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Law Council of Australia  
 National Aboriginal & Torres Strait Islander Legal Services  
 National Association of Community Legal Centres  
 National Family Violence Prevention Legal Services Forum  
 National Legal Aid

Secretariat: Louise Smith

Telephone: 03 6236 3814  
 Facsimile: 03 6236 3811  
 Mobile: 0419 350 065  
 alaf@legalaid.tas.gov.au

## Submission to NPA and ILAP Reviews

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## Introduction

The members of the Australian Legal Assistance Forum (ALAF) make this submission to Urbis and Cox Inall Ridgeway in response to the Discussion Papers released as part of the current reviews of the *National Partnership Agreement on Legal Assistance Services 2015-2020* (NPA) and the Indigenous Legal Assistance Program (ILAP).

The members of ALAF are:

- **National Aboriginal and Torres Strait Islander Legal Services (NATSILS)**

NATSILS is the peak national body for Aboriginal and Torres Strait Islander Legal Services (ATSILS) in Australia. NATSILS brings together over 40 years' experience in the provision of legal advice, assistance, representation, community legal education, advocacy, law reform activities and prisoner Throughcare to Aboriginal and Torres Strait Islander peoples in contact with the justice system. NATSILS and its members are the experts on the delivery of effective and culturally responsive legal assistance services to Aboriginal and Torres Strait Islander peoples. The members of NATSILS are the seven ATSILS. NATSILS receives funding directly under ILAP.

- **National Family Violence Prevention Legal Services Forum (NFVPLS)**

NFVPLS is the national, peak body for the 14 Family Violence Prevention Legal Services (FVPLSs), operating in over 31 locations across Australia. It provides a leading, national voice on preventing and addressing violence against Aboriginal and Torres Strait Islander people – predominantly women and children. NFVPLS works in collaboration across FVPLSs to achieve improved justice outcomes for Aboriginal and Torres Strait Islander victims/survivors of family violence and sexual assault.

FVPLSs were established over 16 years ago in recognition of: the gap in access to legal assistance for Aboriginal and Torres Strait Islander victims/survivors of family violence and sexual assault (predominantly women); the high number of legal conflicts within ATSILS; and the high rates of family violence within Aboriginal and Torres Strait Islander communities.

FVPLSs are specialists providing culturally safe and holistic legal and non-legal supports to Aboriginal and Torres Strait Islander people who experience family violence and sexual assault. 90% of FVPLS clients nationally are Aboriginal and Torres Strait Islander women. FVPLSs provide legal assistance, casework, counselling and court support. They also design and deliver innovative early intervention, prevention and community education programs.

- **National Association of Community Legal Centres (NACLC)**

NACLC is the national peak body for the community legal sector. Its members are the eight State and Territory Community Legal Centre Associations, representing almost 200 community legal centres (CLCs) across Australia. NACLC does not receive direct funding under the NPA.

CLCs are independent, non-profit, community-based organisations that provide free and accessible legal and related services to hundreds of thousands of everyday people as well as

vulnerable and disadvantaged members of the community every year. CLCs are imbedded in local communities, working in a holistic, client-centred and multidisciplinary way. CLCs play a crucial and effective role in assisting people to resolve their legal problems at an early stage, and in meeting rising demand for legal assistance as well as contributing to systemic reform.

- **National Legal Aid (NLA)**

NLA represents the directors of the eight legal aid commissions (LACs) across Australia. LACs are independent statutory authorities established by respective State and Territory legislation. LACs are funded to provide legal assistance services to the public, with a particular focus on the needs of people who are economically and socially disadvantaged. LACs provide in excess of 2.2 million legal services a year from offices in capital cities and regional and remote locations across the country, and by way of outreach. NLA and LACs aim 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.

NLA does not receive direct funding under the NPA.

- **Law Council of Australia**

The Law Council of Australia exists to represent the legal profession at the national level, to speak on behalf of its Constituent Bodies on national issues, and to promote the administration of justice, access to justice and general improvement of the law.

The Law Council advises governments, courts and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world.

A contact list for individual ALAF representatives is included at **Attachment A**.

### [Submission Approach](#)

This high-level submission is made on behalf of ALAF. ALAF members will also be making separate and more detailed submissions in relation to the NPA and ILAP Reviews, as well as engaging, where appropriate, with the current evaluation of FVPLS being conducted by Charles Darwin University for the Department of Prime Minister & Cabinet.

