

# Review of the Indigenous Legal Assistance Program Discussion Paper

Submission to ILAP Review Team, Cox Inall Ridgeway  
5 October 2018



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## Introduction

National Legal Aid (NLA) represents the directors of the eight state and territory legal aid commissions (LACs) in Australia.

NLA and the individual LACs welcome the opportunity to contribute to the Review of the Indigenous Legal Assistance Program (ILAP).

Noting that ‘the focus of the submissions process is towards the Indigenous legal service sector’, this submission is brief and indicates a small number of high level concerns that NLA wishes to bring to the attention of reviewers. We have endeavoured to raise these under the Term/s of Reference to which they most relate.

### **About National Legal Aid and Australia’s legal aid commissions**

LACs are independent, statutory bodies established under respective state or territory legislation. They are funded by state or territory and Commonwealth governments to provide legal assistance services to the public, with a particular focus on the needs of people who are economically and/or socially disadvantaged.

NLA’s purpose is to:

- lead and encourage a national system of legal aid which allows economically disadvantaged people to obtain access to justice, and
- provide a forum for engagement at a national level with government/s, stakeholders, community; and for the individual LACs to engage with each other about best practice of legal aid and related issues.<sup>1</sup>

NLA aims to ensure that the protection or assertion of the legal rights and interests of people are not prejudiced by reason of their inability to:

- obtain access to independent legal advice;
- afford the appropriate cost of legal representation;
- obtain access to the federal and state and territory legal systems; or
- obtain adequate information about access to the law and the legal system.

#### LAC services

LACs are the main providers of legal assistance services in Australia,<sup>2</sup> and provide nearly all the legal assistance representation services at courts and tribunals.

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<sup>1</sup> Charter of NLA.

<sup>2</sup> Productivity Commission 2014, *Access to Justice Arrangements*, Inquiry Report No. 72, vol 2 667.

In 2017-18 LACs provided in excess of 2.2 million services (in all law types) to people across the country. These services were delivered from LAC offices and by way of outreach including through health justice partnerships.

*Attached* to this submission is a booklet which describes LAC services and the location of LAC offices generally.

LAC services are:

- proportionate to the particular need of the individual;
- proportionate to the point along a pathway that the individual's issue/s has reached; and
- focussed on timely, appropriate, efficient and effective resolution of the issues.

Litigation is a response of last resort for LACs and, in accordance with the *National Partnership Agreement on Legal Assistance Services 2015-2020* (NPA), LACs endeavor to resolve disputes through alternative dispute resolution (ADR) processes rather than through litigation, where ever appropriate.<sup>3</sup> A national settlement rate of 77% was achieved through LAC legally assisted dispute resolution processes in 2017-18.

#### LAC services to Aboriginal and Torres Strait Islander peoples

LACs provide services to many Aboriginal and Torres Strait Islander people, and stand alongside Aboriginal and Torres Strait Islander Legal Services (ATSILS) and other legal assistance providers as important and necessary sources of legal assistance for Aboriginal and Torres Strait Islander peoples. Reasons Aboriginal and Torres Strait Islander people access LAC services include: conflict of interest; lack of capacity in the local ATSILS; that a particular service is not available from the local ATSILS, or is not available at a particular location; and choice.

Aboriginal and Torres Strait Islanders are a priority client group under the NPA.<sup>4</sup>

Data in relation to LAC service delivery to Aboriginal and Torres Strait Islander people is generally collected in relation to the more intensive services delivered by LACs. It is not collected in relation to less intensive services, such as information services because these services are delivered very quickly and in high volumes. There are also occasions where data is not collected for more intensive services such as duty lawyer services delivered by private practitioners in receipt of a grant of aid, or in time pressured environments. Data relies on self-identification. For these reasons the data will be an under-count.

In 2017-18 LACs delivered 80,517 more-intensive services to Aboriginal and Torres Strait Islander people; 23,119 more than in 2012-13. There has been a 1% decrease in service numbers to Aboriginal and Torres Strait Islander people between 2017-18 and 2016-17 but

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<sup>3</sup> National Partnership Agreement on Legal Assistance Services 2015-2020, Clause B9.

<sup>4</sup> Ibid 17 (a).

the numbers of Aboriginal and Torres Strait Islander people accessing more intensive LAC services proportionate to all clients accessing such services continued to rise in 2017-18.

*Attached* to this submission is service data for the years 2012-13 to 2017-18 for each of grants of aid approved, duty lawyer, legal task and legal advice.

Many of the representation services that LACs fund Aboriginal people for are expensive and include trials that run over many days and multiple co-accused, using in-house practitioners and/or private practitioners on grants of aid.

## Executive summary

- LACs provide services to many Aboriginal and Torres Strait Islander people, and stand alongside ATSILS and other legal assistance providers, as important and necessary sources of legal assistance for Aboriginal and Torres Strait Islander people.
- Reasons Aboriginal and Torres Strait Islander people access LAC services include: conflict of interest; lack of capacity in the local ATSILS; that a particular service is not available from the local ATSILS, or is not available at a particular location; and choice.
- The ATSILS are able to provide culturally safe and competent services for Aboriginal and Torres Strait Islander people. Connection to community is considered a main strength of ATSILS service delivery.
- Whilst the Commonwealth has constitutional responsibility for Aboriginal and Torres Strait Islander people, funding through the ILAP does not sufficiently enable the meeting of this responsibility.
- When Aboriginal and Torres Strait Islander people are assisted by a LAC in relation to a state/territory based criminal law matter, it is the respective state/territory's resources which are impacted. This cost shifting places additional pressure on the LACs already stretched state/territory resources.
- NLA supports both increased funding to the ATSILS and the re-instatement of the Indigenous Expensive Cases Fund so as to enable funding support to LACs assisting Aboriginal and Torres Strait Islander people whose legal problems fall outside the current NPA priorities.
- The National Aboriginal and Torres Strait Islander Legal Services (NATSILS) receives funding under the ILAP. NLA would support this arrangement continuing into the future with the need for an effective peak body with which to engage.
- Opportunities to improve collaborative service planning include resourcing for the purpose and developing trusting relationships and understandings amongst providers and funders.
- The Commonwealth's unique position at collaborative service planning meetings could be used to better inform planning including by sharing of information between jurisdictions.

- NLA supports five year funding agreements including for the ATSILS pursuant to the ILAP.
- Opportunities to improve the quality and accuracy of data reported lie with legal assistance service providers being appropriately resourced in terms of data collection, recording and reporting systems and related training.
- Comparability of data, particularly at a high level and for representation services, is unlikely to ever be achieved because of the varied nature of the work undertaken.

Recommendations are for:

- Identification of legal need.
- Provision of funding under the ILAP sufficient to meet need.
- Improved resourcing of and support for quality data collection, recording and reporting.

