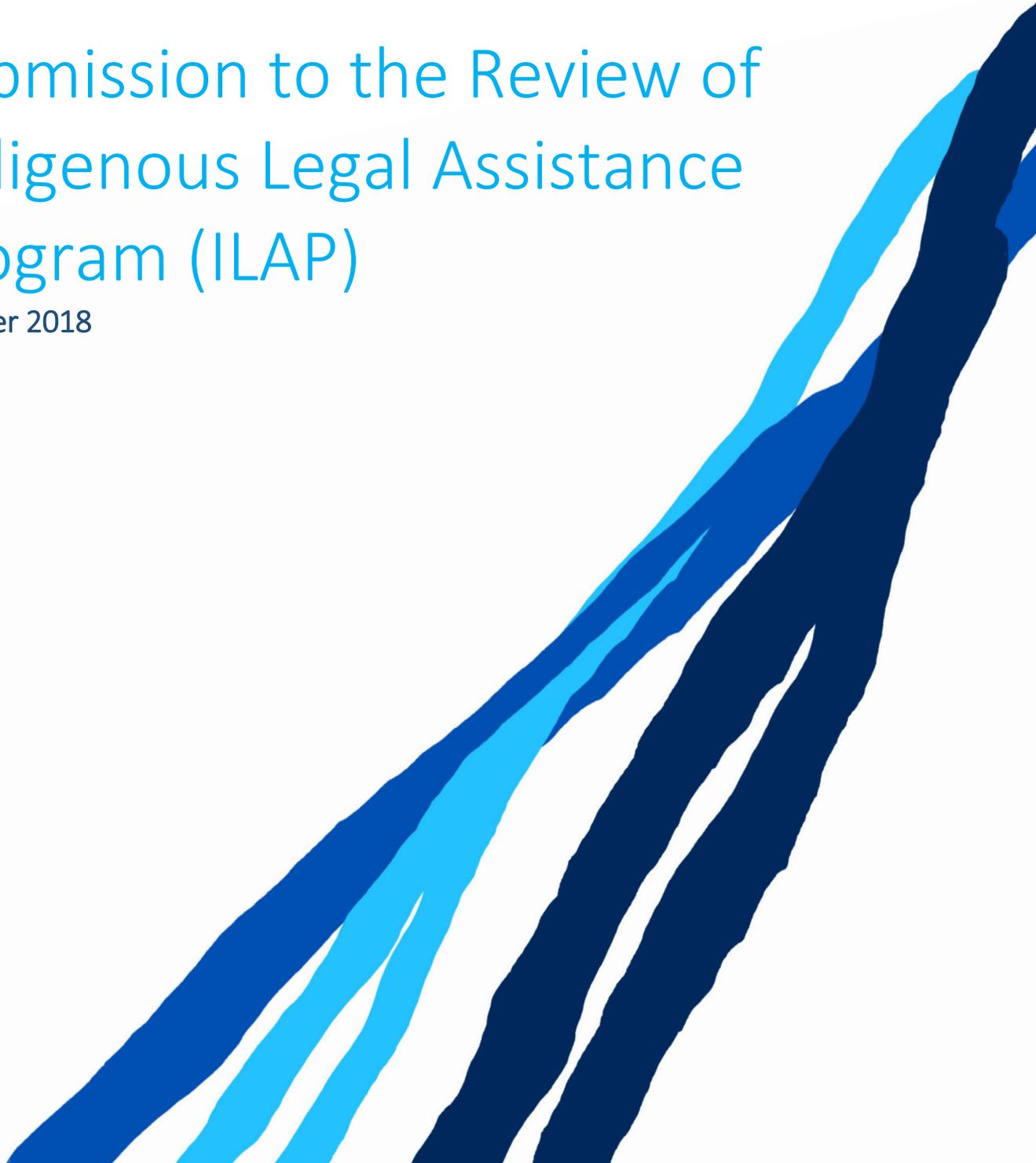




# Submission to the Review of Indigenous Legal Assistance Program (ILAP)

October 2018



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## Introduction

The National Association of Community Legal Centres (NACLC) provides this submission to Cox Inall Ridgeway in response to the Discussion Paper released as part of the current review of the Indigenous Legal Assistance Program (ILAP).

NACLC is the national peak body for the community legal sector. Our members are the eight State and Territory Community Legal Centre Associations. We do not receive direct funding under ILAP or the *National Partnership Agreement on Legal Assistance Services 2015-2020* (NPA).

A number of Aboriginal and Torres Strait Islander Legal Services (ATSILS) and Family Violence Prevention Legal Services (FVPLS) are members of their State and Territory CLC Association. In particular, the Victorian Aboriginal Legal Service (VALS) and Tasmanian Aboriginal Community Legal Service (established by VALS) are members of the Federation of Community Legal Centres (Victoria) and as a result fall under the NACLC umbrella. This means they are accredited under the National Accreditation Scheme (NAS) coordinated by NACLC and have access to the services and supports we provide.

The focus of this submission is on ATSILS and the relationship between CLCs and ATSILS as well as NACLC and NATSILS as peak bodies. We have made separate submissions in relation to the NPA Review and will engage separately in the current evaluation of the FVPLS.

This submission addresses each of the Review Terms of Reference outlined in the Discussion Paper and makes a range of suggestions and recommendations about ways to improve the current and future ILAP (as well as the broader context within which ILAP operates) throughout the body of the submission.

