

August 2023

National Legal Assistance Partnership Review

Issues Paper



We acknowledge Aboriginal and Torres Strait Islander peoples as the Traditional Custodians of the land and its waters. We pay our respects to Elders, past and present, and to the youth, for the future. We extend this to all Aboriginal and Torres Strait Islander peoples reading this report.

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Foreword by the Independent Reviewer

I am delighted to have been asked by Australia's Attorneys-General to conduct this review of the National Legal Assistance Partnership (NLAP) and related matters. For me this is a continuation of the work of the Public Inquiry I led at the Productivity Commission a decade ago into access to civil justice. As I pick up the cudgels again, I have been pleased to re-engage with some old faces and many new ones, all of whom are passionate about this important area of public policy. I welcome ACIL Allen being appointed to assist me with this Review.

Every Australian¹ will face legal issues at some time, and many will have unmet legal needs. For disadvantaged and vulnerable Australians governments fund a range of legal assistance programs and providers in an attempt to ensure not only that these Australians have access to justice but also that their safety and wellbeing is enhanced.

Legal assistance for Aboriginal and Torres Strait Islander Australians is best delivered by well governed, dedicated, community controlled legal assistance organisations working alongside more broad-based providers providing culturally appropriate services. In this Review, I am particularly keen to explore how the provision of legal assistance services can make a material and identifiable contribution to the commitments within the National Agreement on Closing the Gap, including priority reforms, socio-economic targets and enhancing self-determination.

Government funded legal assistance services provide benefits not only to those who receive them but also to the community as a whole. This has been demonstrated not only by the Productivity Commission's Public Inquiry Report on *Access to Justice Arrangements* but more recently by the Law Council of Australia's *Justice Project*, National Legal Aid's *The benefits of providing access to justice* and the World Bank's *A Tool for Justice: the cost benefit analysis of legal aid*. These and many other credible studies show that the economic and community wide benefits from efficient, targeted legal assistance services outweigh the costs of provision and that holistic wrap-around services are likely to deliver the best outcomes.

Like its predecessors, this Review is focused on assistance to the most disadvantaged Australians who receive services funded in part or whole by the Australian Government. Whilst the bulk of funding is provided via NLAP, I will examine other Commonwealth programs funded both through the Attorney-General's Department and other agencies. The Review will generally not be considering issues relating to the "missing middle" (those people with reasonable means who experience unmet legal need) as identified by the Productivity Commission (2014) and the Law Council's Justice Project, except to the extent that early intervention might reduce future demand from funded legal assistance services.

This Review is however fundamentally different to its recent predecessors. Item 1 of the Terms of Reference for this Review require me to undertake:

"a holistic assessment of legal need and all Commonwealth assistance funding including ...the current level of unmet legal need and demand."

¹ 'Australians' refers to both Australian citizens and non-citizens temporarily or permanently living in Australia.

This stands in stark contrast to the previous review of the National Partnership Agreement on Legal Assistance Services 2015-2020 which precluded such inquiry:

“The conduct of new research or in-depth analysis of the level of legal need in Australia and/or whether existing funding is sufficient to meet that need is out of the scope of the NPA Review.”

So, I am required to identify unmet legal need and it is open to me to make recommendations about the level and composition of Commonwealth funding of legal assistance. Where appropriate, or necessary, this may involve observations about total government expenditure (Commonwealth, state and territories) as the Productivity Commission did in 2014 when it recommended a total annual increase in legal assistance funding of \$200m (in excess of \$250m in current prices) for civil matters only.

In considering the demand for legal assistance services I am keen to identify and potentially forecast areas and levels of future demand. I consider it is important for me to provide a better understanding of the sources of unanticipated demand that have placed strain on legal assistance services during the current agreement and what mechanisms might ameliorate such impacts in future agreements. This will enable a better basis for future agreements, the financial planning of service providers and hopefully better outcomes for those Australians who rely on these services.

The demand for legal assistance services can be influenced by governments. Policies that reduce disputes between governments and citizens or adopt non-lawyer intermediated dispute resolution reduce the demand for legal assistance services as the people involved in such disputes are disproportionately disadvantaged. Similarly exogenous events such as pandemics and other natural disasters can create temporary, but usually multi-year, changes in demand which, due to climate change, are likely to become more frequent and therefore we need to make sure our legal assistance providers are prepared to respond appropriately. Where evidence permits, I will make recommendations in these regards.

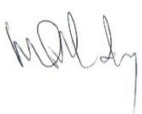
Effective advocacy by legal assistance providers either through participation in policy processes or by funding litigation with a public interest element can, in the long run, reduce disputes, litigation and the demand for legal services. It goes without saying these activities must be funded. This issue has recently been highlighted by the Royal Commission into the Robodebt Scheme and I will have regard to recommendation 12.4 of the Royal Commission.