## **TOR 1 - Impact of ILAP on Delivering Cost Effective, High Quality, Culturally Appropriate and Accessible Indigenous Legal Assistance Services**

### **Questions**

- 1. Did the introduction of ILAP funding arrangements in 2015 impact the Indigenous legal service sector?**
  - a) If so, how?**
- 2. Explain how ATSILS deliver locally tailored and culturally safe services to achieve improved outcomes for Indigenous clients?**
- 3. To what extent does ILAP impact ATSILS in providing culturally safe and competent services for delivering improved outcomes for Indigenous clients?**
- 4. To what extent has ILAP enabled ATSILS to provide cost effective legal assistance? This can include (but is not limited to) early intervention services, reducing the time and preventing clients returning into the justice system.**
- 5. How has ILAP enabled innovation in service models or delivery so that ATSILS can holistically respond to the needs of Indigenous people?**
- 6. How relevant and appropriate are the ILAP program objectives and outcomes in supporting the demands of services for Aboriginal and Torres Strait Islander people within the resources provided to ATSILS?**

### **The ATSILS are specialised legal assistance service providers**

NLA supports the ATSILS as the 'specialised legal assistance services for Aboriginal and Torres Strait Islander people'.<sup>5</sup>

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<sup>5</sup> Productivity Commission 2014, *Access to Justice Arrangements*, Inquiry Report No. 72, vol 2 767.

As the Australian Government Productivity Commission found upon its Inquiry into Access to Justice Arrangements in Australia, “The barriers that many Aboriginal and Torres Strait Islander people face in engaging with the Australian legal system, and the lack of trust in the system, have led to the creation of Indigenous-specific legal assistance bodies - Aboriginal and Torres Strait Islander legal services (ASTILS) and family violence prevention legal services (FVPLS).”<sup>6</sup>

The ATSILS are able to provide culturally safe and competent services for Aboriginal and Torres Strait Islander people. Connection to community is considered a main strength of ATSILS service delivery. Trust in the ATSILS by Aboriginal and Torres Strait Islander people supports access to services. Connection to community also enables staff of the ATSILS to better serve the needs of their clients. Particularly, an improved understanding of client family and background can be achieved by staff who are embedded in community. This understanding can be instrumental in helping to inform the best legal representation for, and social support of, the client. Lawyers and social support staff who are aware of issues are able to ask appropriate questions and to achieve instructions which otherwise might not be forthcoming.

NLA generally considers that the ILAP program helps to support the important specialised nature of, and roles performed by, the ATSILS as distinct from the other legal assistance providers who deliver services to Aboriginal and Torres Strait Islander people.

### **Funding issues**

Whilst the Commonwealth has constitutional responsibility for Aboriginal and Torres Strait Islander peoples, funding through the ILAP does not sufficiently enable the meeting of this responsibility.

The NPA, which is the vehicle for the Commonwealth’s funding to the LACs, does not make provision for the Commonwealth funding of state/territory based criminal law matters, even where the person charged is Aboriginal. As a result, when Aboriginal and Torres Strait Islanders are assisted by a LAC in relation to a state/territory based criminal law matter, it is the respective state/territory’s resources which are impacted. This cost shifting places additional pressure on the LACs already stretched state/territory resources.

NLA understands that this situation is likely to be exacerbated when ATSILS suffer the further impacts of ‘savings measures’ of \$10 million in 2020-21 and 2021-22. It can be expected that this will place additional pressure for service delivery on the LACs which the LACs are not equipped to respond to.

NLA refers to the old Indigenous Expensive Cases Fund which was established as a scheme in 2007, following successful pilot, until it was later discontinued. NLA supports both increased funding to the ATSILS and the re-instatement of the Indigenous Expensive Cases

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<sup>6</sup> Ibid 766.

Fund so as to enable funding support to LACs assisting Aboriginal and Torres Strait Islander peoples whose legal problems fall outside the current NPA priorities.

Funding pressures are also placed on ATSILS by reason of the expense associated with necessary travel to remote communities and the costs associated with holistic service delivery. ILAP funding levels are not considered to sufficiently recognise these impacts.

Issues of insufficient resourcing contribute to challenging and often stressful service delivery environments. This in turn can lead to challenges retaining staff and to juniorisation of staff.

NATSILS receives funding under the ILAP. NLA would support this arrangement continuing into the future with the need for an effective peak body with which to engage.

## **TOR 2 – Implementation of Collaborative Service Planning**

### **Questions**

- 1. Does your service or organisation engage in collaborative service planning?
  - a) If so, what services/organisations or departments does your organisation collaborate with?**
  - b) How frequently and since when has your organisation engaged in collaborative service planning?****
- 2. How effective has collaborative service planning been in your area/region to provide a holistic response to Indigenous clients and communities?**
- 3. What are the opportunities to improve collaborative service planning within and outside the legal sector to provide wrap-around services for Indigenous clients?**
- 4. What barriers, if any, prevent effective collaborative service planning?**
- 5. How has the ILAP funding arrangements enabled ATSILS to engaged with collaborative service delivery and planning coordination?**
- 6. How effective and appropriate is collaborative service planning as an outcome to measure the success of ATSILS performance and allocation of funds?**

Whilst NLA is not a party to collaborative service planning under either the NPA or ILAP funding agreements, NLA is a member of the Australian Legal Assistance Forum (ALAF) and meets regularly with ALAF counterparts, including the National Aboriginal and Torres Strait Islander Legal Services.

*Attached* please find the ALAF Statement of Co-operation signed by representatives of member organisations.

The effectiveness of collaborative service planning is generally considered to depend on trusting relationships and effective resourcing. It is further considered that collaborative service planning has been adversely affected by both concerns about competitive funding environments and the ongoing effects of the funding cuts sustained by the ATSILS. In

relation to the funding of the ATSILS it would be beneficial if the importance of the ATSILS connection to community in providing culturally safe services, was commonly understood.

Opportunities to improve collaborative service planning include resourcing for the purpose and developing trusting relationships and understandings amongst providers and funders.