## Overview

Each of the four publicly funded legal assistance services: Community Legal Centres (CLCs), Aboriginal and Torres Strait Islander Legal Services (ATSILS), Family Violence Prevention Legal Services (FVPLS) and Legal Aid Commissions (LACs) play an important, unique and complimentary role in providing legal help to people across Australia.

All legal assistance providers are not-for-profit organisations that work to provide legal and related help to people across Australia who would not otherwise be able to access such help. Our services play an essential role in facilitating access to justice and assisting individual clients as well as contributing to broader systemic reform of the justice system. In particular, the work of ATSILS, FVPLS and CLCs as community based and/or community controlled organisations is of vital importance in ensuring people and communities receive the legal help they need.

Our position is that the most appropriate providers of legal services for Aboriginal and Torres Strait Islander peoples are the ATSILS and FVPLS as community-controlled organisations with specialist expertise in providing culturally safe services to Aboriginal and Torres Strait Islander people.

Aboriginal and Torres Strait Islander peoples have experienced, and continue, to experience, historical marginalisation from mainstream services, and generally prefer to and feel culturally secure in attending Aboriginal and Torres Strait Islander specific services. In some instances these providers may be unable to assist a client because of real or perceived conflict, lack of resources, or because it is a specialist area of law that is outside their practice expertise, in which case a CLC may offer assistance. For example:

- 11.5% of CLC clients nationally are Aboriginal and/or Torres Strait Islander peoples<sup>1</sup>
- 42.3% of centres who responded to the 2017 NACLCL National Census indicated they have a specialist program for Aboriginal and/or Torres Strait Islander peoples.<sup>2</sup>

As a result, we work to ensure CLCs provide culturally appropriate/competent services (including through a mandatory cultural safety requirement as part of our National Accreditation Scheme) and provision of support and resources.

However, given the critical importance of ATSILS and FVPLS, and the significant legal need of Aboriginal and Torres Strait Islander people, funding and support for the ATSILS and FVPLS should be a vital component of the Government's commitment to addressing the crisis in legal assistance.

The current reviews of the NPA and ILAP provide a useful opportunity to consider the operation of the NPA and ILAP, but also more broadly the interaction between these and the decision-making, funding, administrative and policy settings for the legal assistance sector.

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<sup>1</sup> Report from CLASS.

<sup>2</sup> NACLCL, *National CLCs Census Final Report (2017)* forthcoming.

## Term of Reference 1 (Impact of ILAP on Delivering Cost Effective, High Quality, Culturally Appropriate and Accessible Indigenous Legal Assistance Services)

### Summary

- ATSILS play a vital role in providing holistic and culturally safe Aboriginal and Torres Strait Islander community controlled legal services
- As a matter of principle, we support the position of NATSILS that ATSILS should not be administered or funded under the NPA but rather retain the separate and independent ILAP
- We echo NATSILS calls to ensure that the funding and administration of, and engagement with, ATSILS respects the right to self-determination for Aboriginal and Torres Strait Islander peoples and communities
- If in the course of this Review there is consideration being given to incorporating funding and administration of ATSILS under the NPA (or future NPAs), we offer some brief reflections on the NPA below. Overall, in our experience of the NPA it had the potential to improve funding and administration of the sector but its overall implementation and operation has not delivered many of its potential opportunities
- There is a need for greater Commonwealth leadership as well as more meaningful and shared engagement and responsibility between the Commonwealth and State and Territory Governments with respect to the legal assistance sector

Our position is that the most appropriate providers of legal services for Aboriginal and Torres Strait Islander peoples are the ATSILS and FVPLS as community-controlled organisations with specialist expertise in providing culturally safe services to Aboriginal and Torres Strait Islander people.

ATSILS play a vital role in providing holistic and culturally safe Aboriginal and Torres Strait Islander controlled legal services. To the extent that the current ILAP frameworks and agreements do not facilitate this important work, there is a need to ensure ILAP appropriately resources and supports ATSILS to provide these services.

The current reviews of the NPA and ILAP provide a useful opportunity to consider the operation of the NPA and ILAP, but also more broadly the interaction between these and the decision-making, funding, administrative and policy settings for the legal assistance sector.

The outcomes of ILAP appropriately focus on improving access to justice for Aboriginal and Torres Strait Islander people and reducing the disproportionate disadvantage experienced by Aboriginal and Torres Strait Islander people in the justice system. It also seeks to ensure there are culturally safe services.

As a matter of principle, we support the position of NATSILS that ATSILS should not be administered or funded under the NPA but rather retain the separate and independent ILAP. We echo NATSILS calls to ensure that the funding and administration of, and engagement with, ATSILS respects the right to self-determination for Aboriginal and Torres Strait Islander peoples and communities.

If in the course of this Review there is consideration being given to incorporating funding and administration of ATSILS under the NPA (or future NPAs), we offer some brief reflections on the NPA below (which are more fully articulated in our main submission to the NPA Review).

We note that in our experience of the NPA, it had the potential to improve funding and administration of the sector but overall the implementation and operation of the NPA itself, as a partnership between the Commonwealth and State and Territory Governments, has not delivered many of its potential opportunities.

For example, we have observed:

- that the NPA was intended to, but did not, provide funding certainty to CLCs
- significant inconsistency across jurisdictions with respect to funding and administration of the sector and State and Territory governments have taken vastly different approaches, with mixed results
- the need for greater Commonwealth leadership to support good practice and national consistency following its reduced role in overseeing and guiding sector funding, administration and work
- the need for more meaningful and shared engagement and responsibility between the Commonwealth and State and Territory Governments for the sector
- ongoing duplication of reporting requirements, particularly given allocation of Commonwealth funding outside the NPA
- increased pressure and reliance on CLC peak bodies with no, or limited funding to undertake vital coordination, information sharing, support and engagement work

In our submission to the NPA Review we have outlined a range of suggested amendments to the NPA itself as well as the associated structures, roles and responsibilities to improve its operation and effectiveness.

