

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

CONSULTATION PAPER - 23 February 2018

Organisation/Agency	National Association of Community Legal Centres (NACLC)
Contact person	Amanda Alford
Email	Amanda_alford@clc.net.au
Contact Number	0421 028 645

Feedback instructions

This form has been prepared by the Commonwealth Attorney-General's Department (AGD) in order to gather feedback on the *Review of the NPA – Consultation Paper* (the Consultation Paper) of 23 February 2018.

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, Friday 16 March 2018**.

Completed forms will NOT be published publicly (unless permission has been sought by AGD to do so).

Terms of Reference

AGD has provided updated terms of reference, as outlined in the Consultation Paper, based on comments received to date from the states and territories and the legal assistance sector. In providing comments and feedback on the terms of reference, 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 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.
- The potential areas of review (the dot points) will be considered in the development of the Review Plan by the Independent Reviewer.

Statement of requirements

AGD and the states and territories recognise the importance of an Independent Reviewer with knowledge, experience and understanding of the legal assistance sector. AGD invites comments on the statement of requirements.

Program logic

AGD also seeks any comments on the updated National Partnership Agreement on Legal Assistance Services 2015-2020 – Program Logic document included in the Consultation Paper. 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 – Review of the NPA – Terms of Reference

Term of Reference	Support / Support in principle / Do not support	Suggested improvements on the terms of reference
<p>Background As reflected in Clause 2, in entering into the NPA, the Parties:</p> <ul style="list-style-type: none"> (a) recognise that they have a mutual interest in working together to improve access to justice and resolve legal problems for the most disadvantaged people in Australia and maximise service delivery through the effective and efficient use of available resources, and (b) are committed to progressing issues that affect the legal assistance sector and support the principles of the <i>National Strategic Framework for Legal Assistance</i>. <p>According to Clause 41 of the NPA, a review must be scheduled to be completed approximately 18 months prior to its expiry on 30 June 2020. This will provide an opportunity to measure the effectiveness of the NPA and identify opportunities to improve future arrangements.</p> <p>In reviewing the NPA, Clause 42 requires the Parties to consider:</p> <ul style="list-style-type: none"> (a) the States' progress towards achieving the objective, outcomes and outputs (b) whether legal assistance services are effective, efficient and appropriate, including whether the services represent value for money, which will be informed by the cost of service delivery, among other things (c) the appropriateness of the objective, outcomes, outputs, performance indicators, performance benchmarks, milestones and reporting arrangements, and (d) the outcomes of the Reform of the Federation White Paper. <p>On 1 April 2016, the Council of Australian Governments agreed that the Reform of the Federation will be progressed by the Council on Federal Financial Relations and Commonwealth and State and Territory Treasuries. As such, the Review of the NPA will not consider Clause 42(d).</p> <ul style="list-style-type: none"> • the Review of the Indigenous Legal Assistance Program • the Evaluation of the pilot program of specialist domestic violence units and health justice partnerships • the Review of the Family Advocacy Support Service, and 	Support	

Term of Reference	Support / Support in principle / Do not support	Suggested improvements on the terms of reference
<ul style="list-style-type: none"> the Evaluation of the Family Violence Prevention Legal Services Programme. 		
<p>Preamble</p> <p>The purpose of the Review is to assess the effectiveness, efficiency and appropriateness of the NPA as a mechanism for achieving its objective and outcomes within available resources, and identify best practice and opportunities for improvement. The Review will focus on how the operation of the NPA has affected progress towards its objective and outcomes. The outcomes of the Review of the NPA will help inform future funding arrangements for legal assistance services from 1 July 2020.</p> <p>The Review of the NPA will not conduct new research or consider in-depth analysis of the broader issues, including the level of legal need in Australia and/or whether existing funding is sufficient to meet that need. This would not exclude consideration of whether funding under the NPA supports the progress towards achieving its objective and outcomes.</p> <p>Aligned with the <i>National Strategic Framework for Legal Assistance 2015-2020</i>, the objective of the NPA (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>The NPA will facilitate the achievement of 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</p>	<ul style="list-style-type: none"> We welcome the inclusion of recognition in Preamble that it will be necessary to consider the resources/funding available under the NPA in assessing progress towards its objectives and outcomes (in line with NACLC's earlier submission).