“The Commonwealth is uniquely placed in relation to collaborative service planning, with representatives attending meetings in all jurisdictions and therefore having the ‘helicopter’ view into collaborative service planning. This unique position could be used to better inform planning including by sharing of information between jurisdictions. It is noted that Victoria Legal Aid hosted a Collaborative Service Planning Symposium in May attended by key representatives from most Australian jurisdictions. It is suggested that the Commonwealth would be well placed to hold/resource such symposiums into the future”.<sup>7</sup>

## **TOR 3 – Effectiveness, Efficiency and Appropriateness of the ILAP Funding Arrangements**

### **Questions**

- 1. Explain how the current ILAP funding arrangements facilitated Indigenous people in obtaining access to justice and exercising their rights?**
- 2. How has the current ILAP funding arrangements enabled ATSILS to reduce the disproportionate disadvantage experienced by Indigenous people in the justice system and achieve the ILAP objectives and outcomes?**
  - a) What were the external factors (if any) that affected the achievement of the ILAP outcomes and objectives?**
- 3. To what extent is the ILAP allocation of funds based on the Indigenous population, service drivers, priority client categories and disadvantage drivers suitable for Indigenous communities accessing services in your area?**
- 4. How have the ILAP funding arrangements and allocation of funds ensured continual service provision to meet client demands and needs for casework, advocacy, community legal education and/or provision of advice?**
- 5. Do the priority client categories reflect the needs of ATSILS clients and communities and improve access to justice?**
- 6. What other priority categories or disadvantage drivers should be added to the funding arrangements?**
- 7. How could the funding arrangement and funding certainty be improved to support ATSILS service expansion, planning, staff retention, skills development and impact?**
- 8. What other funding terms and conditions would your organisation recommend in helping to achieve the ILAP objectives and outcomes?**

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<sup>7</sup> NLA submission to the Review of the National Partnership Agreement on Legal Assistance Services 2015-2020 Discussion Paper, 5 October 2018, 8.

NLA supports five year funding agreements including for the ATSILS pursuant to the ILAP.

Five year funding agreements provide the ability to undertake longer term planning, and help to support the recruitment and retention of appropriately qualified and experienced staff, and enable the acquisition and retention of leases and equipment.

Increased funding to the ATSILS under the ILAP would better support the ATSILS in achieving the objectives and outcomes of the ILAP. As noted in the ALRC report *Pathways to Justice - Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, “Stakeholders overwhelmingly submitted that increasing access to justice fundamentally requires sufficient, sustainable and ongoing funding. In addition to the need for funding for their core work, many innovative service offerings that could increase access are also reliant on additional funding and support. As discussed above, the adequate resourcing of legal assistance services is a cornerstone of access to justice. The ALRC notes the Commonwealth Government’s commitment of an additional \$55.7 million over the next three years for community legal centres and ATSILS. However, as noted by stakeholders, ongoing funding beyond 2020 remains uncertain. The ALRC encourages Commonwealth, state and territory governments to implement recommendations from the Access to Justice and Law Enforcement and Justice Services Inquiries relating to funding legal assistance services.”<sup>8</sup>

## **TOR 4 – Utility of Performance Monitoring and Reporting Arrangements and collection of consistent and comparable service data**

### **Questions**

- 1. What is your amount of experience in reporting and monitoring under ILAP?**
- 2. To what extent do the current ILAP performance monitoring and reporting requirements appropriately balance the need for accountability with the need to minimise the administrative burden on ATSILS?**
- 3. To what extent does the National Legal Assistance Data Standards Manual and ILAP standards for reporting data support collection of consistent and comparable data?**
- 4. What barriers or challenges have impacted implementation of performance monitoring and reporting arrangements?**
- 5. Do you perceive the current performance and reporting arrangements as effective for showcasing successful outcomes, delivery of culturally safe services and innovation in ATSILS service delivery?**
- 6. How do you think ATSILS should capture and report on strengths-based data to share best practice in delivering services to Indigenous communities and the legal sector?**

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<sup>8</sup> Australian Law Reform Commission, *Pathways to Justice - Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Final Report No 133 (2017) [10.22].

**7. How could current program data, which is collected by the Attorney-General's Department, be best used to inform the sector and the broader Indigenous community?**

NLA does not report under the ILAP.

“Consistency of data collection, recording, and reporting relies on efficient data systems and those who are collecting and recording the data understanding the definitions which underpin the data. The National Legal Assistance Data Standards Manual (DSM) identifies the definitions which should be used in reporting data.

Comparability of data, particularly at a high level and for representation services is unlikely to ever be achieved because of the varied nature of the work undertaken, e.g. the count of 1 representation service could be a terrorism trial running over months or a tenancy hearing concluded within hours.”<sup>9</sup>

“If the DSM is to persist, it is considered that the Commonwealth should provide/enable sector wide training to staff whose responsibility it is to capture, and/or record and/or report on data to help support a common understanding of mandatory data reporting and underpinning definitions.”<sup>10</sup>

“...opportunities to improve the quality and accuracy of data reported lie with legal assistance service providers being appropriately resourced in terms of data collection, recording and reporting systems and related training.”<sup>11</sup>

## **TOR 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**

### **Questions**

- 1. What does a whole-of-government and collaborative approach to collectively achieving ILAP objectives look like between Commonwealth, states and territories, ATSILS, NATSILS, legal and non-legal sector?**
- 2. Has the level of collaboration and sharing of information between the Commonwealth, states and territories, ATSILS, NATSILS, legal and non-legal sector impacted the quality of services and outcomes for Indigenous clients?**
- 3. What is the level of support provided to ATSILS and NATSILS by the Commonwealth to deliver the ILAP objectives and outcomes?**

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<sup>9</sup> NLA submission to the Review of the National Partnership Agreement on Legal Assistance Services 2015-2020 Discussion Paper, 5 October 2018, 12.

<sup>10</sup> Ibid 13.

<sup>11</sup> Ibid 13.

- a) How could that support improve or change?
- 4. What is the extent to which the Commonwealth, ATSILS and NATSILS have fulfilled their respective roles and responsibilities under the ILAP?
- 5. What other stakeholders should be included in the policy, program development, evaluation and monitoring of ILAP funding arrangements?
- 6. What services, organisations and departments would you like to have better partnerships with to achieve the ILAP objectives and outcomes?
  - a) Why are these stakeholders important?
  - b) What is the best approach to have these stakeholders engage with ATSILS?

NLA notes the lapsed National Indigenous Law and Justice Framework 2009-2015.

NLA generally cautions against a 'one size fits all' approach and notes that the Framework was not prescriptive.

As indicated above, increased funding and certainty for the ATSILS under the ILAP could be expected to increase and enhance service delivery to Aboriginal and Torres Strait Islander people and to support improved collaborative service planning into the future.

Also as indicated above, NLA supports ongoing funding to the NATSILS as an important representative body within the sector. Peak bodies perform important roles both for their members and for funders and the public. Generally these roles are focussed on members achieving improved service delivery and include:

- co-ordination and exchange of relevant information and good practices;
- policy development and law reform;
- reduction of duplication, freeing member time up to achieve improved service delivery;
- the provision of a forum with which funders and other legal assistance service providers can readily engage with multiple member organisations; and
- the provision of information/advice to governments, funders, researchers, service providers, individuals.