More broadly we note the importance of greater Commonwealth leadership (and a coordinated and whole of government approach to funding of the legal assistance sector) as well as more meaningful and shared engagement and responsibility between the Commonwealth and State and Territory Governments with respect to the legal assistance sector.

## [Review Term of Reference 2 \(Implementation of Collaborative Service Planning\)](#)

### Summary

- Collaboration between legal assistance services as well as with other non-legal community organisations in relation to service delivery and planning has been occurring over many years, including between CLCs and ATSILS
- One of the key processes and mechanisms most likely to support appropriate coverage of services across Australia and that those services are responsive, effective and holistic is Collaborative Service Planning
- However, Collaborative Service Planning is not currently occurring in an effective way across Australia, or in a way that contributes to the objectives and outcomes of the NPA or ILAP

- There is significant inconsistency and limited information-sharing across jurisdictions, resulting in widely different practice and duplication of work underlying CSP
- CSP is not currently operating in a way to ensure or benefit from the engagement of ATSILS
- There are a range of barriers to effective CSP and significant opportunities for improvement upon existing CSP frameworks, mechanisms and processes across Australia
- NACLC has developed a National Position Paper on Collaborative Service Planning, which outlines the national position on the hallmarks of good practice CSP, outlined in this section. We suggest that these provide a useful basis for considering opportunities and ways in which to improve CSP nationally and in specific jurisdictions
- We also suggest increased accountability of State and Territory Governments with respect to CSP to ensure real progress and outcomes as well as greater transparency in reporting around CSP
- We do not consider CSP is intended or designed as an outcome to measure the success of ATSILS performance and allocation of funds.

## Collaboration

Collaboration between legal assistance services as well as with other non-legal community organisations in relation to service delivery and planning has been occurring across Australia over many years.

There is long history of CLCs and ATSILS collaborating and working in partnership. For example, the 2017 National CLC Census indicated that of the centres that responded to the survey:

- 14.9% of CLCs partner with ATSILS in the delivery of legal services
- 10.9% of CLCs partner with ATSILS in policy, advocacy and law reform projects, and
- 9.9% of CLCs partner with ATSILS in the delivery of community legal education.<sup>3</sup>

Collaboration and working in partnership is particularly important in the context of providing support and assistance to particularly vulnerable and disadvantaged clients and communities given the importance of holistic engagement and coordination with a range of organisations to meet not only the legal needs but also broader needs of each person.

Importantly however, this collaboration takes time (for example, to establish trust and true partnerships) as well as resources.

In the context of this broader tradition of collaboration, the NPA and service agreements under ILAP introduced formal requirements to undertake Collaborative Service Planning (CSP), a term developed in the context of the NPA, but building on the collaboration in relation to service delivery and planning that has been occurring across the sector over many years.

## Overview of Collaborative Service Planning

There are a number of components to ensuring appropriate coverage of services across Australia and that those services are responsive, effective and holistic. The central component is adequate, sustainable and predictable funding of services to meet legal need.

To ensure legal and related services are provided in an appropriate and effective way, there is also a need for co-design, coordination and collaboration between governments, the community legal sector,

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<sup>3</sup> NACLC, *National CLCs Census Final Report (2017)* forthcoming.

LACs and other providers of legal and non-legal support and assistance. Given the availability of insufficient funding to meet legal need, there is also a need to determine ways in which to target and tailor delivery of services to best meet the needs of priority groups or people who seek legal help in priority areas.

One of the key processes and mechanisms most likely to support the achievement of these things is CSP. As a result, we welcome the inclusion of requirements around CSP in the NPA and ILAP and the attendance of AGD at many CSP meetings across Australia. However, CSP is not currently occurring in an effective way across Australia, or in a way that contributes to the objectives and outcomes of the NPA or ILAP.

### Barriers to Effective CSP

There are a range of barriers that have prevented effective CSP. These include:

- lack of national guidance or structures, other than very limited requirements under the NPA (for example no explicit detail in ILAP)
- lack of expertise at State/Territory level to design and lead CSP
- overall funding inadequacy which ultimately results in CSP processes moving service gaps around as well as resulting in forced competition between service providers
- limited resources for CSP, including often no additional funding to undertake CSP despite the time and resources involved
- limited information sharing across jurisdictions, resulting in widely different practice and duplication of work underlying CSP
- limitations in CSP structures, processes and understanding of the mix of legal assistance services required to meet the legal needs of vulnerable clients has meant CSP has often not considered the important but distinct role of specialist services or those operating nationally or across borders
- the existing evidence base or approach to measuring legal need (for example the 2008 Legal Australia-Wide (LAW) Survey), is outdated and had a number of methodological limitations, including in measuring legal need of Aboriginal and Torres Strait Islander peoples
- on the whole, a failure to fund peak CLC bodies to support CSP
- sector capacity without provision of resources or training to engage in CSP, and
- difficulty engaging all legal assistance providers, which has meant CSP on the whole has not benefited from the perspectives and experiences of all legal assistance providers (particularly ATSILS and FVPLS).