We consider it very important that Urbis and Cox Inall Ridgeway, as the respective consultants for the two reviews, are working collaboratively and sharing information across the reviews given the important relationship between legal assistance providers and the administration and

funding arrangements for all providers. We appreciate advices received by our members in this regard.

### The Legal Assistance Sector

Each of the four publicly funded legal assistance services: CLCs, ATSILS, FVPLS and LACs play an important, unique and complementary 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 wouldn't otherwise be able to access it. 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.

The current reviews 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. Since 2015, administrative and policy responsibility for the legal assistance sector at a Commonwealth level is as follows:

- the NPA has been the framework that governs the funding and administration of CLCs and LACs and is overseen by the Legal Assistance Branch of the Commonwealth Attorney-General's Department (AGD).
- ATSILS are primarily funded through the ILAP, an ongoing grant program administered by the Legal Assistance Branch of the AGD.
- FVPLS have been primarily funded through the 'safety and wellbeing' and 'culture and capability' streams of the Indigenous Advancement Strategy (IAS), administered by the Department of Prime Minister & Cabinet.

ALAF supports these arrangements continuing into the future. In particular, ALAF supports the position of NATSILS that ATSILS should not be administered or funded under the NPA but rather retain the separate and independent ILAP, and the NFVPLS position that it should be re-instated as a stand-alone national program.

ALAF supports these positions of the two Aboriginal and Torres Strait Islander legal assistance providers (ATSILS and FVPLS) in recognition of the vital importance of self-determination and community control for Aboriginal and Torres Strait Islander peoples and communities.

There are however opportunities for greater information sharing, consistency and whole-of-government approaches to the funding and administration of the sector, including by way of:

- national mapping of legal need to underlie and inform transparent and evidence-based funding mechanisms, funded by the Commonwealth;
- whole-of-government funding for the sector, not limited to AGD and IAS funding given the breadth and value of the work of the sector and cross-portfolio impact;

- drawing on the expertise of the sector and its peaks to inform government decision-making and policy development, underpinned by co-design; and
- consideration of, and funding to support, consistent sector-wide data collection and approaches to evaluation and outcomes measurement.

### Services for Aboriginal and Torres Strait Islander Peoples

“Aboriginal and Torres Strait Islander legal services (ATSILS) and Family Violence Prevention Legal Services (FVPLS) provide specialised, culturally tailored services for Indigenous Australians.”<sup>1</sup>

ALAF acknowledges that community controlled organisations are preferred providers of services for Aboriginal and Torres Strait Islander peoples. Community controlled organisations are connected to community and able to provide unique and culturally safe services. Given this, and the significant legal need of Aboriginal and Torres Strait Islander people, funding and support for the FVPLS and ATSILS is vital.

Aboriginal and Torres Strait Islander peoples have experienced, and continue to experience, historical marginalisation from mainstream services, and many Aboriginal and Torres Strait Islander people prefer to and feel culturally secure in attending community-controlled services. However, 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 these situations it is important that another legal assistance provider is available to offer assistance.

### Funding for the Legal Assistance Sector

It is clear that the overall funding provided to the sector is insufficient to meet rising legal need in Australia. However, given the narrow focus of the reviews, we emphasise that the level of funding currently provided to the sector under the NPA and ILAP is a key barrier to meeting the stated objectives and outcomes of the NPA and ILAP.

As the Productivity Commission noted in 2014 (which remains the case) ‘the total quantum of funds allocated is not sufficient to achieve governments’ stated priorities’<sup>2</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>3</sup> which is not currently the case.

As a result, in considering whether the outcomes and objectives of the NPA and ILAP have been met, ALAF strongly recommends that recommendations are made about the need for additional funding under both the NPA and ILAP.

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<sup>1</sup> Productivity Commission of Australia, Access to Justice Arrangements Inquiry Report No 72 (2014) vol 2, 761.

<sup>2</sup> Ibid 741.

<sup>3</sup> Ibid 743.

In the context of the ILAP this includes cessation of ongoing ‘savings measures’ in the order of \$10 million in 2020-21 and 2021-22 which will have a devastating impact on ATSILS and communities. This will include a loss of staff, programs, expertise, advocacy and capacity to run front line services.

More broadly, there is a need to increase funding for the sector as a whole – including to all four legal assistance providers, namely ATSILS, FVPLS, CLCs and LACs. This is supported by a number of inquiries and reviews which have been clear in recommending an urgent need for additional funding for the sector as a whole. For example, the 2014 Productivity Commission Inquiry into Access to Justice Arrangements in civil (including family) law 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.

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, including at a minimum \$390 million per annum.<sup>4</sup>

### Funding Certainty and Predictability

Regardless of the overall amount of funding provided to the sector, funding for the sector has also been characterised by significant uncertainty.

Under the NPA funding uncertainty was the result of a number of factors, including the political and funding circumstances around the NPA (including the ‘funding cliff’ and reversal of scheduled cuts to CLCs); the varying processes undertaken at a State and Territory level; and varying length of service agreements across jurisdictions. The funding uncertainty under ILAP was directly related to the ongoing ‘savings measures’ introduced in the 2013-14 Mid-Year Economic and Fiscal Outlook.

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, ALAF suggests moving forward:

- five-year funding agreements for all legal assistance providers;
- requirements around longer timelines for the notification of funding decisions;
- recognition of the importance of appropriate consultation, support and transitional arrangements and funding where significant changes in the funding or administration of the sector are likely; and
- indexation aligned with annual CPI figures and population growth.

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<sup>4</sup> Law Council of Australia, Justice Project (2018) rec 2.1.

## Co-Design, Collaboration and Collaborative Service Planning

Co-design, collaboration and consultation in true and genuine partnership must underpin the funding and administration of the sector, as well as engagement across the sector. This should be the case in relation to reviews and evaluations, reform, and system or service design both with respect to the legal assistance sector and broader justice system. We have observed that this occurs in an inconsistent way across levels of government and jurisdictions.

True and genuine partnership would be supported by clear agreements and partnership principles that outline how government, system managers and the sector work together and the roles and expectations of each.

We also note the particular need to ensure co-design and support for self-determination in working with Aboriginal and Torres Strait Islander peoples, communities and community-controlled organisations.

## Collaboration and Collaborative Service Planning

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

Broadly, Collaborative Service Planning (CSP) as a mechanism for considering legal need, mapping services, and facilitating collaboration across legal assistance services to meet that need has the potential to be a useful one for the sector, clients and communities.

However, CSP is not currently occurring in the most effective way across Australia, or in a way that best contributes to the objectives and outcomes of the NPA and ILAP. There is limited information-sharing across jurisdictions, resulting in lost opportunities to identify best practice and the potential for duplication of work underlying CSP.

There are a range of barriers to effective CSP and significant opportunities for improvement upon existing CSP frameworks, mechanisms and processes across Australia. In summary (and drawing on a National Position Paper on Collaborative Service Planning developed by NACLC), ALAF members support:

- greater Commonwealth Government leadership, guidance and support in relation to CSP;
- mapping and consideration of all services provided by legal assistance service providers including an accurate understanding of legal need so as to actively inform decisions about ongoing service delivery;
- all legal assistance providers, including CLCs, LACs, ATSILS and FVPLS should be invited, funded and encouraged to contribute to and engage in CSP;
- additional and separate funding must be provided to support CSP;

- CSP processes should be governed by clear structures, processes, project plans and timetables, as well as appropriate timeframes for consultation and decision making;
- CSP must be undertaken in a culturally 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;
- all providers must be treated equally as part of CSP. Consultation, discussion and collaboration must be genuine, respectful and in good faith;
- 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;
- CSP should involve mapping and planning of direct client service delivery, but also community legal education and systemic law reform, policy and advocacy work;
- 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.

### Commonwealth and State and Territory Government Responsibilities

As outlined above, ALAF emphasises the importance of ensuring that principles of co-design underpin engagement between Commonwealth, State and Territory Governments and the sector.

#### Role of the Commonwealth

The Commonwealth Government has a particular leadership role to play in a number of key areas and ALAF and its members welcome the opportunity to work constructively with the Commonwealth Government to address these issues. Possible reforms include:

- greater whole-of-government approach to funding and support of, and engagement with, the sector,
- increased information sharing including of good practice across jurisdictions,
- greater clarity about, or use of, performance data and reports or other information about sector trends at a national level, and
- additional Commonwealth funding and resources to the sector to engage in structures, forums and processes under the NPA and ILAP.

### The Role 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.

In addition, NATSILS and NFVPLS are essential mechanisms that facilitate a unique dialogue between Aboriginal and Torres Strait Islander people and organisations and the broader community, as well as contribute towards Aboriginal and Torres Strait Islander self-determination and equality.