## **TOR 6 - Areas for improvement and opportunities to enhance the ILAP program and future funding arrangements**

### **Questions**

1. What best service delivery models or approaches could ILAP use to address the disproportionate disadvantage experienced by Indigenous people in the justice system?
2. How could ILAP improve its funding arrangements, reporting and monitoring requirements to respond to current demands and unmet needs of Indigenous clients?

3. Can you provide strengths-based<sup>9</sup> examples of your service or organisation delivering successful outcomes for Indigenous clients?
  - a) What contributed to this success?
  - b) If applicable, how did ILAP contribute to the success?
4. Do you have other recommendations on how the ILAP can improve in the future?
5. How could ILAP be improved if it were to achieve a holistic response to the social determinants of Indigenous disadvantage in the justice system and improve social and emotional wellbeing outcomes for clients?

Recommendations are for:

- Identification of legal need
- Provision of funding under the ILAP sufficient to meet need.
- Improved resourcing of and support for quality data collection, recording and reporting.

## Conclusion

Thank you for the opportunity to provide a submission to the Review of the Indigenous Legal Assistance Program.

Should you require any further information from us please be in touch with the NLA Secretariat on 03 6236 3813 or [nla@legalaid.tas.gov.au](mailto:nla@legalaid.tas.gov.au)

Yours sincerely,



Dr John Boersig PSM  
Chair



National Legal Aid

September 2018



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## Legal aid commissions

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8 legal aid  
commissions 

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in excess of 2.2 million services  
per year

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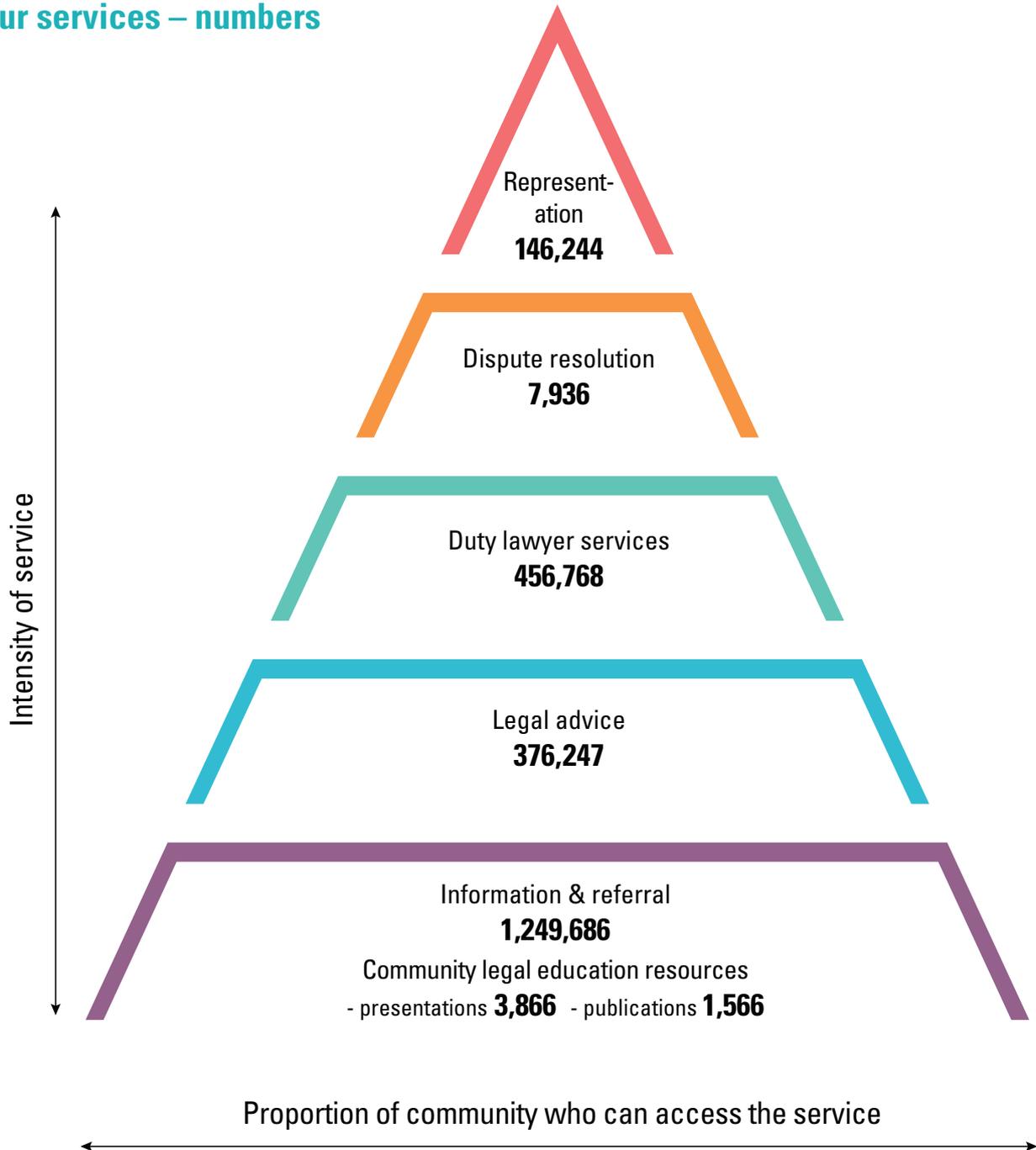
2016-17  
funding \$729.6 M

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80 offices around  
the country