Legal assistance lawyers are among the lowest paid in the profession and grants of legal aid for private practitioners are in many cases inadequate. There is also a wide disparity in salaries offered by different legal assistance sector providers. This leads to suppressed supply of legal services, which is particularly acute in regional, rural and remote areas, which in turn aggravates unmet legal need. If remuneration, and other terms and conditions of employment, are to be improved then it is necessary to demonstrate that there will be a supply response and how that additional supply of legal professionals will address unmet legal need.

It is pleasing to see that some progress has been made in relation to data collection since I last looked at these issues. But it is clear that more needs to be done. In looking at improving data frameworks I will be particularly interested in identifying inefficiencies and redundancies which if addressed could reduce the cost of those who are required to provide these data, including those private practice lawyers who receive grants of legal aid.

In closing, I would like to thank the various government agencies and peak service provider bodies who have provided comments on a draft of this Issues paper. While I have not included all suggestions, this feedback has significantly improved this document.

I look forward to working with everyone interested in these issues in the coming months. I would like to thank the peak bodies and government representatives who have contributed to the development of this Issues Paper and the associated consultation plan.



Dr Warren Mundy FRAeS FAICD

Glossary

AAT	Administrative Appeals Tribunal
ACCO	Aboriginal and Torres Strait Islander Community Controlled Organisations
ADR	Alternative Dispute Resolution
AEST	Australian Eastern Standard Time
AGD	Commonwealth Attorney-General's Department
ATSILS	Aboriginal and Torres Strait Islander Legal Services
Australians	Both Australian citizens and non-citizens temporarily or permanently living in Australia
CAGR	Compound annual growth rate
CEPEJ	European Commission for the Efficiency of Justice
CSP	Collaborative Service Planning
CLC	Community Legal Centre
DSM	National Legal Assistance Data Standards Manual
ECCCF	Expensive Commonwealth Criminal Cases Fund
IGC	Legal Assistance Inter-Governmental Committee
FAM	Funding Allocation Model
FASS	Family Advocacy and Support Service
FFA	Federation Funding Agreement
FVPLS	Family Violence Prevention Legal Service
GDP	Gross Domestic Product
ILAP	Indigenous Legal Assistance Program
LAC	Legal Aid Commission

National Agreement	National Agreement on Closing the Gap
National Strategic Framework	National Strategic Framework for Legal Assistance
NDIS	National Disability Insurance Scheme
NIAA	National Indigenous Australians Agency
NLAP	National Legal Assistance Partnership 2020-25
NPA	National Partnership Agreement on Legal Assistance Services 2015-20
Review	Review of the National Legal Assistance Partnership (NLAP) and related matters
SACS	Social and Community Services
Strategy	National Legal Assistance Data Strategy
TOR	Terms of Reference
UNODC	United Nations Office on Drugs and Crime

Introduction

1

1.1 Purpose of this document

This Issues Paper has been prepared to assist stakeholders to engage with the review of the National Legal Assistance Partnership (NLAP) and related matters (the Review). It draws on key documents, literature and data relating to the NLAP and performance of the legal assistance sector.

This Issues Paper is intended to assist stakeholders to prepare submissions to the Review. It sets out key issues and questions. It is not intended to provide detailed analysis or positions on particular or general issues. Submissions do not need to comment on every issue raised in this paper and stakeholders are free to raise any other issues that are relevant to the Terms of Reference.

1.2 Terms of Reference

In accordance with the Federation Funding Agreements (FFA) Framework and consistent with the NLAP, the Review will evaluate the extent to which the objective, outcomes and outputs of the NLAP have been achieved, and the NLAP is efficient, effective and appropriate in achieving its policy intent. It will have a particular focus on:

- holistic assessment of legal need and all Commonwealth legal assistance funding
- evaluation of the effectiveness and challenges of service delivery
- evaluation of data collection, performance monitoring and reporting.

The Review is adopting a transparent and collaborative approach to consultation. At minimum, it will seek inputs through submission and/or consultation from:

- Legal Assistance Inter-Governmental Committee (IGC) and its members
- National Legal Assistance Advisory Group and its members, and other advisory bodies as appropriate
- peak bodies and providers of the legal assistance sector at all levels
- sectors and service streams that interact with legal assistance, including government departments and institutions, and non-government bodies such as research institutions, peaks and providers in relevant social and health sectors
- clients (existing and potential) of legal assistance services.

A draft review report will be provided to Attorneys-General, via the Commonwealth Attorney-General, in December 2023. The final report will be provided to the Commonwealth Attorney-General by the end of February 2024 publicly released it within 3 months of completion of the review.