Term of Reference	Support / Support in principle / Do not support	Suggested improvements on the terms of reference
<p>TOR 1</p> <p>1. the impact that the NPA 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 and outcomes in supporting the delivery of legal assistance services, including consideration of: <ul style="list-style-type: none"> i. relevance to the current landscape of the legal assistance sector, and ii. existing research about legal need and service delivery b. whether the NPA promotes legal assistance services that are effective, efficient and appropriate and represent value for money, including consideration of: <ul style="list-style-type: none"> i. integrated legal and non-legal services ii. the broader role these services provide within communities iii. the use of different modes of service delivery, and iv. value for money¹ as consisting of a range of factors, including cost of service delivery, and qualitative factors relating to services, service location, client complexity, among others. c. whether the NPA has improved the targeting of legal assistance services to people facing disadvantage, including priority clients (Schedule B), thereby improving access to justice for those who have the greatest legal need². 	<p>Support</p>	<ul style="list-style-type: none"> • We support the removal of the word 'outputs' in para (a). • We support the inclusion of the sub-paragraphs under (b), largely in line with NALC's earlier submission. • We remain unclear how the cost of service delivery will be assessed, but welcome the recognition that 'value for money' should be considered broadly and that it will not involve service delivery comparisons between legal assistance providers.
<p>TOR 1 – Potential areas of review</p> <ul style="list-style-type: none"> • the impact of the 2015 reforms on achieving the NPA's objective and outcomes • the performance of legal aid commissions and community legal centres against the performance benchmarks • the extent in which the NPA has encouraged changes in service delivery practices • delivery of legal assistance services in accordance with the aspirational principles of the Strategic Framework • the appropriateness and utility of the Commonwealth priorities and eligibility principles (Schedule B) in supporting the delivery of targeted legal assistance services 	<p>Support</p>	

¹ value for money will not involve service delivery comparisons between legal assistance providers

² this assessment will use available analysis and bodies of research.

Term of Reference	Support / Support in principle / Do not support	Suggested improvements on the terms of reference
<ul style="list-style-type: none"> whether the objective, outcomes and outputs of the NPA support the delivery of legal assistance services and are relevant to the current landscape of the legal assistance sector and existing research about legal need and service delivery the impact of the NPA in supporting innovation in the delivery of legal assistance services the ongoing appropriateness of the aspirational principles in the Strategic Framework, as the basis for the content of the NPA. 		
<p>TOR 2</p> <p>2. the implementation of collaborative service planning by the Parties, and the extent to which it is contributing to the objective and outcomes of the NPA.</p>	Support	
<p>TOR 2 – Potential areas of review</p> <ul style="list-style-type: none"> the effectiveness of collaborative service planning as a mechanism to facilitate progress towards achieving the objective and outcomes examining the two elements of collaborative service planning (the use of an evidence-base in allocating funding and collaborative service planning meetings), including the utility of Schedule A of the NPA how collaborative service planning has been implemented by each state and territory the data and tools being used by jurisdictions to map out the need for legal services and for service planning the extent of participation and engagement in collaborative service planning by the Parties and the legal assistance sector the outcomes of collaborative service planning processes identify opportunities to improve collaborative service planning and best practice within jurisdictions the respective roles of the Commonwealth and the states and territories in collaborative service planning, and whether any barriers have affected the implementation and operation of collaborative service planning. 	Support	<ul style="list-style-type: none"> We support the inclusion of a dotpoint relating to considering the outcomes of collaborative service planning processes, in line with NACLC’s earlier submission as well as the inclusion of the other new dotpoints.
<p>TOR 3</p> <p>3. the effectiveness, efficiency and appropriateness of current funding arrangements in meeting the objective and outcomes of the NPA, including consideration of:</p> <ol style="list-style-type: none"> the shared responsibility of the Parties in the operation of the NPA if and how Commonwealth Social and Community Services (SACS) supplementation was distributed 	Support in principle, however see comments/notes.	<ul style="list-style-type: none"> We support the inclusion of consideration of the shared responsibility of the parties in the operation of the NPA at para (a). We support the inclusion of (c) in line with our earlier submission.