### Opportunities for Improvement and Hallmarks of Good Practice

Given the potential benefits of CSP, but in light of the barriers outlined above, there are significant opportunities for improvement upon existing CSP frameworks, mechanisms and processes across Australia.

NACLC has developed a National Position Paper on Collaborative Service Planning, which is included below which outlines the national CLC position on the hallmarks of good practice CSP. We suggest that these provide a useful basis for considering opportunities and ways in which to improve CSP:

## Commonwealth Leadership and National Consistency

1. The Commonwealth Government should provide leadership, guidance and support in relation to CSP, including through:
  - Provision of additional funding to the sector to undertake and engage in CSP (discussed further below)
  - Facilitation of national consistency in the key elements of, and approaches to, CSP
  - Sharing information with governments and the sector about CSP processes and progress across jurisdictions
  - Developing good practice guidance and/or materials to inform CSP
2. A national inter-agency forum or similar should be created to oversee CSP nationally, hosted by the Commonwealth Attorney-General's Department. Such a forum would provide oversight over CSP nationally and should include representatives from each of the four key legal assistance providers, through their peak bodies, as well as representatives from the Commonwealth government and State and Territory Governments. It should be separate to the Australian Legal Assistance Forum (ALAF). Briefings should be provided to the group from jurisdictional CSP forums/groups.

## Purposes

3. The purposes of CSP include:
  - building understanding of the existing and emerging legal and related needs in communities
  - facilitating coordination between service providers in the planning and delivery of services as well as referral pathways and opportunities for partnerships
  - mapping of existing services and identification of service gaps
  - facilitating information-sharing between providers
  - providing a mechanism and/or forum for consideration of research, projects and similar that will support and facilitate CSP and good practice service delivery
  - informing the allocation of LAC, CLC, ATSILS and FVPLS funding, and
  - providing information and guidance to governments on the administration and funding of the legal assistance sector.
4. CSP should involve mapping and consideration of all services provided by legal assistance service providers and actively inform decisions about ongoing service delivery by all service providers.

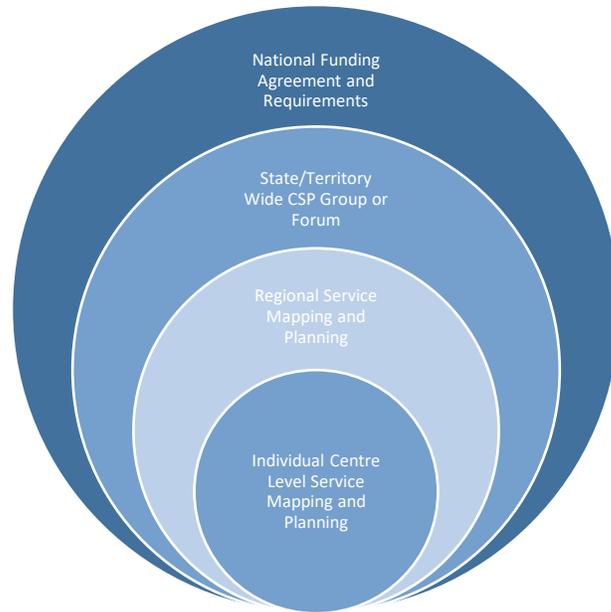
## Structure, Parties and Processes

5. All legal assistance providers, including Community Legal Centres, Legal Aid Commissions, Aboriginal and Torres Strait Islander Legal Services and Family Violence Prevention Legal Services should be invited and encouraged to contribute to and engage in CSP.
6. CSP processes should be governed by clear structures, processes, project plans and timetables, as well as appropriate timeframes for consultation and decision-making.
7. CSP should occur at (or be informed by input from) national, State and Territory and regional/local levels, each feeding into the other (see diagram below).
8. Peak CLC bodies, including NACLIC and NATSILS have a key role to play in CSP
9. At a State/Territory level there should be one central group/forum with dedicated responsibility for leading collaborative service planning. In addition:

- The State/Territory Department of Justice or equivalent should lead and have secretariat responsibility for CSP
  - The group must have established Terms of Reference and clear and consistent membership, including representatives of all legal assistance providers nominated by the relevant organisation or peak body
  - The group must develop a clear Project Plan, with appropriate implementation and monitoring mechanisms and provision of progress reports against the Plan
  - Working Groups with responsibility for progressing specific elements of CSP could be established to sit under and report back to the central group/forum.
10. At a regional/local level, regional CSP provides an opportunity to build more locally based service plans through data collection and analysis and consideration of local/regional service delivery. At a regional level CSP may involve legal and non-legal providers outside the legal assistance sector. Consideration should also be given as to how to incorporate the work of state-wide services at regional and local CSP levels.
  11. Individual centres should undertake centre-based mapping and service planning but must be provided with appropriate resource to undertake this work. This can include use of the NALCL Legal Needs Assessment Toolkit, to inform their work and engagement with broader CSP processes.
  12. CSP must be undertaken in a culturally safe and appropriate way, acknowledging the expertise of ATSILS and FVPLS as community controlled organisations in providing services to Aboriginal and Torres Strait Islander people and communities.
  13. All providers must be treated equally as part of collaborative service planning. Consultation, discussion and collaboration must be genuine, respectful, in good faith and grounded in a commitment to partnership.<sup>4</sup>

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<sup>4</sup> For example, the following principles have been developed to guide CSP in NSW: We will ensure that our collaborative efforts adhere to the following guiding principles: **Commitment and participation** – we are committed to the working collaboratively and will actively participate in the collaboration. **Positive working relationship** – we will ensure fair and transparent decision making, recognising the strengths, culture and voice of all partners. **Transparency** – we will share information and ideas that will support and strengthen collaborative service planning processes. **Independence** – we will value and respect independence within the partnership, recognising each other’s contributions and acknowledging each other’s strengths. **Equal standing and responsibility** – all partnering organisations have an equal standing in the partnership and are equally responsible for the outcomes of the partnerships. **Joint learning** – we will learn from each other, with the aim of incorporating learning, communications and knowledge-sharing into the relationship.