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## Our services – numbers



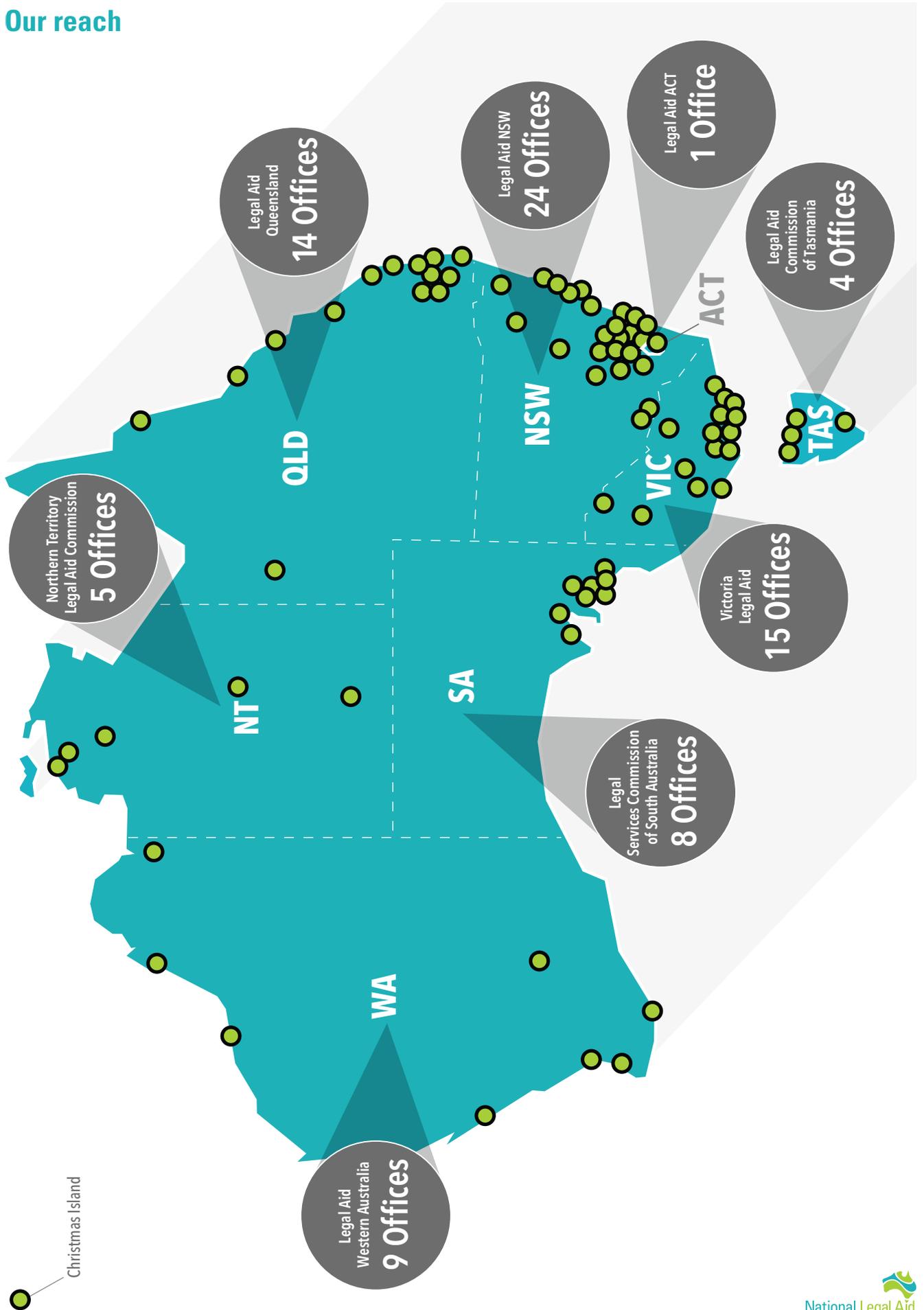
Sources: National Partnership Agreement on Legal Assistance Services 2015-20;  
National Legal Aid Statistics

<https://nla.legalaid.nsw.gov.au/nlareports/>

**Notes:**

- i) Duty lawyer services include Family Advocacy and Support Services.
- ii) Legal advice includes work accompanying the advice e.g. drafting of legal letters, telephone advocacy on someone's behalf etc.
- iii) Community legal education resources reported here are Commonwealth law related only. More services were provided for state/territory law matters.

# Our reach



## Our services – description

### Legal aid commissions services

Legal aid commissions (LACs) are the main providers of legal assistance services in Australia,<sup>1</sup> and provide nearly all the legal assistance representation services at courts and tribunals. Many also co-ordinate funding to community legal centres.

In 2016-2017 LACs provided in excess of 2.2 million services (in all law types) to people across the country. These services were delivered from LAC offices and by way of outreach including through health justice partnerships.

### Background

LAC services are provided consistently with the priorities specified by the inter-governmental National Partnership Agreement on Legal Assistance Services 2015-2020 (NPA), and with the state and territory enabling legislation of the respective LAC.

Litigation is a response of last resort for LACs and the NPA also specifies that “Family or civil law disputes should be resolved through alternative dispute resolution processes rather than through litigation, where appropriate.”<sup>2</sup>

### Legal representation services

Legal representation services include legal representation in fully contested matters including the provision of independent children’s lawyers and child representatives as requested by the family law courts and child protection courts respectively, as well as full legal representation services for parties with matters predominantly in the family law, family violence, child protection, and criminal law courts.

### Duty lawyer services and family advocacy support services

Duty lawyer services are provided in civil law courts and tribunals including the family law courts, the Administrative Appeals Tribunal, and as many local courts as possible including state/territory family violence courts. “The presence of duty lawyer services on the day at court has been proven to contribute to the effectiveness and efficiency of the court process for both the client and the court or tribunal”.<sup>3</sup>

Family advocacy and support services are provided at some registries of the family law courts<sup>4</sup> to assist families experiencing domestic violence as they move through the family law system. The service integrates duty lawyers with specialist family violence workers to help families navigate between the federal and state court systems and connect people with trauma-informed help such as risk assessments and safety planning.<sup>5</sup>

## Our services – description (continued)

### Dispute resolution services

Dispute resolution services are provided as a necessary first step in all matters which are appropriate for such service delivery. All LACs operate programs which provide legally assisted models of dispute resolution conferences, and which achieve very high settlement rates, e.g. in 2016-2017 the national average settlement rate was 78%. The LACs organise conferences, including providing the Chairperson for these conferences, and ensure parties who qualify for a grant of legal aid are legally represented.

Whenever settlement is achieved these services avoid the cost of resources associated with court proceedings, including the cost of court administration and hearing time.

### Legal advice, information and referral services

The legal advice, information and referral services, and community legal education, are non-means tested services designed as prevention and early intervention strategies. These services are provided on-line, by phone, and face to face.

LACs produce information and self-help resources and provide community legal education services to further support self-representing parties with various problem types.

<sup>1</sup> Productivity Commission 2014, *Access to Justice Arrangements*, Inquiry Report No. 72, Canberra vol 2 667.

<sup>2</sup> National Partnership Agreement on Legal Assistance Services 2015-2020, Clause B9.

<sup>3</sup> An evaluation of Legal Aid NSW's Early Intervention Unit Duty Service at Parramatta Family Law Courts, Law and Justice Foundation, 2012 [www.legalaid.nsw.gov.au/\\_data/assets/pdf\\_file/0003/15969/Evaluation-of-Family-Law-Early-Intervention-Duty-Service.pdf](http://www.legalaid.nsw.gov.au/_data/assets/pdf_file/0003/15969/Evaluation-of-Family-Law-Early-Intervention-Duty-Service.pdf) found that the duty service contributed to the efficiency and effectiveness of the court process by: diverting matters that should not have been in court and advising and assisting clients to take the most appropriate course of action; and contributing to the resolution of matters on the day through the drafting of documents, including providing a 'reality check' with clients – while explaining the processes and implications and negotiating with other parties for clients.

<sup>4</sup> The services in the Northern Territory are primarily delivered from the Darwin Local Court and the Katherine Local Court due to demand for services at these locations.

