

Review of the National Partnership Agreement on Legal Assistance Services 2015-2020

NPA REVIEW

TERMS OF REFERENCE PAPER, 8 January 2018

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Feedback instructions

This form has been prepared by the Commonwealth Attorney-General's Department (AGD) in order to gather feedback on the *NPA Review – Terms of Reference Paper* (the TOR Paper) of 8 January 2018. A separate paper will be provided in due course which will provide updates on other aspects of the Review, including administrative arrangements and governance and consultation structures.

Parties interested in providing comments or feedback on the Paper should complete this form. Completed forms should be emailed to legalassistancereview@ag.gov.au by **5pm, Wednesday 31 January 2018**.

Completed forms will NOT be published publicly (unless permission has been sought by AGD to do so).

Terms of Reference

In providing comments and feedback on the terms of reference as discussed in the TOR Paper, consideration should be given to the following:

- The purpose of the Review is to assess the effectiveness, efficiency and appropriateness of the Agreement as a mechanism for achieving its aspirational objective and outcomes, with a focus on: legal assistance services; collaborative service planning; funding arrangements; performance monitoring and reporting arrangements; roles and responsibilities; and areas of improvement.
- The Review will focus on how the operation of the Agreement has affected progress towards meeting its objective and outcomes.
- It is beyond the scope of the Review to undertake new research or in-depth analysis of legal need.
- The Review may consider previous research and existing bodies of work on met and unmet legal need and what is known in each jurisdiction.

Program logic

AGD also seeks any early comments on the National Partnership Agreement on Legal Assistance Services 2015-2020 – Program Logic document included in the TOR Paper (page 11). AGD notes that the Program Logic document will be finalised during the evaluation planning process once the broad scope and review mechanism have been determined.

Feedback form – NPA Review – Terms of Reference

Term of Reference	Support / Support in principle / Do not support	Reason	Suggested improvements
<p>Preamble</p> <p>The purpose of the Review is to assess the effectiveness, efficiency and appropriateness of the Agreement as a mechanism for achieving its objective and outcomes. The Review will focus on how the operation of the Agreement has affected progress towards meeting its objective and outcomes.</p> <p>Aligned with the <i>National Strategic Framework for Legal Assistance 2015-2020</i>, the objective of the Agreement (Clause 8) is:</p> <p><i>'a national legal assistance sector that is integrated, efficient and effective, focused on improving access to justice for disadvantaged people and maximising service delivery within available resources'.</i></p> <p>To meet this objective, the Agreement specifies the following outcomes (Clause 9):</p> <ul style="list-style-type: none"> (a) legal assistance services are targeted to priority clients with the greatest legal need (b) legal assistance service providers collaborate with each other, governments, the private legal progression and other services, to provide joined-up services to address people’s legal and related problems (c) legal assistance services are appropriate, proportionate and tailored to people’s legal needs and levels of capability (d) legal assistance services help people to identify their legal problems and facilitate the resolution of those problems in a timely manner before they escalate (e) legal assistance services help empower people to understand and assert their legal rights and responsibilities and to address, or prevent, legal problems. 	<p>Support in principle, however see notes and suggested improvements</p>	<p>We note that it will be important to have common understanding about what terms such as ‘effectiveness’, ‘efficiency’ and ‘appropriateness’ mean in the context of the review.</p>	<p>See notes below in relation to consideration of funding issues. In line with those comments, we propose amendment to the first sentence of the Preamble as follows: “The purpose of the Review is to assess the effectiveness, efficiency and appropriateness of the Agreement as a mechanism for achieving its objective and outcomes <u>within available resources.</u>”</p>

Term of Reference	Support / Support in principle / Do not support	Reason	Suggested improvements
<p>TOR 1</p> <p>1. the impact that the Agreement has had on the delivery of efficient and effective legal assistance services, including consideration of:</p> <ul style="list-style-type: none"> a. the appropriateness and utility of the objective, outcomes and outputs in supporting the delivery of legal assistance services b. whether legal assistance services are effective, efficient and appropriate and represent value for money, including consideration of integrated legal and non-legal services c. whether the Agreement has improved the targeting of legal assistance services to people facing disadvantage who have the greatest legal need, including people experiencing, or at risk of, family violence, using available analysis and bodies of research. 	<p>Support in principle, however see notes and suggested improvements</p>	<p>**We are unsure how whether services 'represent value for money' and 'the cost of service delivery' will be measured/considered and relative to what. We suggest more work is done as part of the review to be clear early on about the proposed approach and ensuring the focus is on outcomes rather than outputs.</p> <p>**Noting that the hallmark of CLC service delivery and operation is that CLCs are embedded in local communities and their contribution to the broader community (which is something Government has recognised) and consistent with TOR 1 for the ILAP Review, we suggest the inclusion of consideration of the broader role CLCs play within communities.</p> <p>**Consistent with TOR 1 for the ILAP Review and in light of the significant impact external drivers of demand can have on the sector and the achievement of Agreement objectives, we suggest the inclusion of an additional dotpoint as part of TOR 1 which refers to the drivers of demand for services and impact on the objectives and outcomes of the NPA.</p> <p>**It is not clear which group of people are to be considered in assessing (c) given the performance benchmarks in Clause 17 list one set of priority clients, and Schedule B lists another list.</p>	<ul style="list-style-type: none"> • We suggest the dotpoints under TOR 1 be amended as follows: <ul style="list-style-type: none"> ○ "the performance of legal aid commissions and community legal centres against the performance benchmarks, <u>including consideration of the broader role these services provide within communities</u>". ○ New dotpoint: "<u>the drivers of demand for services and impact on the objectives and outcomes of the Agreement</u>".

Term of Reference	Support / Support in principle / Do not support	Reason	Suggested improvements
<p><u>TOR 2</u></p> <p>2. the effectiveness, efficiency and appropriateness of collaborative service planning in achieving the objective and outcomes of the Agreement.</p>	<p>Support in principle, however see suggested improvement</p>	<p>The current TOR do not include specific consideration of the outcomes of collaborative service planning process, however there is a specific reference in the Draft TOR for the ILAP Review. Accordingly, we propose inclusion of this as an additional dotpoint as part of the TOR 2.</p>	<p>The current TOR do not include specific consideration of the outcomes of collaborative service planning process. We suggest the inclusion of a new dotpoint: "<u>The outcome of collaborative service planning processes</u>".</p>

Term of Reference	Support / Support in principle / Do not support	Reason	Suggested improvements
<p><u>TOR 3</u></p> <p>3. the effectiveness, efficiency and appropriateness of current funding arrangements as a mechanism for the provision of funding in order to meet the objective and outcomes of the Agreement, including consideration of the provision of Commonwealth Social and Community Services (SACS) supplementation.</p>	<p>Support in principle, however see notes in this column and general notes.</p>	<p>See comments below in general section in relation to the issue of funding/resources and the TOR.</p> <p>Given SACS supplementation is included within the scope of the review, it is appropriate to consider all funding and resources provided under the NPA relevant to the effective, efficient and appropriate delivery of services. As a result, we suggest the inclusion of:</p> <ul style="list-style-type: none"> • Funding for interpreter services • Funding related to data collection and implementation of the National Standards Data Manual • Funding for and related to processes and mechanisms introduced under the NPA, including but not limited to collaborative service planning • Funding SACS and other costs related to organisational sustainability. • Funding for the administration of the sector • Funding under the NPA for peak CLC bodies. 	

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<p>TOR 4</p> <p>4. the utility of the performance monitoring and reporting arrangements, including the collection of consistent and comparable service data, in encouraging change in service delivery practices and in measuring the achievement of the objective and outcomes of the Agreement, including consideration of:</p> <ul style="list-style-type: none"> a. performance indicators (Clause 17) b. performance benchmarks (Clause 18) c. milestones (Clause 19), and d. reporting arrangements (Clause 20). 	<p>Support</p>		
<p>TOR 5</p> <p>5. the relationship and engagement of the Parties to the Agreement and the extent to which the Commonwealth and the states and territories have fulfilled their agreed roles and responsibilities.</p>	<p>Support in principle, however see notes.</p>	<p>The first dotpoint under TOR 5 refers to considering the 'quality of the relationships' between the Commonwealth, states and territories and legal assistance sector'. It is unclear how the quality of a relationship might be objectively and usefully reviewed.</p> <p>Given the purpose of the Agreement and key role of governments in supporting the sector to achieve the objectives and outcomes in the Agreement, as well as being consistent with the draft TOR for the ILAP review, we suggest the inclusion of an additional dotpoint as part of TOR 5 which refers to the "level of support provided by the Commonwealth and States and Territories in meeting the objectives and outcomes of the Agreement".</p>	<p>We suggest the inclusion of an additional dotpoint as part of TOR 5 which refers to the "<u>level of support provided by the Commonwealth and States and Territories in meeting the objectives and outcomes of the Agreement</u>".</p>

Term of Reference	Support / Support in principle / Do not support	Reason	Suggested improvements
<p>TOR 6</p> <p>6. identify areas for improvement and opportunities to enhance future arrangements to better achieve the objective and outcomes of the Agreement.</p>	<p>Support in principle, however see notes.</p>	<p>It is not clear whether this TOR is intended to consider post 2020 arrangements in the sense that they may involve a new NPA or other mechanism for allocation of funding. The TOR as drafted still links improvements to the current objective and outcomes of the Agreement despite considering whether they are appropriate/useful as part of TOR 1. As a result, we suggest rewording for clarity.</p> <p>The dotpoints for TOR 6 include consideration of recommendations from other reviews including “whether other legal assistance funding arrangements could be better aligned to, or otherwise support, the objective and outcomes of the Agreement”. Given the distinct but complementary role of all legal assistance providers it is important that all relevant funding arrangements support legal assistance providers and encourage collaboration, but also maintain the independence of providers. We suggest that consideration of whether it is appropriate for other arrangements to align or support the NPA (as opposed to the other way around, or all supporting a separate policy/framework or similar) is an important threshold question and that the sentence should be amended.</p>	<p>We suggest the following rewording so that TOR 6 reads as follows: “Identify areas for improvement and opportunities to enhance future arrangements”.</p> <p>We suggest that in the dotpoints to TOR 6, dotpoint 4 should be amended to read “any relevant recommendations of other reviews of legal assistance arrangements”.</p>

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<p style="text-align: center;">General comments</p>		<p>Overall we support the draft Terms of Reference and consider they provide a broad enough review scope to consider the key issues and areas for improvement.</p> <p>That said, there are a number of areas in which it will be important to discuss and settle on agreed approaches and meanings once the substantive review commences. There are also a number of queries in relation to the structure of the Terms of Reference.</p> <p>Structure of the TOR The status of the general comments and information in the Consultation Paper as well as the dotpoints under each TOR is unclear. If the dotpoints do not formally form part of the TOR and can therefore be considered (or not) as the reviewer thinks appropriate, we would strongly recommend the inclusion of more detail in the TOR themselves, incorporating the dotpoints. We encourage further discussion of this issue prior to finalisation of the TOR.</p> <p>Funding and Resources We note the reference in the Consultation Paper to excluding the question of 'whether existing funding is sufficient to meet legal need'. While we understand the exclusion of considering the overall quantum necessary to meet legal need in Australia given the scope and timing of the review, consideration of whether the objective and outcomes of the NPA have been met must necessarily include consideration of the resources available to meet them. In addition, given the Consultation Paper indicates that "the outcomes of the Review will help inform future funding arrangements for legal assistance services from 1 July 2020", consideration of existing resources is also required given the clear impact it may have on future funding arrangements. As a result, we have proposed some amendments to the Preamble but otherwise consider that the TOR are sufficiently broad to enable consideration of this issue.</p>	

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			<p>Timeframe for Review We are concerned about the proposed timeframes for the review. In particular, if the TOR are not finalised until 21 March 2018 (with Ministerial approval still required after that date) and the review is due to be completed by December 2018, we are interested in further information about the proposed timetable for conduct of the full review and ensuring appropriate time for consultation and discussion with the sector.</p> <p>Interaction between NPA and Other Funding Agreements/Arrangements There is no specific reference in the TOR to the interaction between the NPA and other Commonwealth funding arrangements for legal assistance services (Indigenous Legal Assistance Program or funding for Family Violence Prevention Legal Services), other than to contemplate alignment or other legal assistance funding arrangements with the objectives/outcomes of the NPA. Given there are concurrent reviews of ATSILS and FVPLS (as noted in the 'related reviews and evaluations' section of the Discussion Paper, we suggest further consideration of including this interaction in the TOR.</p>

Feedback form – National Partnership Agreement on Legal Assistance Services 2015-2020 – Program Logic

Program logic element	Comments
IMPACT / OUTCOMES / BENEFITS Long term > 5 years	
IMPACT / OUTCOMES / BENEFITS Medium term 4 – 5 years	
IMPACT / OUTCOMES / BENEFITS Short term 1 – 3 years	
OUTPUTS	
ACTIVITIES	
KEY ASSUMPTIONS	
General comments	<ul style="list-style-type: none"> • It is unclear how the draft program logic relates to the draft TOR. • We are of the view that it is too early to develop a program logic and that the program logic should be developed in consultation with the sector and the relevant reviewer, and clearly connect to considerations/evaluation under the TOR.