### Resources

14. Additional and separate funding must be provided to support collaborative service planning. This should include funding for: individual centres; jurisdictional groups/forums undertaking or contributing to CSP; and peak CLC bodies at a State/Territory and national level.

### Research and Evidence Base

15. It is vital that a solid, relevant and current evidence-base is established to inform CSP that is easily accessible to governments and the sector.
16. There is a need to ensure that both quantitative and qualitative data is captured and considered as part of CSP so that it is a 'data informed' process rather than 'data driven' process.
17. The NSW Law and Justice Foundation Collaborative Planning Resources should be used to support CSP, but must be up-to-date and accessible.<sup>5</sup>
18. Other data sources/evidence bases should also be used to inform planning. This should include information, research and data in relation to demographic data, factors driving or impacting legal need (for example the impact of Government policy decisions and implementation on priority groups and the impact of local factors including natural disasters, major employer closures and similar), the existence of relevant social and community services and supports, and good practice service design and delivery. It is also important to consider and incorporate data that recognises the client groups and role of specialist services.
19. There is a need for funding and support for research and thinking about CSP, including consideration of work being undertaken in other sectors of relevance to measuring a particular need and then funding and planning delivery of services accordingly.

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<sup>5</sup> For example, we understand that the NSWLJF has recently updated its Evidence of Legal Need resource for the upcoming procurement/application process in NSW.

### Relationship between CSP and Funding

20. CSP processes and outcomes should inform the allocation of Commonwealth and State/Territory funding for legal assistance services but those decisions should be made by way of separate and independent process (es).
21. CSP should only be used to inform decision-making with respect to new or additional funding, or in the context of a guaranteed base for existing services.

### Support, Capacity Building and Training

22. It is important that senior and wherever possible, consistent representatives from organisations are involved in CSP mechanisms and processes and that they are provided with appropriate support, training and resources to support their engagement.

### Other Issues

23. It is important for CSP in each jurisdiction to meaningfully plan, consider and account for:
  - specialist and generalist services
  - national and state-wide services
  - services that operate across jurisdictions
  - pro bono services and partnerships
24. CSP should involve mapping and planning of direct client service delivery, but also Community Legal Education and systemic law reform, policy and advocacy work
25. CSP is likely to be an iterative process and it is important for there to be monitoring and accountability mechanisms in place, including reviews of CSP in each jurisdiction to ensure the structure, processes and outcomes are effective and appropriate. There is also a role for greater oversight and accountability by the Commonwealth to ensure real progress and outcomes arising from CSP.

### Opportunities for Reform

The hallmarks of good practice outlined above provide clear suggestions as to ways in which existing approaches and structures across jurisdictions might be amended to improve the effectiveness of CSP.

In addition we also suggest reform to increase the accountability of State and Territory Governments with respect to CSP to ensure real progress and outcomes as well as greater transparency in reporting around CSP.

More broadly, consistent with the hallmarks outlined above, it is important to review CSP overall to ensure it more appropriately considers the legal need of Aboriginal and Torres Strait Islander peoples and facilitates engagement by ATSILS. For example, it is appropriate for CSP frameworks to recognise ATSILS and FVPLS as the preferred providers for legal services for Aboriginal and Torres Strait Islander peoples.

We do not consider CSP is currently intended or designed as an outcome to measure the success of ATSILS performance and allocation of funds. With some of the reforms outlined above, including more appropriate measurement of the legal need of Aboriginal and Torres Strait Islander peoples; reform of CSP structures and processes to better support and facilitate engagement by ATSILS; and appropriate resourcing to support CSP, it could be a useful mechanism to more comprehensively map legal need and inform the allocation of funding.

### Term of Reference 3 (Effectiveness, Efficiency and Appropriateness of the ILAP Funding Arrangements)

#### Summary

- Current levels of Commonwealth funding are insufficient to meet the broad and important outcomes of ILAP and there is a significant need for reversal of ongoing savings measures as well as broader funding increases
- Ensuring certain, predictable, long-term and sustainable funding for the sector is a vital part of ensuring it can operate most effectively. We understand that ILAP has not provided funding certainty to ATSILS
- Policy, advocacy and law reform work is a vital part of the work of the legal assistance sector, including ATSILS, and should be funded and supported under ILAP
- There is a critical need for ongoing funding of NATSILS as the peak body for ATSILS

#### Level of Funding

It is clear that the overall funding provided to ATSILS is insufficient to meet current or rising legal need of Aboriginal and Torres Strait Islander people in Australia and that the level of funding currently provided to ATSILS under ILAP is a key barrier to meeting the objectives and outcomes of ILAP.

#### Background

As the Productivity Commission noted in 2014 (which remains true) ‘the total quantum of funds allocated is not sufficient to achieve governments’ stated priorities’<sup>6</sup> and that ‘the global funding envelope provided to legal assistance providers by Australian governments should be broadly related to the costs associated with meeting these priorities’,<sup>7</sup> which is not currently the case.

The vital work of the legal assistance sector (including ATSILS) generates savings to governments and the community as a whole. As the Productivity Commission has noted:

- the ‘positive spill-over or flow on effects to the wider community from providing legal assistance services’<sup>8</sup> justify government involvement in, and funding of, legal assistance services
- in many types of disputes, the avoided or flow-on costs are greater than the cost of providing funding to legal assistance services to provide the assistance<sup>9</sup>

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<sup>6</sup> Productivity Commission of Australia, Access to Justice Arrangements Inquiry Report No 72 (September 2014) 741.

<sup>7</sup> Ibid, 743.

<sup>8</sup> Ibid, 666.

<sup>9</sup> See, eg, Ibid, Appendix K, 1054.

- ‘legal assistance services can prevent or reduce the escalation of legal problems, which in turn can mean reduced costs to the justice system and lower costs to other taxpayer funded services (in areas such as health, housing and social security payments)’.<sup>10</sup>

A number of inquiries and reviews have recommended increased funding to the sector, including ATSILS. For example:

The Productivity Commission’s 2014 Access to Justice Arrangements Inquiry was clear—there is a need for an immediate injection of \$200 million per year into legal assistance with 60% contributed by the Commonwealth Government and 40% contributed by State and Territory Governments.

In 2014 when the report was released, the Productivity Commission expressed the view that this was an urgent and interim measure, necessary to address “the pressing nature of service gaps” and needs including maintaining existing frontline services. Since 2014 there have been three Federal Budgets, each failed to address these services gaps by not providing additional funding, resulting in an extra \$360 million shortfall since 2014 and thousands of people have been and continue to be turned away from essential legal services.

More recently, the Law Council of Australia’s Justice Project recommended that Commonwealth, State and Territory Governments should invest significant additional resources in the legal assistance sector to address critical civil and criminal legal assistance service gaps. The Report suggested that at a minimum it should include \$390 million per annum.<sup>11</sup>

### [Increased Funding](#)

Building on the recommendations of these key inquiries and reviews, there is a clear need for increased funding of ATSILS to assist ATSILS to meet the broad and important outcomes of ILAP.

We support the funding principles articulated by NATSILS in its submission to this Review with respect to ILAP funding, including that funding should be evidence-based, adequate, sustainable, co-designed, transparent, equitable, secure, quarantined and community-controlled.

Increased funding for ATSILS has two components:

1. Reversal of ongoing funding cuts as a result of ‘savings measures’
2. Increased funding to meet the needs of Aboriginal and Torres Strait Islander peoples, including through facilitating their access to justice and exercise of their rights and to reduce the disproportionate disadvantage experienced by Aboriginal and Torres Strait Islander peoples in the justice system.

### [Reversal of Ongoing Funding Cuts](#)

Community legal centres and ATSILS have faced significant funding uncertainty and a range of funding cuts and ‘savings measures’ in recent times.

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<sup>10</sup> Ibid, 666.

<sup>11</sup> Law Council of Australia, Justice Project (2018), rec 2.1.

We understand that the ILAP is subject to an ongoing government savings measure introduced in the 2013-14 Mid-Year Economic and Fiscal Outlook (MYEFO) and is facing another projected \$10 million in cuts from 2020-2022.

Given the value of ATSILS, significant and rising levels of legal need and the broad intended goals of the ILAP, we strongly recommend reversal of these projected funding cuts. Despite the critical and effective work of ATSILS across Australia, achievement of the ILAP goals would appear to be extremely difficult in the context of limited and reduced funding.

#### *Increased Funding*

In addition to reversal of the existing savings measures, we also strongly recommend increased funding for ATSILS as part of the broader legal assistance sector in line with the recommendations made by the Productivity Commission and Justice Project.

#### *A Cooperative Approach to Funding*

In addition to increases in funding, there is also a need for a cooperative approach between the Commonwealth and State and Territory Governments to determining the overall quantum of funding required for ATSILS (and then more broadly to meet legal need).

We suggest that to properly inform decisions about ATSILS funding and allocation between jurisdictions it is necessary to re-examine how decisions are made about the quantum of funding for legal assistance, to quantify the existing extent of underfunding and to determine an appropriate and sustainable quantum of funding in the long-term in light of legal need.

Accordingly, we recommend a cooperative approach between the Commonwealth, State and Territory Governments and the legal assistance sector to determine what the appropriate quantum of funding is for the sector (including ATSILS), what the contribution of Commonwealth, State and Territory Governments should be to that quantum, and the appropriate allocation of the quantum to the four key legal assistance providers. Given the variety of Government sources from which legal assistance providers receive funding, a whole-of-government approach to such a determination is vital. In addition, once the appropriate quantum is determined it is vital that State, Territory and Commonwealth Governments commit to provision of such funding on an ongoing basis.

#### *The Need for Certain, Predictable and Long-Term Funding*

Regardless of the overall amount of funding provided to the sector, there is a need for certain, predictable and long-term funding.

While the 5-year funding agreements under ILAP are significantly more certain/predictable than existing CLC funding agreements, we understand that there are still issues with respect to the provision of funding in advance. For example, we understand ATSILS are provided with funding for no more than six months in advance.

Funding uncertainty has significant impacts on the efficiency and effectiveness of the work of the sector. It makes decisions about service delivery, staffing, and related issues very difficult.

As a result, we support any moves to provide greater funding certainty to ATSILS to facilitate their service planning and delivery and emphasise the need to consider ways to ensure these principles underlie funding decisions and processes moving forward.

## Law Reform, Policy and Advocacy Work

Early intervention, law reform and systemic advocacy work is crucial in identifying and encouraging reform of laws, policies and practices that are not operating effectively or equitably.

The value of this work has been recognised in a number of contexts, including the Productivity Commission Inquiry into Access to Justice Arrangements which recognised that ‘in many cases, strategic advocacy and law reform can reduce demand for legal assistance services and so be an efficient use of limited resources’.<sup>12</sup>

The Commission also expressed the view that ‘strategic advocacy can benefit those people affected by a particular systemic issue, but, by clarifying the law, it can also benefit the community more broadly and improve access to justice (known as positive spill-overs or externalities)’. It ultimately recommended that ‘Australian, State and Territory Governments should provide funding for strategic advocacy and law reform activities that seek to identify and remedy systemic issues and so reduce demand for frontline services’.<sup>13</sup>

The Law Council of Australia’s Justice Project also recommended that governments ‘should fund and recognise the value of systemic law reform and policy advocacy work by legal assistance providers’ and specifically recommended the removal of the current restriction on this work under the NPA.<sup>14</sup>

We understand that while not specifically restricted as is the case under the NPA, the current ILAP funding arrangements restrict advocacy for ATSILS and NATSILS, which are not a funded activity. Given the broad outcomes of ILAP, systemic work is central to achieving these outcomes, specifically facilitating access to justice for Aboriginal and Torres Strait Islander peoples and reducing the disproportionate disadvantage experienced by Aboriginal and Torres Strait Islander peoples in the justice system.

As a result, we support reform of existing funding arrangements to allow funding and support for this vital work by NATSILS and ATSILS under ILAP.

## Funding for a Peak Body

In our experience, there is significant value derived from having a well-supported and resourced peak body, such as NATSILS. As a result, we strongly support ongoing and increased funding for NATSILS. This issue is discussed in more detail with respect to Term of Reference 5 below.

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<sup>12</sup> Productivity Commission of Australia, Access to Justice Arrangements Inquiry (2014) Final Report, Vol 2, 709.

<sup>13</sup> Ibid, Vol 1, rec 21.1.

<sup>14</sup> Law Council of Australia, Justice Project (2018), recs 2.12, 2.13.

## Term of Reference 4 (Utility of Performance Monitoring and Reporting Arrangements and Collection of Consistent and Comparable Service Data)

### Summary

- We suggest increased transparency and use of information provided as part of reporting by all legal assistance providers and greater coordination across levels of government
- The development of a National Legal Assistance Data Standards provided an opportunity to improve data collection across the sector, however to it has not been consistently implemented across some parts of the legal assistance sector
- There is a need for Commonwealth funding and support for implementation of the Data Standards Manual and greater sector data consistency moving forward
- There is a need for greater recognition of and investment in sector-led evaluation and outcomes measurement

We are not best placed to comment on the particular nature of performance monitoring and reporting arrangements for ATSILS. However, we do note that burdensome or duplicative administrative and reporting requirements take significant time and require allocation of resources that could otherwise be spent on services for Aboriginal and Torres Strait Islander people across Australia.

More broadly, there is currently limited national information sharing about the data or information across the sector, which means this data has not been available to inform decision-making or policy development at a national level. We encourage increased transparency and use of information provided as part of reporting and greater coordination across levels of government.

### Sector Data and Data Standards

There is a need for strong, consistent and reliable data to provide a basis for informing government, service providers and others in the development of evidence-based policy with respect to legal assistance and the justice system more broadly.

Importantly however, we emphasise the need to ensure that decision-making is data informed rather than data driven. Qualitative information or evidence such as case studies and the experience of individuals within the system is a rich and informative source of data that complements quantitative data such as service outputs and client demographics.

We also support calls by NATSILS and ATSILS for greater data sovereignty, including the ability to define, collect and analyse their own data and control decisions about data and to be properly resourced to do so.

Numerous inquiries and reviews have highlighted the importance of high quality consistent data across the legal assistance sector: much of this is summarised in the 2014 Productivity Commission Access to Justice Inquiry Report.<sup>15</sup>

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<sup>15</sup> See, eg, ch 25.

The development of a National Legal Assistance Data Standards Manual (Data Standards Manual) provided an opportunity to improve data collection in the sector and address the Productivity Commission's concerns, including introduction of common client and service data recording across all four legal assistance services.

To date the Data Standards Manual has not been consistently implemented across some parts of the legal assistance sector. This has largely been as a result of the lack of resources to support training or implementation of the Data Standards Manual.

As a result, we strongly suggest that there is a need for:

- The Commonwealth to re-convene the National Data Standards Working Group (which includes representatives from all legal assistance providers), and
- Commonwealth funding and support be provided to ALAF and the peak legal assistance bodies, as well as the sector, to support moves to implement the Data Standards Manual and greater sector data consistency.

### Evaluation and Outcomes Measurement

Nationally, we recognise the potential benefits of a greater focus on outcomes in measuring the impact and value of the work of the legal assistance sector.

As recognised in the recent Cameron Review of CLCs in NSW:

*Outcomes measurement is a way of demonstrating the value of a particular investment. It involves identifying the outcomes a service is intended to deliver, and developing a framework to evaluate how successful the services has been in achieving this outcome. Without a way of measuring outcomes, it is difficult to establish whether a service is achieving what it set out to do.<sup>16</sup>*

We consider that there is a need for monitoring, evaluation and outcomes measurement to be built into the funding and administration of the legal assistance sector, provided it is sector-led and the peak bodies and individual services are funded and supported to undertake this work within a broader framework. It is important ATSILS, FVPLS, CLCs and LACs are able to lead the development of this work for their own services and it is important that this work be self-determined.

