ways that develop or use appropriate local infrastructure. Current tendencies for VCAT to conduct its regional hearings in venues such as local Magistrates' Courts can be highly inappropriate, particularly in view of the stigma often attached to being seen in the local community to be attending court, even though it is not for a court matter. The lack of user-friendliness of these venues was, for example, noted by the Victorian Law Reform Commission in its review of Victoria's Guardianship Legislation.[[30]](#footnote-30)

It is noted that, despite the emphasis on a more regionalised VCAT in Justice Bell's President's Report, as noted above, the issue seems to have been accorded relatively minimal priority in the current VCAT Strategic Plan, where the only aspect of the issue that appears to be given attention is in a commitment to 'optimise the locations of our hearing facilities in suburban and regional areas, to ensure we cater for community needs in expected growth areas.'[[31]](#footnote-31) This appears to be a relatively narrowed response to the more systemic regionalisation reforms that Justice Bell had recommended.

While Tribunals such as VCAT were initially established as a user-friendly jurisdiction to enable less formal resolution of some matters, this is not necessarily how it is perceived by many of its current users, who see a 'creeping legalism' now dominating its proceedings.[[32]](#footnote-32) It is, of course, especially important in rural and regional communities to maximise opportunities for less formal, less litigious, resolution of disputes – not only for the reasons already noted in terms of the need to maintain, as much as possible, functional relationships between parties but also because of the simple reality that access to lawyers is significantly reduced in regional and rural areas,[[33]](#footnote-33) and this obviously puts regional and rural litigants at a disadvantage in a system where creeping legalism is a factor.

The CRRLJ therefore stresses the importance of VCAT continuing to explore the directions advocated in *One VCAT* for more user-friendly procedures and especially for greater recognition of the importance of ADR, and of VCAT developing best practice in its administration.[[34]](#footnote-34) Obviously this also has the added benefit of enabling less costly resolution of disputes compared to the mounting costs of resolving matters through courts and the costs of representation that are becoming more and more associated with these.

**3.5 The provision and distribution of pro bono legal services by the private legal profession in Victoria, including:**

* **Ways to enhance the effective and equitable delivery of pro bono legal assistance**
* **Opportunities to expand the availability of pro bono legal services in areas of unmet need**
* **Options for expanding existing incentives for law firms within the Victorian Government Legal Services Panel**

With the overall low proportion of legal practitioners per capita in regional Victoria compared to metropolitan areas and the increasing pressures on those practitioners with limited staffing to service regional and rural clients,[[35]](#footnote-35) clearly there will be more limited access to pro-bono services in these areas also. Even those legal practices that undertake pro bono work with a regional and rural focus are relatively unlikely to undertake it through outreach work that is actually in those communities and, even these small numbers, appear to be declining.[[36]](#footnote-36) In the case of non-regional and rural practices engaging in pro bono work with a regional and rural focus, the work can involve referrals received from those areas to the legal service, telephone assistance, secondment of practitioners to regional and rural areas, and various forms of education, secondary consultation and professional development.[[37]](#footnote-37)

It is, however, important to maximise opportunities for pro bono practice in regional and rural areas, both through encouraging local practitioners to do pro bono work in their own communities and through encouraging metropolitan practices, especially the larger ones, to engage actively with those communities by working there on a pro bono basis and through delivering professional development and secondary consultations to regional and rural lawyers. The CRRLJ supports any measures that provide extra incentives to non-regional and non-rural law practices to engage in pro bono work with these areas: whether this be through creating new incentives geared particularly towards attracting more lawyers to regionally and rurally based pro bono work, or weighting existing incentive programs so that lawyers who might not otherwise think to focus their pro bono efforts on regional and rural communities may be more inclined to do so. The CRRLJ notes that the overall guidelines for delivery of pro bono services as issued by the Department of Justice under the arrangements of the Victorian Government Legal Services Panel broadly acknowledges the importance of pro bono services as a means of exercising 'socially responsible' legal practice, as well as a way to 'enhance access to justice for disadvantaged persons or organisations' including circumstances where 'a client has no other access to the courts and the legal system'.[[38]](#footnote-38) These are important criteria that clearly include many communities and clients in regional and rural Victoria. We do, however, contend that there may be value in noting some of the groups who may be covered by this necessarily broad definition so that law firms can give active and particular attention to them. Clearly we would argue that regional and rural communities should be included in such a description. Further there may be some value in considering a small repository of funds being allocated to offset costs of providing pro bono services to more regional and rural areas, such as travel costs, so that when law firms are considering where to target their pro bono efforts, these more distantly located areas are not further disadvantaged.