<sup>5</sup> Senator George Brandis (then Attorney-General) *'Improving family violence support in family law courts'* (media release, 17 May 2017).

## Our national achievements

- 2.2 million services to the public
- Family dispute resolution – 78% national settlement rate
- Family Advocacy and Support Services

Implementation in March 2017 of the Family Advocacy and Support Service at the main registries of the family law courts following the announcement in late October 2016 by Government that the services would be established.

- Independent children's lawyers

Dedicated website (<https://icl.gov.au>) and suite of publications to provide information, news and resources to the public about the role of the independent children's lawyers in family law proceedings and also the professional development and mentoring for those undertaking the role.<sup>6</sup>

- *What's the law? Australian law for new arrivals*

*What's the law?* was produced for national use in the Adult Migrant English Program (AMEP) and addresses 10 commonly experienced legal issues. The kit includes a DVD with 10 photo stories, information for teachers and activity sheets. A recent research study which focused on one of the *What's the law?* modules found that it improved the participants understanding of the law. The study will soon be published in the *Journal of Law and Social Policy*.

This resource was developed by the eight Australian state and territory legal aid commissions, and inspired by the resource *Getting to know the law in my new country*, produced by the Footscray Community Legal Centre in Victoria.

- National consultations and submissions, including in response to parliamentary inquiries and reviews by the Australian Law Reform Commission, ensuring an experience informed national response. For example:

### Family Law

- Family Law Amendment (Parenting Management Hearings) Bill 2017, Senate Legal and Constitutional Affairs Committee Inquiry
- Family Law Amendment (Family Violence and Other Measures) Bill 2017 Exposure draft and public consultation paper and the Senate Legal and Constitutional Affairs Committee Inquiry
- Family Law Amendment (Family Violence and Cross-examination of Parties) Bill 2017 Exposure draft and public consultation paper, Commonwealth Attorney-General's Department
- Parliamentary inquiry into a better family law system, House of Representatives Standing Committee on Social Policy and Legal Affairs

### Elder Abuse

- Australian Law Reform Commission Elder Abuse Inquiry, Issues Paper and Discussion Paper.

<sup>6</sup> In response to the release of the Australian Institute of Family Studies *Independent Children's Lawyers Study* Final Report 2nd edition June 2014, and with NLA taking on sole responsibility for independent children's lawyer training as from May 2017.

## What we are working on

- Review of the National Partnership Agreement on Legal Assistance Services 2015-2020
- Responding to elder abuse
- Review of the family law system by the Australian Law Reform Commission

- Online Dispute Resolution System project

This project is investigating the introduction of an Online Dispute Resolution System for couples that are separating or divorcing in Australia to assist them to resolve their family law disputes with less reliance on formal pathways.

National Legal Aid gratefully acknowledges the sponsorship of the Commonwealth Attorney-General's Department.

- ICL training program

This program comprises online and face to face training modules and tested learnings. National Legal Aid gratefully acknowledges the support of the Commonwealth Attorney-General's Department for developing this training.

- Family Violence and Family Law Community Legal Education Resource to complement the Family Advocacy and Support Services

This resource comprises a national website housing family violence resources and information about the Family Advocacy and Support Services in each state and territory. National Legal Aid gratefully acknowledges the support of the Commonwealth Attorney-General's Department for developing this resource.

- Hosting the International Legal Aid Group Conference 2021

"The International Legal Aid Group (ILAG) is a network of legal aid specialists including Chief Executives and Managers from Legal Aid Commissions, high ranking Civil Servants and leading Academics from over two dozen countries. ILAG's mission is to improve evidence-based policy-making in the field of poverty legal services through discussion and dialogue relating to international developments in policy and research. ILAG focuses primarily on the particular issues raised in jurisdictions which have established highly developed systems of legal aid. However, ILAG is expanding its brief to include jurisdictions with less developed systems and has in an real interest in how technology can be used to improve access to justice."<sup>7</sup>

<sup>7</sup> International Legal Aid Group website <http://www.internationallegalaidgroup.org/index.php>

## Charter of National Legal Aid

### Membership

National Legal Aid (NLA) represents the directors of the eight state and territory legal aid commissions (LACs) in Australia.

The LACs are independent statutory bodies that provide legal assistance services to the public, with a particular focus on the needs of people who are economically and/or socially disadvantaged. LACs provide in excess of 2.2 million legal services each year.

One of the NLA directors, on a rotation basis, is the Chair and primary spokesperson for NLA.

### Purpose

NLA's purpose is to:

- lead and encourage a national system of legal aid which allows economically disadvantaged people to obtain access to justice, and
- provide a forum for engagement at a national level with government/s, stakeholders, community; and for the individual LACs to engage with each other about best practice of legal aid and related issues.

### Beliefs

NLA is guided by belief in the rule of law and the importance of an effective, efficient, independent justice system which is accessible to everyone. These are the cornerstones of a civil and democratic society.

### Priorities

In 2017-18 key priorities for NLA include:

- prevention of and responding to elder abuse;
- prevention of and responding to domestic violence, and
- inclusion of justice targets in the Closing the Gap strategy and support for adequate funding for the Aboriginal and Torres Strait Islander legal services as the 'specialised legal assistance services for Aboriginal and Torres Strait Islander people'.<sup>8</sup>

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<sup>8</sup> Productivity Commission 2014, *Access to Justice Arrangements Inquiry Report No. 72*, Canberra, 767.

## Charter of National Legal Aid (continued)

### Strategies

NLA:

- maintains a set of policies which provide the basis for our work in advocating for equitable access to justice;
- is supported by a secretariat and by a number of working groups and networks including a representative of each of the LACs with expertise in the respective area of legal aid business, and
- meets regularly for strategic planning purposes.

### Co-operation

There are four main government funded legal assistance service providers in Australia, including the LACs, community legal centres, Aboriginal and Torres Strait Islander legal services and Family Violence Prevention Legal Services.

NLA is a member of the Australian Legal Assistance Forum (ALAF), comprised by representatives of the above legal assistance service providers and the Law Council of Australia representing Australian lawyers and their state and territory representative bodies, a signatory to the ALAF Statement of Co-operation, and provides the ALAF Secretariat.

### New Zealand

There is a strong alliance between NLA and Legal Aid Services New Zealand. The legal aid alliance facilitates the sharing of information, the showcasing of initiatives, and contributes to the development of best practice.

A representative of Legal Aid Services NZ attends NLA meetings to discuss matters of mutual interest.