Term of Reference	Support / Support in principle / Do not support	Suggested improvements on the terms of reference
<ul style="list-style-type: none"> c. the drivers of demand for legal assistance services d. how and whether funding under the NPA supports the progress towards achieving its objective and outcomes e. the interaction between the NPA and other Commonwealth funding arrangements for legal assistance services 		<ul style="list-style-type: none"> • We reiterate comments made in our earlier submission suggesting that given SACS supplementation is included within the scope of the review, we suggest it is appropriate to include consideration of all funding and resources provided under the NPA relevant to the effective, efficient and appropriate delivery of services. See our earlier submission for a suggested list of other inclusions.
<p><u>TOR 3 – Potential areas of review</u></p> <ul style="list-style-type: none"> • whether the NPA has increased funding certainty to the states and territories and the legal assistance sector • the effectiveness of the NPA as a funding mechanism to incorporate new funding • the appropriateness and utility of the models used to distribute funding to states and territories to achieve the objective and outcomes of the NPA • whether Commonwealth SACS supplementation has been distributed appropriately • the extent to which funding provided by the Parties supports the objective and outcomes of the NPA • the extent to which the defined funding was effectively distributed and has increased capacity of family law and family violence related services from 2017-18 • the extent to which the operation of the NPA aligns with the IGAFRR, and • whether funding under the NPA supports the achievement of its objective and outcomes. 	<p>Support</p>	
<p><u>TOR 4</u></p> <p>4. the utility of the performance monitoring and reporting arrangements, including the collection of consistent and comparable service data in measuring the progress towards achieving the objective and outcomes of the NPA, including consideration of:</p> <ul style="list-style-type: none"> a. performance indicators (Clause 17) b. performance benchmarks (Clause 18) c. milestones (Clause 19) d. reporting arrangements (Clause 20), and e. support systems for data collection and reporting. 	<p>Support</p>	

Term of Reference	Support / Support in principle / Do not support	Suggested improvements on the terms of reference
<p><u>TOR 4 – Potential areas of review</u></p> <ul style="list-style-type: none"> whether the performance monitoring and reporting requirements appropriately balance the need for accountability versus the need to minimise the administrative burden on the Parties and legal assistance service providers whether the performance monitoring and reporting requirements are sufficiently inform progress towards achieving the objective and outcomes of the NPA whether a sufficient level of performance information of service providers is captured any barriers that have affected the implementation of the performance monitoring and reporting arrangements under the NPA. whether the <i>National Legal Assistance Data Standards Manual</i>, developed in response to recommendation 25.4 of the Productivity Commission report, has supported the collection of consistent and comparable performance data, and the effectiveness of data collection arrangements under the NPA, including the introduction of the <i>Community Legal Assistance Services System (CLASS)</i>. 	Support	
<p><u>TOR 5</u></p> <p>5. the relationship between the Parties to the NPA and the legal assistance sector and the extent to which the Commonwealth and the states and territories have fulfilled their agreed roles and responsibilities.</p>	Support	
<p><u>TOR 5 – Potential areas of review</u></p> <ul style="list-style-type: none"> the relationship between the Commonwealth, states and territories and the legal assistance sector the extent to which the roles of both the Commonwealth and states and territories have contributed to meeting the objective and outcomes of the NPA level of support provided by the Commonwealth and states and territories in meeting the objectives and outcomes of the NPA whether the implementation of the reforms in the NPA by the Parties has been effective, and how and the extent to which the Parties have fulfilled the roles and responsibilities outlined in Part 3 of the NPA. 	Support	<ul style="list-style-type: none"> We support the inclusion of consideration of the level of support provided by the Commonwealth and states and territories in meeting the objectives and outcomes of the NPA, as suggested in our earlier submission.
<p><u>TOR 6</u></p> <p>6. identify areas for improvement and opportunities to enhance current and future arrangements.</p>	Support	

Term of Reference	Support / Support in principle / Do not support	Suggested improvements on the terms of reference
<p><u>TOR 6 – Potential areas of review</u></p> <ul style="list-style-type: none"> elements of the NPA which hinder or assist in the achievement of the agreed objective and outcomes the extent to which current arrangements require further reform to improve service delivery and maximise the effective and efficient use of available resources consider innovative service delivery models and best practice whether the requirements under the NPA can be enhanced to better support the objective and outcomes of the NPA, including collaborative service planning, and any relevant recommendations of other reviews of legal assistance arrangements that relate to the NPA, including whether other legal assistance funding arrangements could be better aligned to, or otherwise support, the objective and outcomes of the NPA. 	<p>Support, however see notes.</p>	<ul style="list-style-type: none"> In line with our earlier submission, it is important to ensure consideration of the interaction between the NPA and other Commonwealth funding arrangements for legal assistance services rather than an assumption that other funding arrangements should be aligned to or support the NPA. We suggest amendment of the final dotpoint to better reflect the wording in TOR 3(E) around interaction.
<p>General comments</p>	<p>General</p> <ul style="list-style-type: none"> We welcome incorporation of some of the feedback NACLC provided in its earlier submission to the initial draft TOR. We welcome the inclusion of recognition that it will be necessary to consider the resources/funding available under the NPA in assessing progress towards its objectives and outcomes (in line with NACLC’s earlier submission). We welcome indications that the Review Plan will be developed collaboratively and that key terms such as effectiveness, efficiency and appropriateness will be part of this collaborative development and design. We emphasise the importance of this collaboration and co-design. In the Scope of Review section and TOR 1, we support new comments in there that include consideration of the broader role of legal assistance services within communities; comments in relation to the interpretation/approach to considering ‘value for money’; and the drivers of demand for legal assistance services. Given the lack of clarity about the status of the dotpoints in the initial TOR, we support the inclusion of more detailed wording in the actual TOR as has been done. 	

Feedback form –Review of the NPA – Statement of Requirements

Statement of requirement	Support / Support in principle / Do not support	Suggested improvements for the statement of requirements
Specific services to be undertaken by the Independent Reviewer		
<p>1. <u>Review Plan</u></p> <p>The Independent Reviewer will work with the Steering Committee, in consultation with the Advisory Group and broader legal assistance sector, to collaboratively design and develop a Review Plan. The Review Plan should:</p> <ul style="list-style-type: none"> • be informed by the terms of reference for the Review of the NPA and the draft program logic for the NPA • review existing data and national data sets and identify what and how additional data will be collected as part of the Review of the NPA • identify key evaluation questions and specify an appropriate summative review methodology which utilises a suitable mix of qualitative and quantitative methods and data analysis • provide definitions to key qualitative terms, including effectiveness, efficiency, appropriateness and value for money • specify an appropriate key stakeholder consultation plan which details any proposed consultation, interviewing, submission, surveying and other information gathering processes, and • be endorsed by the Steering Committee. <p>The Independent Reviewer will be required to provide a draft Review Plan to the Steering Committee and the Advisory Group for comment, prior to final endorsement by the Steering Committee.</p>	<p>Support</p>	<ul style="list-style-type: none"> • We welcome the requirement that the Review Plan be developed and designed collaboratively.
<p>2. <u>Conduct the Review of the NPA</u></p> <p>The Independent Reviewer will conduct the Review of the NPA in accordance with the terms of reference and the approved Review Plan. The Review of the NPA will not involve interviewing, consulting or otherwise interacting with clients of legal assistance services. Therefore, AGD anticipates that the supplier will not require ethics consideration and approval. However, the Independent Reviewer will be expected to follow standard good research practice including informed participant consent and compliance with relevant Ethical Guidelines. The</p>	<p>Support in principle</p>	

Statement of requirement	Support / Support in principle / Do not support	Suggested improvements for the statement of requirements
Independent Reviewer must also work in collaboration with the Review of the Indigenous Legal Assistance Program.		
<p>3. Prepare and submit an interim progress report.</p> <p>The interim report will need to detail initial findings on the Review of the NPA. The interim report should include consultation with the Steering Committee and the Advisory Group and consider appropriate feedback. The Independent Reviewer should consider these comments in manner that does not impede the independence of the Review of the NPA.</p>	Support	
<p>4. Prepare and submit a final report of the Review of the NPA.</p> <p>The Independent Reviewer will need to prepare and submit a final report of the Review of the NPA. The final report will include details of the Review Plan, summarise the findings of the Review and provide recommendations for future action. The draft final report will need to be available for comment by the Steering Committee and the Advisory Group. The final report should consider these comments in manner that does not impede the independence of the Review of the NPA.</p>	Support	
Specific requirements of the Independent Reviewer		
<p>The Independent Reviewer will be expected to demonstrate the following essential requirements in order to be selected to conduct the Review of the NPA:</p> <ul style="list-style-type: none"> • experience in designing and conducting program reviews and evaluations <ul style="list-style-type: none"> ○ there is a preference for suppliers with experience in reviewing programs, policies or initiatives relevant to the legal assistance sector • knowledge of and experience working with the legal assistance sector, or how relevant expertise will be obtained to appropriately inform the Review of the NPA • strong evaluation and review experience in both qualitative and quantitative methodologies and data analysis in assessing the impact of social programs • strong stakeholder engagement experience, including working with governments, community and/or not for profit organisations and Aboriginal and Torres Strait Islander organisations 	Support with amendments, see comments	<ul style="list-style-type: none"> • Given the timeframe and importance of experience/knowledge specific to the sector, we consider it is necessary that knowledge of, and experience working with, the legal assistance sector is an essential requirement and that the sentence 'or how relevant expertise will be obtained to appropriately inform the Review of the NPA' should be deleted.

Statement of requirement	Support / Support in principle / Do not support	Suggested improvements for the statement of requirements
<ul style="list-style-type: none"> • ability to conduct the reviews consistent with agreed milestones and budget within set timeframes • high level of professionalism and integrity, with the ability to provide independent and impartial analysis and evidence-based recommendations ,and • travel to selected legal assistance providers across Australia, Commonwealth and state and territory government departments, the Steering Committee and Advisory Group, and other key stakeholders. 		
<p>General comments</p>	<p>We reiterate comments and submissions made earlier in this process with respect to the need for a reviewer with knowledge of and experience working with the legal assistance sector and if the same reviewer is appointed for the NPA and ILAP reviews, cultural competency.</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"> We are of the view that the Program Logic should be developed in consultation with the sector and the relevant reviewer. We have a range of concerns about the Program Logic as currently drafted.

Feedback form – Review of the NPA – Other comments

Issue	Comments
Timeline	<ul style="list-style-type: none"> • We remain extremely concerned about the timeframe for the review and indication that essentially the substance of the review will be conducted over a 3 month period. • There appears to only be approximately a 2 week period allowed for feedback on the Final Report, which is insufficient. • There is no anticipated date for the public release of the Final Report, or any Government response to the Report which we consider important parts of the review.
Steering Committee	<ul style="list-style-type: none"> • We would like further information on what the Steering Committee 'endorsing the interim progress report and final report' means given that NPA reviews should be conducted independently of, or jointly, with parties to the agreement. For example, where the report makes findings/recommendations that one or more members of the Steering Committee do not agree with, what will the process be? • We welcome the inclusion of PM&C on the Steering Committee given the concurrent FVPLS review and role as a central agency.
Reviewer	<ul style="list-style-type: none"> • We welcome emphasis on the independence of the reviewer, though some clarity is required in relation to balancing that independence with the stated need for unanimous agreement by the Steering Committee about 'endorsement of the final report' and the public release of the reviewers written reports.
Advisory Group	<ul style="list-style-type: none"> • We suggest consideration and further discussion is required in relation to the role of the peaks and members of the Advisory Group that represent the State and Territory Associations on the Advisory Group. • On the one hand the Advisory Group is designed to provide a 'forum for consultation with the legal assistance sector' and to 'facilitate consultation with the sector. On the other hand. Advisory Group members will be required to sign confidentiality agreements and not permitted to 'discuss, distribute or allow access to information' provided to the Advisory Group by the Steering Committee, AGD or reviewer "without the consent of the Steering Committee". We think it would be useful to have further discussions about this balance and ways to ensure we can have appropriate consultation with members.