We suggest that it would be useful for any outcomes measurement or evaluation work or projects with respect to one of the legal assistance services could usefully be shared and inform this work across the sector to ensure appropriate interaction and recognition of the work of the sector as a whole.

There are a number of useful outcomes measurement and evaluation projects that have recently been completed by the Federation of Community Legal Centres in Victoria and Community Legal Centres Queensland that could inform thinking and work on this issue.<sup>17</sup> We also understand NFVPLS have been provided with funding and support to develop work in this area for FVPLS.

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<sup>16</sup>Alan Cameron, *Review of NSW Community Legal Services* (2017), [8.7.3]

<sup>17</sup> See, eg, [www.communitylegalimpact.org](http://www.communitylegalimpact.org) and [https://www.fclc.org.au/outcomes\\_measurement\\_framework](https://www.fclc.org.au/outcomes_measurement_framework)

## Term of Reference 5 (Extent of Engagement between the Commonwealth, State and Territory Governments, ATSILS and NATSILS and the Legal Assistance Sector in Supporting a Joined-Up Approach to Addressing Indigenous Legal Need)

### Summary

- There is a need for co-design, collaboration and consultation under ILAP in a way that supports the self-determination of Aboriginal and Torres Strait Islander peoples
- The Commonwealth Government has a particular leadership role in funding and supporting ATSILS and there is a need for a more coherent whole-of-government approach to this role
- There is a need for more meaningful and shared engagement and responsibility between the Commonwealth and State and Territory Governments in relation to the funding and administration of ATSILS
- Peak bodies, including NATSILS, play a vital role in insuring the outcomes of ILAP are met and in supporting engagement and collaboration across governments and the sector

### Co-Design, Collaboration and Consultation

At the outset we emphasise that in considering engagement between governments, ATSILS, NATSILS and the broader sector, there is a need to recognise that co-design, collaboration and consultation in true and genuine partnership must underlie the funding and administration of the sector.

Co-design must underlie and inform government approaches to the funding and administration of the sector, including reviews and evaluations, reform, and system or service design both with respect to the legal assistance sector and broader justice system. This is particularly important to support and respect the self-determination of Aboriginal and Torres Strait Islander peoples.

### Role of the Commonwealth

The Commonwealth plays an important leadership role in funding and supporting the ATSILS. We have observed the need for:

- increased information sharing and sharing of good practice across the sector
- a whole-of-government approach to the funding, administration and support of ATSILS
- increased collaboration across the legal assistance sector, ensuring good practice, developments and initiatives can be shared across the legal assistance sector.

### The Work and Value of Peak Bodies

The peak legal assistance bodies provide a vital role within the NPA and ILAP frameworks and more broadly. Most recently this was recognised in the Law Council's Justice Project which stated that 'engagement with and funding and support for peak legal assistance bodies is likely to result in more positive outcomes for government, the sector and the community.'

The role and value of peak bodies in the legal assistance sector include:

- Provide a voice to, and for, the legal assistance sector

- Play a key coordination and support role to the benefit of governments and the sector, including for example by sharing information; facilitating consultation; sharing and encouraging good practice; and sharing and drawing upon sector expertise to inform government decision-making
- Work to support and facilitate the provision of high quality community legal services.
- Undertake national advocacy and representation on behalf of the sector and the people and communities our legal services work with
- Contribute to the evidence base that informs improved government policy development and decision-making, including through: research, policy development, expert advice and participation in roundtables and similar; sector consultation; provision of submissions and similar
- Advocate for and contribute to law and legal frameworks, policy settings and a society that enables access to justice and the protection of human rights for people in Australia
- Provide a two way conversation between front line service delivery and policy makers to improve the operating conditions of member organisations
- Educate governments, other organisations and the community about the sector and access to legal help
- Collect, analyse and communicate data
- Provide sector support, education, training and capacity building.
- Facilitate and lead strategic sector thinking
- Work with governments to co-design policy and systemic approaches and reforms
- Work collaboratively and in partnership with other peak bodies and organisations to achieve all of the above

We have a strong and productive relationship with NATSILS and consider that it plays a vital role in the ways articulated above, as well as in facilitating engagement and information sharing between Aboriginal and Torres Strait Islander peoples, communities and community-controlled organisations and the broader legal assistance sector.

NATSILS also plays a key role in supporting ATSILS and facilitating the work of ATSILS in meeting the broad outcomes under ILAP.

It operates at a high level across a wide range of areas, but current resourcing of NATSILS means it is not able to undertake a range of work that would be of benefit to ATSILS and the achievement of ILAP outcomes.

As a result, we strongly support ongoing and additional funding and support for NATSILS as the peak body under ILAP.

## Further Information and Contacts

We give permission for this submission to be treated as a public submission, to be identified in the report as having made a submission and being quoted with attribution in the report of the ILAP Review should Cox Inall Ridgeway wish to do so.

We would be happy to provide any additional information relevant to the Review.

The key NACLCL contacts for the purposes of the ILAP Review are:

Nassim Arrage

Amanda Alford

Chief Executive Officer

Director Policy and Advocacy

[nassim.arrage@naclc.org.au](mailto:nassim.arrage@naclc.org.au)

[amanda.alford@naclc.org.au](mailto:amanda.alford@naclc.org.au)

0408 092 256

0421 028 645