### Further information

Further information about NLA and the work that we do, can be found at



<http://www.nationallegalaid.org/>

## National Legal Aid directors

### Legal Aid ACT

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## National Legal Aid directors (continued)

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### National Legal Aid

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## National Legal Aid

### Legal aid commissions services to all clients with number and % of services provided to Aboriginal & Torres Strait Islander Peoples 2012-13 to 2017-18

|                        |              | 2012-13        |               |                      | 2013-14        |               |                      | 2014-15        |               |                      | 2015-16        |               |                      | 2016-17        |               |                      | 2017-18        |               |                      |
|------------------------|--------------|----------------|---------------|----------------------|----------------|---------------|----------------------|----------------|---------------|----------------------|----------------|---------------|----------------------|----------------|---------------|----------------------|----------------|---------------|----------------------|
|                        | law type     | total          | ATSI          | ATSI as a % of total | total          | ATSI          | ATSI as a % of total | total          | ATSI          | ATSI as a % of total | total          | ATSI          | ATSI as a % of total | total          | ATSI          | ATSI as a % of total | total          | ATSI          | ATSI as a % of total |
| Grants of aid approved | Civil        | 4,442          | 475           | 10.69%               | 3,826          | 453           | 11.84%               | 3,889          | 464           | 11.93%               | 3,594          | 469           | 13.05%               | 3,381          | 484           | 14.32%               | 4,305          | 797           | 18.51%               |
|                        | Crime        | 88,885         | 11,649        | 13.11%               | 80,758         | 12,037        | 14.91%               | 82,283         | 12,623        | 15.34%               | 89,310         | 13,414        | 15.02%               | 95,704         | 14,974        | 15.65%               | 98,046         | 15,919        | 16.24%               |
|                        | Family       | 47,080         | 4,198         | 8.92%                | 45,350         | 4,344         | 9.58%                | 45,943         | 4,551         | 9.91%                | 48,483         | 5,256         | 10.84%               | 47,122         | 5,363         | 11.38%               | 45,772         | 5,290         | 11.56%               |
|                        | <b>total</b> | <b>140,407</b> | <b>16,322</b> | <b>11.62%</b>        | <b>129,934</b> | <b>16,834</b> | <b>12.96%</b>        | <b>132,115</b> | <b>17,638</b> | <b>13.35%</b>        | <b>141,387</b> | <b>19,139</b> | <b>13.54%</b>        | <b>146,207</b> | <b>20,821</b> | <b>14.24%</b>        | <b>148,123</b> | <b>22,006</b> | <b>14.86%</b>        |
| Duty lawyer            | Civil        | 18,464         | 273           | 1.48%                | 20,046         | 345           | 1.72%                | 23,206         | 236           | 1.02%                | 24,397         | 356           | 1.46%                | 25,797         | 558           | 2.16%                | 25,670         | 868           | 3.38%                |
|                        | Crime        | 333,528        | 20,894        | 6.26%                | 347,841        | 22,174        | 6.37%                | 366,823        | 25,588        | 6.98%                | 395,985        | 26,114        | 6.59%                | 394,794        | 28,790        | 7.29%                | 359,720        | 29,706        | 8.26%                |
|                        | Family       | 31,128         | 1,615         | 5.19%                | 30,534         | 1,527         | 5.00%                | 32,558         | 1,187         | 3.65%                | 34,782         | 1,222         | 3.51%                | 36,879         | 1,516         | 4.11%                | 41,428         | 2,489         | 6.01%                |
|                        | <b>total</b> | <b>383,120</b> | <b>22,782</b> | <b>5.95%</b>         | <b>398,421</b> | <b>24,046</b> | <b>6.04%</b>         | <b>422,587</b> | <b>27,011</b> | <b>6.39%</b>         | <b>455,164</b> | <b>27,692</b> | <b>6.08%</b>         | <b>457,470</b> | <b>30,864</b> | <b>6.75%</b>         | <b>426,818</b> | <b>33,063</b> | <b>7.75%</b>         |
| Legal task             | Civil        | 118,485        | 3,993         | 3.37%                | 123,189        | 4,731         | 3.84%                | 131,417        | 6,298         | 4.79%                | 131,665        | 7,157         | 5.44%                | 125,453        | 7,169         | 5.71%                | 123,705        | 5,791         | 4.68%                |
|                        | Crime        | 85,846         | 4,464         | 5.20%                | 85,820         | 4,576         | 5.33%                | 84,784         | 5,614         | 6.62%                | 82,816         | 5,713         | 6.90%                | 78,299         | 6,217         | 7.94%                | 69,498         | 6,411         | 9.22%                |
|                        | Family       | 105,599        | 3,916         | 3.71%                | 105,872        | 4,199         | 3.97%                | 102,058        | 4,766         | 4.67%                | 103,955        | 5,086         | 4.89%                | 97,240         | 5,451         | 5.61%                | 96,379         | 5,303         | 5.50%                |
|                        | <b>total</b> | <b>309,930</b> | <b>12,373</b> | <b>3.99%</b>         | <b>314,881</b> | <b>13,506</b> | <b>4.29%</b>         | <b>318,259</b> | <b>16,678</b> | <b>5.24%</b>         | <b>318,436</b> | <b>17,956</b> | <b>5.64%</b>         | <b>300,992</b> | <b>18,837</b> | <b>6.26%</b>         | <b>289,582</b> | <b>17,505</b> | <b>6.04%</b>         |
| Legal advice           | Civil        | 26,478         | 2,054         | 7.76%                | 28,970         | 3,927         | 13.56%               | 35,689         | 5,444         | 15.25%               | 31,766         | 6,047         | 19.04%               | 24,836         | 5,134         | 20.67%               | 16,769         | 3,619         | 21.58%               |
|                        | Crime        | 14,834         | 2,056         | 13.86%               | 11,563         | 1,949         | 16.86%               | 10,609         | 1,972         | 18.59%               | 11,904         | 1,999         | 16.79%               | 13,800         | 2,608         | 18.90%               | 13,210         | 3,121         | 23.63%               |
|                        | Family       | 24,367         | 1,811         | 7.43%                | 24,388         | 1,684         | 6.91%                | 28,252         | 2,250         | 7.96%                | 17,435         | 1,670         | 9.58%                | 13,236         | 1,535         | 11.60%               | 8,564          | 1,203         | 14.05%               |
|                        | <b>total</b> | <b>65,679</b>  | <b>5,921</b>  | <b>9.02%</b>         | <b>64,921</b>  | <b>7,560</b>  | <b>11.64%</b>        | <b>74,550</b>  | <b>9,666</b>  | <b>12.97%</b>        | <b>61,105</b>  | <b>9,716</b>  | <b>15.90%</b>        | <b>51,872</b>  | <b>9,277</b>  | <b>17.88%</b>        | <b>38,543</b>  | <b>7,943</b>  | <b>20.61%</b>        |

Source - National Legal Aid statistics <https://nla.legalaid.nsw.gov.au/nlareports/Default.aspx>

Data about LAC service use by Aboriginal and Torres Strait Islander peoples relies on the service user self-identifying as Aboriginal and/or Torres Strait Islander either on an application form or to the LAC service provider. The data also needs to be captured in systems. The data reported is therefore an undercount with not insignificant numbers of "unknown/not stated" included in the overall count of services and not all data captured in systems.