The full Terms of Reference are available at Appendix A.

1.3 Who can make a submission

The Review invites submissions from all Australians. The Review is keen to receive submissions from the legal assistance sector, including Commonwealth, from state and territory governments, national and jurisdictional peak legal assistance bodies and service providers, individual Legal Aid Commissions (LACs), Community Legal Centres (CLCs), Aboriginal and Torres Strait Islander Legal Services (ATSILSs), Family Violence Prevention Legal Services (FVPLSs), and the legal profession and their representative bodies.

The Review would also like to hear from organisations which support vulnerable Australians and communities about those peoples' experiences of the legal assistance sector and how it might better services their needs.

Submissions should be lodged by 5pm AEST Friday 27 October 2023. While submissions after that date will be accepted, it may be challenging to properly consider their content. If you are considering making a submission and expect it to be made after 27 October, please email submissions@nlapreview.com.au.

1.4 Required information

Your submission must include:

- your organisation name (or individual as appropriate)
- your organisations type (e.g., ATSILS, CLC, LAC, etc)
- whether you or your organisation has ever received Commonwealth funding under the NLAP or funding from other Commonwealth or State and Territory government sources.

When you make a submission, please indicate whether you consent to:

- your submission being published on the Review website
- being identified in the report of the Review as having made a submission
- your submission being quoted with attribution in the report of the Review
- your submission being quoted anonymously in the report of the Review.

Your choices about what you consent to will not affect how your submission is viewed or analysed.

1.5 Process

Submissions may range from a short letter outlining your views on a particular topic to a much more substantial document covering a range of issues. Where possible, you should provide evidence, such as relevant data and documentation, to support your views.

Submissions can either be emailed directly to submissions@nlapreview.com.au or lodged via the website www.nlapreview.com.au.

The Review has developed a stakeholder engagement plan in consultation with the various Attorneys-General Departments and peak stakeholder groups. Key stakeholders who have been identified to be included in this process will be contacted shortly. Given the delivery timeframe of the Review, it may not be possible to expand the scope of consultation. If you wish to engage more directly with the Review, please email submissions@nlapreview.com.au.

Current state of legal assistance funding

2

2.1 National Strategic Framework for Legal Assistance

The National Strategic Framework for Legal Assistance provides a policy framework to guide all government legal assistance policy development, service delivery and sector planning. The National Strategic Framework outlines the shared objective for all Commonwealth, state and territory government funded legal assistance:

“To further a national, integrated system of legal assistance that is focused on keeping the justice system within reach, maintaining the rule of law, and maximising service delivery within available resources. Within this system, legal assistance services should be delivered in a high quality and culturally appropriate manner.”

The National Strategic Framework sets out 6 guiding principles for the provision of legal assistance services:

1. Focus service delivery on people facing disadvantage
2. Client centred and appropriate services
3. Collaboration and integrated approaches
4. Appropriately timed responses and preventative action
5. Empowerment and resilience
6. Continuous learning and improvement.

These principles do not include the Priority Reforms of the National Agreement on Closing the Gap (National Agreement), discussed further in Chapter 3.

2.2 National Legal Assistance Partnership 2020-2025

The NLAP is a national partnership agreement between the Australian Government and all states and territories under which the Commonwealth provides funds to the states and territories for disbursement to a range of legal assistance providers. Not all Commonwealth, state and territory legal assistance funding is funded through the NLAP (see 2.4 for other sources of funding).

The NLAP follows the National Partnership Agreement on Legal Assistance Services 2015-20 (NPA), which expired on 30 June 2020. Three parts of the legal assistance sector (LACs, ATSIILS and most CLCs) were brought together under the of the NLAP. The NLAP transferred project and contract management responsibilities to the states and territories, with the support of administrative funding from the Commonwealth.

The NLAP has been informed by the findings of the 2018 reviews of the NPA and the Indigenous Legal Assistance Program (ILAP) (2018 Review). These reviews assessed the effectiveness, efficiency and appropriateness of the NPA and the ILAP. In contrast to this Review, those reviews were directed not to investigate the current level of unmet legal need nor the adequacy of funding of legal assistance.