As a result, ALAF emphasises the need for the ongoing funding and support of the peak legal assistance bodies to ensure that the objective and outcomes of the NPA and ILAP are met.

## Early Intervention, Law Reform and Systemic Advocacy

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.

All legal assistance providers undertake this vital work, including:

- early intervention and prevention work;
- identification of systemic issues and trends arising from individual client assistance/work; and
- law reform, policy and advocacy in key areas of law with the aim of avoiding or resolving disputes, ensuring fairer and more effective laws and facilitating access to justice.

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>5</sup>

The Productivity 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>6</sup>

The recent Cameron Review of Community Legal Centres in NSW also recognised and strongly supported ongoing funding for this work. The Final Review Report stated that ‘CLCs that engage in strategic advocacy and law reform activities that aim to remedy systemic issues, including in relation to environmental matters, should continue to be funded’.<sup>7</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 current restriction on this work under the NPA be removed.<sup>8</sup> This restriction prevents the use of Commonwealth funding for lobbying and engagement in public campaigns which relate to policy, advocacy and law reform work.<sup>9</sup>

The ATSILS are also not funded under ILAP to undertake advocacy.

ALAF strongly supports removal of this restriction under the NPA and ILAP and broader government funding for vital policy, advocacy and law reform work.

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<sup>5</sup> Productivity Commission of Australia, Access to Justice Arrangements Inquiry (2014) Final Report, Vol 2, 709.

<sup>6</sup> Ibid, Vol 1, rec 21.1.

<sup>7</sup> Alan Cameron, *Review of NSW Community Legal Services* (2017), 7-8.

<sup>8</sup> Law Council of Australia, Justice Project (2018), recs 2.12, 2.13.

<sup>9</sup> Clause B7 of the NPA.

## Data

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. Currently however, there is not consistent or comparable data across the legal assistance sector.

### Data Standards Manual

In 2015, the AGD released the National Legal Assistance Data Standards Manual. The aim of the Data Standards Manual was to introduce 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, ALAF strongly suggests that there is a need for:

- The Commonwealth to re-convene the National Data Standards Working Group, 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.

### Conclusion and further information

We give permission to be identified in the report as having made this submission and quoted with attribution in the reports of the NPA and ILAP Reviews. We trust this submission is useful and would welcome the opportunity to provide any additional information as part of the reviews.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'John Boersig', with a large, sweeping flourish extending to the right.

Dr John Boersig PSM  
Chair ALAF

## Attachment A: ALAF contacts

The relevant contacts for each member organisation of ALAF are as follows:

### NLA

Dr John Boersig PSM  
Chair ALAF and Chair NLA  
[john.boersig@legalaidact.org.au](mailto:john.boersig@legalaidact.org.au)  
02 6243 3496

Dr Graham Hill  
Director, Legal Aid WA  
[graham.hill@legalaid.wa.gov.au](mailto:graham.hill@legalaid.wa.gov.au)  
08 9261 6260

### NATSILS

Cheryl Axleby  
Co-Chair  
[CherylA@alrm.org.au](mailto:CherylA@alrm.org.au)  
08 8113 3777

Karly Warner  
Executive Officer  
[kwarn@vals.org.au](mailto:kwarn@vals.org.au)  
0423 610 587

### NFVPLS

Antoinette Braybrook  
Convenor  
[ceo@djirra.org.au](mailto:ceo@djirra.org.au)  
03 9244 3333

Laura Vines  
Manager Policy and Strategy  
[lvines@djirra.org.au](mailto:lvines@djirra.org.au)  
0402 812 830

### NACLC

Nassim Arrage  
Chief Executive Officer  
[nassim.arrage@naclc.org.au](mailto:nassim.arrage@naclc.org.au)  
02 9264 9595

Amanda Alford  
Director Policy and Advocacy  
[amanda.alford@naclc.org.au](mailto:amanda.alford@naclc.org.au)  
0421 028 645

### Law Council of Australia

Mark Woods  
Chair Access to Justice Committee  
[mark.woods@ttwoods.com.au](mailto:mark.woods@ttwoods.com.au)  
03 5173 1100

Nathan McDonald  
Senior Policy Lawyer  
[nathan.macdonald@lawcouncil.asn.au](mailto:nathan.macdonald@lawcouncil.asn.au)  
02 6246 3721