Family includes state family law child care & protection and apprehended domestic/family violence matters, although matters of this type might also be reflected in civil law data.

## Statement of Co-operation

This Statement of Co-operation is made on the 5<sup>th</sup> day of June 2015.

### 1. **Whereas:**

The Australian Legal Assistance Forum (ALAF) is an organisation whose participants are representatives of the following organisations ('the Parties'):

1. National Legal Aid representing the Directors of all Legal Aid Commissions in Australia and through them those Commissions.
2. The Law Council of Australia representing Australian lawyers and their state and territory representative bodies.
3. The National Aboriginal and Torres Strait Islander Legal Services representing the Aboriginal and Torres Strait Islander Legal Services across Australia.
4. The National Association of Community Legal Centres representing Community Legal Centres and their State and Territory Associations throughout Australia.
5. The National Family Violence Prevention Legal Services Forum representing the Family Violence Prevention Legal Services across Australia.

ALAF was established in 1998 to enable its then participants, being the national bodies listed at 1. - 4. above, to consider and address Australian legal assistance issues in a co-operative way and to make recommendations on those issues in a co-ordinated fashion. Recognising the mutual benefits to be gained through co-operative arrangements in relation to legal assistance service delivery, in July 2009 those participants signed a Statement of Co-operation to record their common commitment to co-operative, efficient and effective delivery of legal assistance services.

This Statement of Co-operation renews and reaffirms the commitment made in 1998 and formalised in the Statement of Co-operation in 2009, and provides for the inclusion of the National Family Violence Prevention Legal Services Forum.

## **2. Acknowledgements:**

A purpose of this Statement of Co-operation is to confirm that:

- 2.1 Each of the organisations exists to support their members in providing legal assistance to the most disadvantaged clients in our communities.
- 2.2 Each of the organisations acknowledges and respects the strengths and value of each other in providing legal services to disadvantaged clients.
- 2.3 The organisations each acknowledge that their respective differences are strengths.
- 2.4 Each of the organisations acknowledges that Aboriginal and Torres Strait Islander peoples are amongst the most disadvantaged in the community and have vast unmet legal need.
- 2.5 Community controlled Aboriginal and Torres Strait Islander Legal Services and Family Violence Prevention Legal Services are the preferred and most culturally safe providers of legal services to Aboriginal and Torres Strait Islander peoples.
- 2.6 The value of Community Legal Centres at community based levels is their ability to respond flexibly to the changing legal needs of their communities and in the community development role they also bring to their communities.
- 2.7 Legal Aid Commissions have been established by statute in each State and Territory as independent organisations with a legislative obligation to provide legal services to disadvantaged people.
- 2.8 The delivery of legal assistance services across Australia is greatly reliant on the service of private practitioners, represented at the national level by the Law Council of Australia, who provide legal services pursuant to grants of legal aid at rates well below the market rate that are available for those services, and by undertaking pro bono work and by volunteering.
- 2.9 Each organisation acknowledges that there are manifold unmet legal needs in the community that can be best met by working together co-operatively to ensure that legal needs can be identified, and their responses shared and prioritised between us to avoid inappropriate duplication and to co-ordinate the effective delivery of the most appropriate services to meet those legal needs.
- 2.10 Each organisation commits to working together with the other organisations party to this Statement of Co-operation to improve service delivery options to ensure that the clients with the greatest legal needs receive legal assistance.

### **3. Status:**

- 3.1 This Statement of Co-operation is not intended to impose legally binding obligations or legal relations on the participants.

### **4. Objects, Intended Activities:**

- 4.1 To promote co-operation between legal assistance service providers to ensure that clients' individual legal needs are met with the most appropriate and effective service available.
- 4.2 To regularly disseminate information and promote communication amongst the service providers on issues of mutual concern to enhance the ability of those providers to address client needs.
- 4.3 To actively demonstrate support for the Parties and their respective roles in the delivery of effective legal assistance services across Australia.
- 4.4 To inform governments and other organisations on the needs of legal assistance client groups and on issues relevant to the practical, effective and sustainable delivery of legal assistance and representation services.
- 4.5 To assist governments and other organisations in the development of policies to enhance access to justice for all people in Australia.

### **5. Operational Matters:**

- 5.1 Each organisation will nominate 2 representatives to attend ALAF meetings.
- 5.2 ALAF will elect a Chairperson from the representatives attending ALAF meetings. The Chairperson will hold office for 2 years unless otherwise agreed by the Parties.
- 5.3 ALAF will be supported by a Secretariat, which will be provided by National Legal Aid for the time being unless otherwise agreed by the Parties.
- 5.4 The Executive Officer from the Secretariat will work to the Chairperson of ALAF and will be responsible for the co-ordination of, and follow-up from, meetings etc.
- 5.5 The Secretariat will attend ALAF meetings.
- 5.6 Meetings will not usually be scheduled unless at least one representative from each organisation can attend.

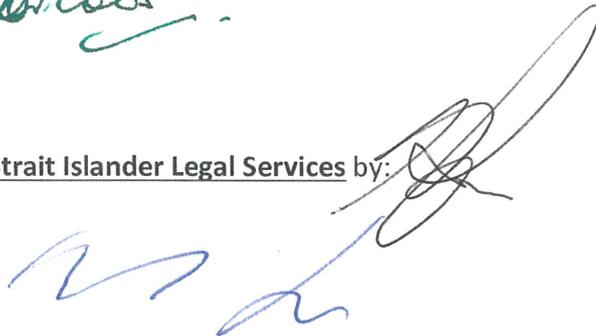
- 5.7 The Parties agree that they will respond to the emails from the Secretariat and ensuing email exchanges in a timely fashion and will endeavour to find and adhere to agreed meeting dates.
- 5.8 Submissions and other written communications will be signed and sent by the Chairperson on behalf of ALAF after first having been approved by at least one representative from each of the organisations, unless urgency requires otherwise in which case the Chairperson has authority to speak consistent with the objects of ALAF.
- 5.9 The Parties to the Statement of Co-operation agree that they will provide the ALAF Secretariat with up to date contact details for their respective representatives.

Signed on this 5<sup>th</sup> day of June 2015

Signed for and on behalf of  
Law Council of Australia by:



Signed for and on behalf of  
National Aboriginal and Torres Strait Islander Legal Services by:



Signed for and on behalf of  
National Association of Community Legal Centres by:

Signed for and on behalf of  
National Family Violence Prevention Legal Services Forum by:



Signed for and on behalf of  
National Legal Aid by:

