

Feedback from the National Legal Assistance Partnership Overview Paper – October 2019

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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 *National Legal Assistance Partnership – Overview Paper* of October 2019. The paper reflects of the Australian Governments' proposed future legal assistance arrangements and follows the 2018 reviews of the *National Partnership Agreement on Legal Assistance Services 2015-20* and the Indigenous Legal Assistance Program. As such, AGD requests that parties do not unnecessarily reiterate feedback provided previously in the review processes or in a publicly available submission to the reviewers.

The paper also includes an updated version of the *National Strategic Framework for Legal Assistance* based on feedback received in 2019 from state and territory departments, Commonwealth agencies that administer legal assistance programs, national legal assistance peak bodies and other relevant organisations. Previous feedback has already been considered and actioned where appropriate.

It is preferred that feedback from individual community legal centres, legal aid commissions, Aboriginal and Torres Strait Islander legal services and family violence prevention legal services should be provided to national peak bodies for a consolidated response. Comments or feedback on the Paper should be provided by completing this form which should be emailed to legalassistance@ag.gov.au by **5pm Friday 15 November 2019**.

Completed forms will NOT be published publicly (unless permission has been sought by AGD to do so).

Feedback form – NLAP Overview Paper

NLAP Overview Paper	Comment
PART 1: NATIONAL LEGAL ASSISTANCE PARTNERSHIP	
<p>Key elements to the NLAP</p>	<ul style="list-style-type: none"> • We welcome: <ul style="list-style-type: none"> ○ Implementing NLAP through multilateral and bilateral agreements. ○ Including all new and existing Commonwealth legal assistance funding with the NLAP which should significantly reduce red tape for funded Centres. ○ Delivering quarantined funding for different parts of the legal assistance sector ○ The ‘no loss principle’ in the distribution of funding. ○ Including principles of Aboriginal and Torres Strait Islander determination within the NLAP (although we have concerns about the definition of self-determination provided). ○ Provisions restricting the States and Territories from delegating the administration of Commonwealth legal assistance funding to the legal assistance sector, including LACs. The practice of outsourcing this function to LACs diverts LAC focus away from critical service provision and generates conflicts of interest within the legal assistance sector. It reduces the effectiveness of the CLC sector and undermines collaborative service planning. ○ Improved collaborative service planning, including the tiered and publicly transparent processes. • We have concerns about: <ul style="list-style-type: none"> ○ The inadequate levels of funding provided through NLAP despite overwhelming evidence that current funding levels require a more substantial increase. ○ The timeframe around the negotiations of NLAP and the multilateral and bilateral agreements. The lack of timeliness and funding certainty has already impacted on the continuity of services in some jurisdictions and will continue to compromise service delivery until agreement is settled. For example, all CLCs in the Northern Territory have lost key staff and are now unable to recruit beyond 30 June 2020. As a result services are being wound down that will take time to reinstate for a number of factors including the difficulty in recruiting staff, the reduced ability to recruit experienced staff as CLC wages do not favourably compare to other services, and the amount of time it takes to induct and train inexperienced staff.

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	<p>This has an even greater impact on rural and remote areas, where recruitment is even more challenging.</p> <ul style="list-style-type: none"> ○ Funding agreements for CLCs that are less than 5 years. Funding security enhances sector performance and should be provided to the extent possible. ALSs currently enjoy 5-year funding agreements and there must be no reduction in this level of funding security. ○ The increased workload for national and State/Territory peaks without the provision of additional resources. ○ Retaining the distinction of defined funding for family law/family violence services as it creates an administrative burden for Centres already engaged in this work (see below for more detail). ○ The lack of resourcing for CLCs and their peaks for collaborative service planning. ○ The funding allocation model and its ability to address particular kinds of disadvantage. ○ The increased performance monitoring and reporting requirements, especially in relation to data collection. ○ Not including women, LGBTIQ and asylum seekers and refugees as priority client groups. ○ The absence of a commitment to FVPLS funding, reducing the ability of the NLAP to serve as an overarching legal assistance framework. ○ The prioritisation of funding for “front line legal assistance” assumes that CLCs do not do this already. CLCs have always invested in front-line service delivery to the detriment of effective operational systems, remuneration and support for staff, organisational development etc. The focus on front line services without additional funding will result in poor resourcing of functions that are not client-facing which ultimately results in inefficiencies and bad outcomes for clients. <ul style="list-style-type: none"> ● We oppose the restriction on “lobbying” activities, including the new amendments. <p>In relation to ATSILS:</p> <ul style="list-style-type: none"> ● We do not support bringing ATSILS into NLAP; we support their call to maintain a stand-alone Indigenous Legal Assistance Program ● If the Commonwealth continues to implement the inclusion of ATSILS in NLAP, we support: <ul style="list-style-type: none"> ○ ATSILS funding being quarantined, ○ Funding going to existing providers, ○ Changing the current proposed definition of self-determination.

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PART 2: OPERATION OF THE NLAP	
Multilateral agreement	<ul style="list-style-type: none"> • The balance between multilateral and bilateral agreements provides for national consistency while allowing for relevant flexibility between jurisdictions. • Where possible, strengthen references to national and cross-border Centres/services. Centres operating across borders also face unique challenges, including inadequate funding levels, regulatory/compliance issues, and referral pathways
Bilateral agreements	<ul style="list-style-type: none"> • The balance between multilateral and bilateral agreements provides for national consistency while allowing for relevant flexibility between jurisdictions • Where possible, strengthen references to national and cross-border Centres/services
Funding streams under the NLAP	<ul style="list-style-type: none"> • We are concerned that significant additional funding has not been made available under NLAP despite the overwhelming evidence that current funding levels are grossly inadequate. • The current level of indexation indicated is insufficient to meet inflation and rising operational costs. • We support the inclusion of these funding streams except that ILAP should remain a separate program and the Expensive Commonwealth Criminal Cases Fund (ECCCF) should be outside the agreement

State and territory funding distribution

- We support the ‘no state and territory loses’ principle.
- Without further information, we have concerns about whether the funding distribution model properly addresses complex needs and intersectionality. For example:
 - The numbers of people in individual categories are not a good indication of need – economies of scale favour bigger centres that are well serviced. Instead, proportion of the local population could be used.
 - The individual factors indicated in the model do not reflect complex or compound disadvantage. Eg 80% of young people in detention in the NT are Aboriginal, often on care and protection orders, speak languages other than English, are homeless, experience violence.
 - There is a significant difference between the disadvantage of people in remote and very remote areas when compared with regional areas. It is unclear what weightings have been applied.
 - Other important indicators of vulnerability include lack of infrastructure and services, as well as education and health status
 - It is not clear how this modelling takes into account the Northern Territory population, where over 70% of CLC clients are Aboriginal or Torres Strait Islander people.
- The defined funding for family law and family violence (FLFV) is causing significant red tape and reporting burdens for CLCs in some jurisdictions:
 - The sector is delivering FLFV services well in excess of the quarantined amount; indeed, this was the case before the Commonwealth’s decision to quarantine funding in this way. Defined funding for FLFV services has not driven expansion of servicing in this area because CLCs were already doing more FLFV than can be funded with this amount alone. The sector is clearly committed to FLFV servicing and does not need quarantining to secure this commitment.
 - Some Legal Aid Commissions are imposing reporting burdens in an attempt to ‘demonstrate’ application of funding to FLFV matters. This has meant the imposition of cumbersome business rules that do not achieve their purpose. This is the very definition of red tape, diverting centre resources away from frontline service delivery and into pointless reporting.
 - Centres should only have to tender for Commonwealth and State funding in one process. This is already the case in some jurisdictions but not all. Centres in several jurisdictions have achieved or are seeking the synchronisation of funding allocations. Single tender processes will be undermined where assessment panels or other decision-makers will be required to determine applications against multiple assessment criteria depending on the kind of legal work being proposed.

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	<ul style="list-style-type: none"> ○ Defined funding undermines the flexibility of centres to respond to the specific needs of their communities or constituencies (a key CLC strength). This responsiveness to community need is why CLCs have such large FLV practices in the first place. Defined funding undercuts efforts to streamline funding processes and generates red tape, outcomes at odds with the NLAP's objectives.
State and territory funding	<ul style="list-style-type: none"> ● We support greater visibility of State and Territory funding ● This is a missed opportunity for State and Territory Governments to commit to funding legal assistance. Commonwealth commitment should be matched by commitments from jurisdictions. ● The NLAP could also include a commitment that funding from State and Territory governments should be subject to NLAP and not have different performance and monitoring requirements to reduce the administrative burden on individual service providers.
Financial arrangements	<ul style="list-style-type: none"> ● The financial arrangements need to ensure that State and Territory governments pass on funding to individual services in a timely manner to ensure service continuity. In some jurisdictions, payments have been delayed well into the next financial year, for service delivery expected to take place in the given financial year
General Principles	<ul style="list-style-type: none"> ● We support that funding cannot be used to administer the NLAP. In some jurisdictions, Commonwealth money for the CLC sector is being taxed by states to 'administer' CLC programs, with the sector having no line of sight over expenditure of these funds. ● We support quarantined funding. However, flexibility for service providers to collaborate and or subcontract services to other service providers should be ensured. ● A requirement should be included that places a positive obligation on State and Territory governments to direct NLAP funding to key systems that support front-line service delivery (e.g. CLASS). Unless the Commonwealth is going to fund CLASS outside NLAP, then some consideration should be given to efficient use of public funds. State and Territory Governments already pay CLASS access fees, to force CLCs Australia to collect CLASS fees from every Centre is an inefficient use of public funds. Similarly, each Centre procuring their own data system is an inefficient use of Commonwealth funds. ● Funding should be administered in 5-year cycles ● Services should be given at least 12 months' notice of changes to funding distributions. ● NLAP should clarify that any unspent funds must remain in the legal assistance sector and should be quarantined as per its original allocation.

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<p>Mainstream and specialist legal assistance services</p> <ul style="list-style-type: none"> • Baseline funding • Expensive Commonwealth criminal cases supplementation • Domestic violence units and health justice partnerships • Family Advocacy and Support Services 	<ul style="list-style-type: none"> • We support CLCs not being restricted in applying Commonwealth baseline funding to State law matters. • We are concerned about the inclusion of the ECCCCF into the NLAP Funding for the following reasons: <ul style="list-style-type: none"> ○ ECCCCF should be administered under a reimbursement model, as demand cannot be predicted. Reliance on the planned forecast model will likely result in case demand exceeding allocated budget in any year. ○ We are concerned that the proposed allocation will result in the diversion of funds in some jurisdictions to ECCCCF cases to the detriment of women and children who largely receive NLAP services for FLV. ○ The proposed allocation of ECCCCF will have downstream impacts on ATSILS in Victoria and New South Wales. ○ Any diversion of LAC funds to ECCCCF cases will result in downstream impacts and increased demand for CLC services, increasing the risk that victim-survivors may miss out on being able to access essential legal information, advice or representation.
<p>Aboriginal and Torres Strait Islander specific legal assistance services</p> <ul style="list-style-type: none"> • Baseline funding 	<ul style="list-style-type: none"> • Baseline funding for ATSILS should be increased to reflect the disproportionate number of Aboriginal and Torres Strait Islander people in contact with the justice system • All existing ATSILS provide services across a whole jurisdiction; it is unclear how there could be a “demonstrable and substantial shift in legal need within a jurisdiction”. This dot point should be removed as a ground to remove funding from an existing ATSILS. • Any concerns about performance should be subject to a fair, transparent and objective process • We support the inclusion of the self-determination principles in NLAP, However, the language should be strengthened to be consistent with the United Nations Declaration on the Rights of Indigenous Peoples. We support the submission made by NATSILS about proposed word changes.
<p>Payments</p>	
PART 3: OBJECTIVE AND OUTCOMES	
<p>Objective and outcomes</p>	<ul style="list-style-type: none"> • We welcome: <ul style="list-style-type: none"> ○ Participation and engagement in collaborative service planning by all parties ○ Sharing of information and resources which support the delivery of legal assistance services.

NLAP Overview Paper	Comment
PART 4: ROLES AND RESPONSIBILITIES	
Role of the Australian Government <ul style="list-style-type: none"> • Policy and strategic guidance • Provision of funding • Sector planning and development • Performance monitoring 	<ul style="list-style-type: none"> • We welcome the more clearly articulated role of the Australian government, especially in relation to collaborative service planning and the sharing of information and resources.
Role of states and territories <ul style="list-style-type: none"> • Policy and strategic guidance • Allocation of funding • Sector planning and development • Performance monitoring 	
Shared roles and responsibilities	
PART 5: COLLABORATIVE SERVICE PLANNING	
Scope of collaborative service planning	<ul style="list-style-type: none"> • Overall, we support the redefinition and clarification of the scope of collaborative service planning, including the tiered system. • We welcome the decoupling of collaborative service planning and the allocation of funding to individual CLCs. • Having one legal assistance provider manage another provider’s program (e.g. a LAC managing a CLC program) undermines collaborative service planning. • We are interested in how collaborative service planning can address the particular issues faced by national and cross-border services in meeting the needs of their communities. NLAP should reference the importance of this. • Some flexibility should be given to smaller geographical jurisdictions in the way in which they might (or might not) implement local collaborative service planning. • We are concerned that no additional resources are being made available to CLCs and their peaks to engage in collaborative service planning
Purpose	
Activities <ul style="list-style-type: none"> • Mapping • Building 	

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Tiered collaborative service planning structure	<ul style="list-style-type: none"> • CLCs are agile and innovative organisations, which in response to community need, are already expert and adept at: <ul style="list-style-type: none"> ○ Using available resources efficiently and effectively ○ Reallocating, consolidating and sharing resources ○ Changing service delivery approaches ○ Adjusting triage practices ○ Collaborating or co-locating with other service providers, and ○ Merging administrative functions
National collaborative service planning	<ul style="list-style-type: none"> • We are interested in how collaborative service planning – whether at the national level or local level – can address the needs of people living in cross border communities (and their service providers), which face additional, complex challenges due to often navigating multiple laws and systems.
Jurisdictional collaborative service planning	
Local collaborative service planning	
PART 6: PERFORMANCE MONITORING AND REPORTING REQUIREMENTS	
National performance indicators	<ul style="list-style-type: none"> • Note: the expanded national performance indicators will involve change requests to CLASS so that State Governments can provide the reports required. It does not appear that funding is being made available to update data systems like CLASS.
State and Territory outputs <ul style="list-style-type: none"> • Legal Assistance Strategy • Legal Assistance Action Plan 	<ul style="list-style-type: none"> • We support the requirement for a Legal Assistance Strategy and Legal Assistance Action Plan but: <ul style="list-style-type: none"> ○ We are concerned about how services and their peaks might engage in the development of these without additional resources; and ○ We are keen to ensure that their development does not create additional reporting and compliance burdens for individual services • We are interested in how the Legal Assistance Strategy might address issues of intersectionality and complex disadvantage and discrimination. • Legal Assistance Strategy and Action Plan should consider cross-border (and national) issues

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<p>Reporting requirements</p> <ul style="list-style-type: none"> • Statement of Services and Funding • Jurisdictional Performance Report • Legal Assistance: National Services Summary 	<ul style="list-style-type: none"> • We do not support the collection and reporting of additional data while legal assistance remains chronically underfunded and there is no outcomes framework to assess the impact of service delivery. • Data is important, but the collection of meaningless data is counterproductive. The Commonwealth sensibly proposes that an outcomes framework will be developed over the life of the NLAP, and this framework should drive decisions around data collection. • We are concerned about the impacts that additional data collection requirements might have on service providers and the reduction in front-line service delivery as a result. • We are extremely concerned about the provision of unit-level data to AGD at this stage, without having a clearer understanding of what issues we are trying to address: from the difference we seek to make to the actions that might make that difference, to what data might help that story. • For services like ours that deliver holistic, comprehensive supports to people with complex matters that often have a public interest dimension, ‘time taken’ per service is not a sensible measurement. This is particularly the case for our specialist centres, all of which have a disproportionately complex caseload and often run cases over years.
<p>Transition to an outcomes-based framework</p>	<ul style="list-style-type: none"> • We welcome this transition and again raise that any changes to the reporting framework needs to come with additional resources to support change management.
<p>PART 7: GOVERNANCE ARRANGEMENTS</p>	
<p>Legal Assistance Services Inter-Governmental Committee</p>	
<p>Advisory Group</p>	<ul style="list-style-type: none"> • We support the establishment of the Advisory Group.
<p>Review of the NLAP</p>	<ul style="list-style-type: none"> • We support a review of NLAP, with that review taking place at least 18 months before the expiry of the agreement.
<p>PART 8: COMMONWEALTH PRIORITIES</p>	
<p>National priority client groups</p>	<ul style="list-style-type: none"> • The national priority client groups should include: <ul style="list-style-type: none"> ○ Women, ○ LGBTIQ people ○ Asylum seekers and refugees • Some consideration should also be given on how to include public interest matters.

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Commonwealth service priorities	<ul style="list-style-type: none"> • We oppose the distinction being made between front-line service delivery and law reform; any distinction is arbitrary. • We also oppose the principle that strategic policy and law reform should be led by relevant peak bodies. It represents a fundamental shift in the way that we work as a sector. More often than not, the “frontline legal assistance providers” are more expert in the issue at hand than the relevant peak body. Further, the peaks are not resourced well enough to have this responsibility. This principle would only have a silencing effect on CLC work which would be a loss to government and the wider community. • We have provided multiple submissions on how law reform is an effective early intervention measure that CLCs employ as an efficient use of government funds
Commonwealth law priorities	

NLAP Overview Paper	Comment
Lobbying and campaigning activities	<ul style="list-style-type: none"> • Our first position is that there should be no restriction on CLCs undertaking systemic advocacy work • In particular, we oppose the definition of lobbying and campaigning that is proposed for NLAP. Specifically, the last 2 dot points on page 22 should be struck out in their entirety. • There are significant efficiencies in using casework to inform systemic reform and lobbying for law reform that will deal with bad law and result in savings to the justice system. It is one of the most effective ways to support prevention, a stated objective of the NLAP. • Peak bodies are not necessarily versed in specialisations or particular community issues. • CLCS are responsive to and immersed in communities and act as a filter to provide information and lobby the government about issues that impact the community. • Services are community-based – Central Australia is a world apart from the Top End, similarly one remote community is not the same as another. Different issues arise depending on where you are and the community being serviced and it just creates further administration to require a peak body to advocate when they may be removed from the issues. • Many centres have great expertise in particular areas, and it is sensible that they lead advocacy efforts in those areas. • There seems to be a suggestion that CLC lobbying and campaigning works against Government, but in fact the sector often finds through this work the policy and legislative solutions that governments later adopt. State Governments tend to recognise this. • In implementing this advocacy ban the Commonwealth undermines one of the great strengths of the CLC sector and restricts efforts to find the solutions required to overcome the barriers to justice experienced by many in Australia. • If the Commonwealth insists on including a ban on lobbying and campaigning, our strong submission is to retain the wording in the current NPA.
PART 9: NATIONAL STRATEGIC FRAMEWORK FOR LEGAL ASSISTANCE	
Updated National Strategic Framework for Legal Assistance	
Legal need in Australian	
Overview of the National Strategic Framework	<ul style="list-style-type: none"> • We support the inclusion of the self-determination principles in NLAP, however the language should be strengthened to be consistent with the United Nations Declaration on the Rights of Indigenous Peoples. We support the submission made by NATSILS about proposed word changes.

NLAP Overview Paper	Comment
Objective of the National Strategic Framework <ul style="list-style-type: none"> Self-determination 	
Purpose of legal assistance services	
Principles	
Principle one: Focus service delivery on people facing disadvantage	
Principle two: Client centred and appropriate services	
Principle three: Collaboration and integrated approaches	<ul style="list-style-type: none"> More consideration should be given to cross-border and national issues
Principle four: Appropriately timed responses and preventative action	
Principle five: Empowerment and resilience	
Principle six: Continuous learning, improvement and support	
Next steps and finalisation of the National Strategic Framework	
A. NATIONAL PERFORMANCE INDICATORS	
Overview	
Number and percentage of clients receiving legal assistance who are financially disadvantaged disaggregated by priority client groups.	
Number and percentage of services delivered by legal assistance providers, disaggregated by: <ul style="list-style-type: none"> funding category (Commonwealth or state or territory funding) intensity (service category and service type – for example, representation services is the service category and court/tribunal is the service type) law type and problem type (for example, criminal law is the law type and aggravated assault is the problem type), and client type (indicators of disadvantage and priority client groups). 	

NLAP Overview Paper	Comment
Assessment of clients' experience of legal assistance services, addressing issues relating to: <ul style="list-style-type: none"> • accessibility • service quality and relevance to legal need • appropriate referral, and • overall utility in improving client outcomes (timeliness and increased confidence to take action). 	
Number of referrals made to and from legal assistance providers, disaggregated by source, provider referred to and reason.	
Number of training or capacity building activities conducted or undertaken by legal assistance providers, with other services.	
Interpretation	<ul style="list-style-type: none"> • Does not address the issues CLCs have been raising in the Data Standards Working Group about a new category of Ongoing Legal Support.

B. JURISDICTIONAL PERFORMANCE REPORT	
Overview	
Information relating to each jurisdiction's Legal Assistance Strategy and Legal Assistance Action Plan.	
De-identified data of services provided by legal assistance providers, funded by the Commonwealth and the states and territories.	
Case studies relating to the range of service delivery models used by legal assistance providers. Service delivery model refers to the range of practices undertaken by legal assistance providers in the delivery of services to clients. This case study would capture information relating to: <ul style="list-style-type: none"> • detailed description of the service delivery model used • cost in providing services, and • benefits and barriers to clients. 	
Case studies relating to the triage models used by legal assistance providers.	