**3.6 The availability and distribution of funding amongst legal assistance providers by the Victorian and Commonwealth governments to best meet legal need**

The distribution of legal assistance funding, such as through the establishment of Community Legal Centres and Victoria Legal Aid offices is heavily weighted towards metropolitan communities, even beyond the proportional distribution of the population. This is exacerbated by a continuing decline in rural and regional practitioners engaging in legally aided work.[[39]](#footnote-39) Obviously this means that access to legal assistance, particularly for people who are unable to pay for a private lawyer, is more difficult in regional and rural areas than in the city.

Beyond these obvious problems of limited access to legal assistance for people in regional and rural communities are the problems that the legal services themselves must face when they are located in these areas. Not only do they typically need to service a larger geographical catchment than their metropolitan counterparts, but they also experience greater difficulty attending professional development events, which tend to be mainly delivered in the city and which regionally-located staff often have difficulty attending.[[40]](#footnote-40) These difficulties are no doubt exacerbated by the characteristically low staffing levels at Community Legal Centres, making it even more difficult for a professional member of staff to be absent from the Centre for a day or more in order to attend professional development in Melbourne. Resources to enable high-quality digitally-delivered professional development to Community Legal Centres is therefore an important ingredient in any solution to address this issue.

The problems of sparse presence of Community Legal Centres and Victoria Legal Aid offices in regional and rural locations have, if anything, been getting worse rather than better. Recent years have seen a growing trend towards consolidation of small regional and rural services into larger regional towns where large service providers are expected to cover larger geographical areas rather than having smaller services located more locally. This trend is apparent across most of the human service sector and, while it can enable some efficiencies in terms of governance and administration costs, these savings are sometimes deceptive, particularly in terms of the roles Community Legal Centres play in preventing legal problems escalating out of control or even arising in the first place, through their proactive community education and community engagement activities. These vital aspects of Community Legal Centres can be seriously compromised when they are too dislocated from the communities they serve. The inevitable result of this is that legal problems remain undetected, communities remain uninformed about fundamental legal issues, and so more serious legal problems, which are more costly both socially and economically, arise later on. We therefore urge a greater focus on more locally-based and locally-connected Community Legal Centres, particularly throughout regional and rural areas.

**3.7 Whether there is any duplication in services provided by legal assistance providers by the Victorian and Commonwealth governments to best meet legal need**

As might be gleaned from our response to the preceding Term of Reference, the CRRLJ sees a lack, rather than a duplication, of services provided by legal assistance providers in regional and rural Victoria. While there is sometimes debate and confusion about the differing roles of Victoria Legal Aid and Community Legal Centres, when both are so lacking and so stretched in regional and rural areas, those debates become somewhat meaningless. Where towns are serviced by both Victoria Legal Aid and a Community Legal Centre, we have not been made aware of any situations where the one has been duplicating the work of the other but rather, instead, where having the two has provided at least some potential to avoid this issues of conflict of interest noted elsewhere in this submission.

**3.8 The resourcing of Victoria Legal Aid (VLA) to ensure that Government funding is used as effectively and as efficiently as possible and services are directed to Victorians most in need including:**

* **Within the total funding envelope, the types of matters funded by VLA, eligibility criteria for legal assistance and the level of assistance provided**
* **VLA's current service delivery model, including the use of panel arrangements and internal lawyers, and spending on allied support services**

The CRRLJ notes that, for reasons canvassed throughout this submission, regional and rural Victorians are systemically disadvantaged in their access to justice and, specifically, in their access to legal assistance. In particular, a sparseness of locally available lawyers together greater problems with conflicts of interest for those lawyers that are available locally are likely to mean that a person living in a regional or rural area may have to spend more money accessing a lawyer than would someone in the larger cities. We therefore argue that rurality should be a factor that can be taken into account when assessing eligibility for legal aid, and that it should be included in the list of 'special circumstances' outlined in Section 15 of the Victoria Legal Aid Handbook for Lawyers.[[41]](#footnote-41)

We also again stress the importance of recognising the issues specific to towns located on or near state borders, noted near the beginning of this submission. Legal services working in these communities will typically need to be familiar with the laws, and the administrations, of the jurisdictions on both sides of the border, as well as with the range of other support services that might be relevant to their clients' matters. It is important to adequately resource these services so that they are able to properly work across jurisdictions and cope with the extra workload, and requirements for expertise, which this entails.

**3.9 Options for providing better support to self-represented litigants throughout the Victorian justice system**

Given the additional difficulties that regional and rural Victorians experience in accessing legal assistance, it can be expected that a greater proportion of them will be unrepresented in court. Ironically, however, similar factors that are responsible for the lack of access to lawyers in these communities are also responsible for a lack of access to support and information for unrepresented litigants: that is, a paucity of legal services. There are a number of measures that can be taken to provide better support to unrepresented litigants, regardless of where they live or the location of the court in which their matter is being heard. These include:

* Development of more and better plain-language guides for unrepresented litigants,[[42]](#footnote-42) and ensuring that these are easily available in regional and rural communities (particularly in community locations so that unrepresented litigants can access them *before* they go to court) and online,
* A continued and enhanced presence of court-based supports, such as Court Network, in all regional court locations so that unrepresented litigants can have easy access to information about what to expect at Court and who to go to for information and advice.

**4. Concluding remarks**

This submission has focussed upon issues of access to justice that are peculiar to, or particularly prominent in, regional and rural Victoria. There are many other issues that will pertain across all of Victoria that have not been raised here, such as issues arising from the disadvantage experienced through poverty, disability, aboriginality, ethnicity, age and gender. The fact that this submission has not concentrated on those issues should not be read as an indication that we do not see them to be important.

That said, the issues of disadvantage in access to justice experienced in regional and rural communities can be profound and are often neglected in other discussion and discourse about access to justice. This will continue to be the case as long as regional and rural communities and interests are not meaningfully engaged and included in the development of laws, policies and services. It is therefore important to ensure that that engagement happens and happens thoroughly and continually - a core recommendation of *Postcode Justice*.[[43]](#footnote-43)

Both the Centre for Rural Regional Law and Justice and the membership-based National Rural Law and Justice Alliance (which has been hosted by the CRRLJ) have provided valuable means of mobilising and consolidating the voice of regional and rural Australia, and Victoria, in the justice space. Neither the CRRLJ nor the NRLJA have received funding from either the Commonwealth or the State Governments and yet their role is critical to both as a conduit to these vital communities that not only accommodate still large proportions of the Australian and Victorian populations, but are also the places in which so much of the nation's crucial primary industries are located.

The CRRLJ would welcome the opportunity to meet with the Department and Government to discuss further how both it and the NRLJA can further contribute to these important issues so central to this Review.

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39. Coverdale (2011), *op cit*, 84 [↑](#footnote-ref-39)
40. Federation of Community Legal Centres (2006), *Capacity Building Project: Final Report and Action Plan*, Federation of Community Legal Services, Melbourne Victoria, 30 [↑](#footnote-ref-40)
41. Victoria Legal Aid, *Handbook for* Lawyers, https://handbook.vla.vic.gov.au/handbook/15-special-circumstances, accessed 8 December 2015 [↑](#footnote-ref-41)
42. See, for example, Court Network (2014), *A Resource Booklet for People Attending a Final Hearing in the Family Law Courts with a lawyer*, Court Network, Melbourne Victoria, which was authored by the CRRLJ [↑](#footnote-ref-42)
43. Coverdale (2011), *op cit*, 11 [↑](#footnote-ref-43)