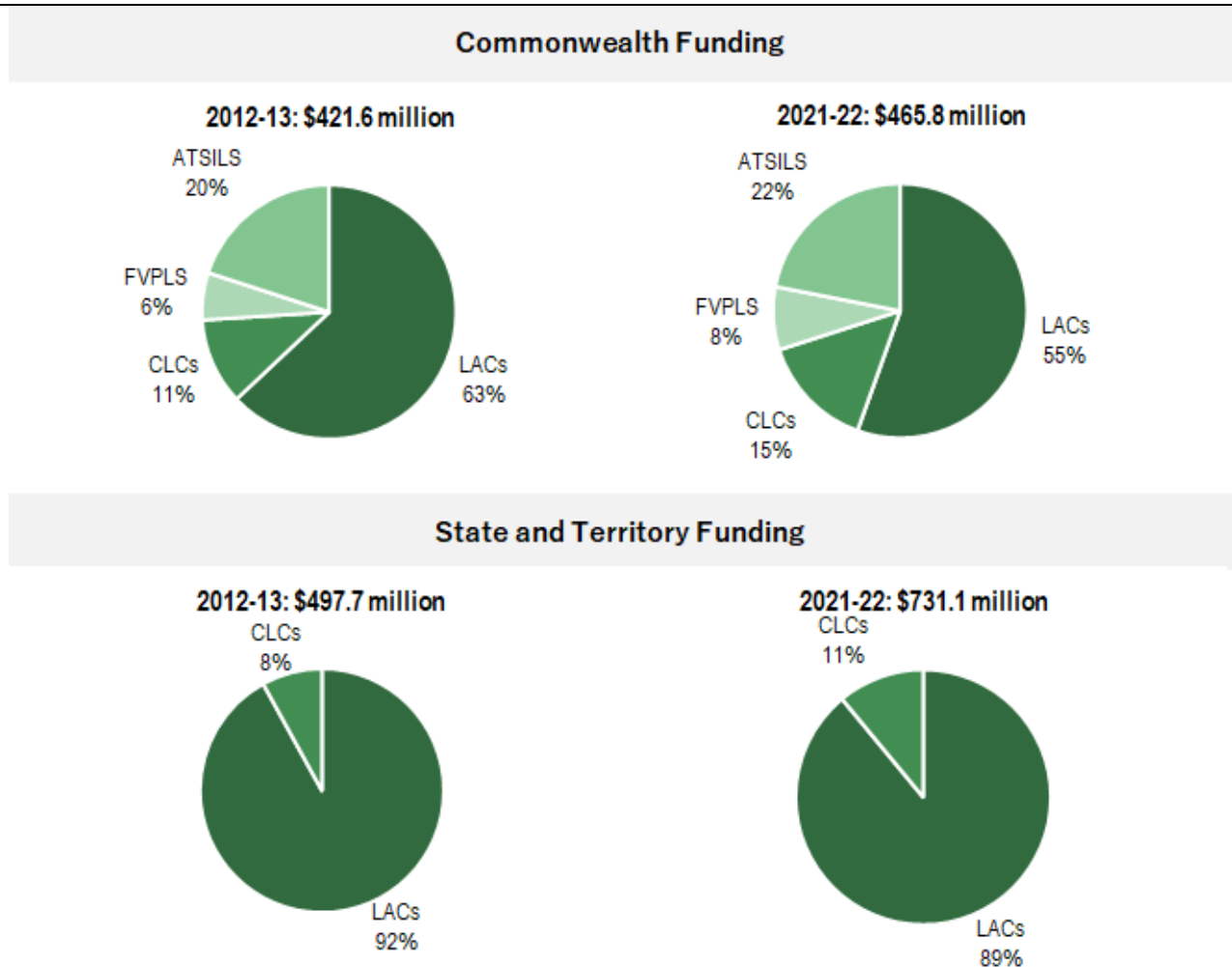
2.3 Legal assistance expenditure over time

This section provides description on the structure and development of legal assistance funding. The Reviewer recognises that to properly consider the adequacy of Commonwealth legal assistance funding it is necessary to consider it in the context of the funding from the states and territories, without necessarily considering its adequacy. Due to time restrictions and data availability, this discussion is partial and focussed on Commonwealth funding. The Review intends to provide a more complete analysis in its draft report to Attorneys-General in December.

2.3.1 Distribution of Commonwealth and state and territory payments to main legal assistance providers

It should be noted that the data presented in Figure 2.1 does not include any state and territory funding of FVPLs and ATSILs and CLC estimates are preliminary.

Figure 2.1 Distribution of Commonwealth funding and states and territories payments to main legal assistance providers



Source: Data for 2012-13 is from the Productivity Commission's Access to Justice Inquiry report. Data for 2021-22 is gathered from multiple sources, including the actual NLAP agreement, Commonwealth and State budgetary paper, and various documents held by the Australian Attorney-General's Department. (Expressed in 2021-22 dollars – deflated using wage price index)

Commonwealth funding to legal assistance providers has increased in real terms, from \$422m in 2012-13 to \$466m in 2021-22. The composition of Commonwealth funding has changed over the same period – funding for LACs has declined (63% to 55%), whilst it has improved for CLCs (11% to 15%), ATSILSs (20% to 22%), and FVPLSs (6% to 8%).

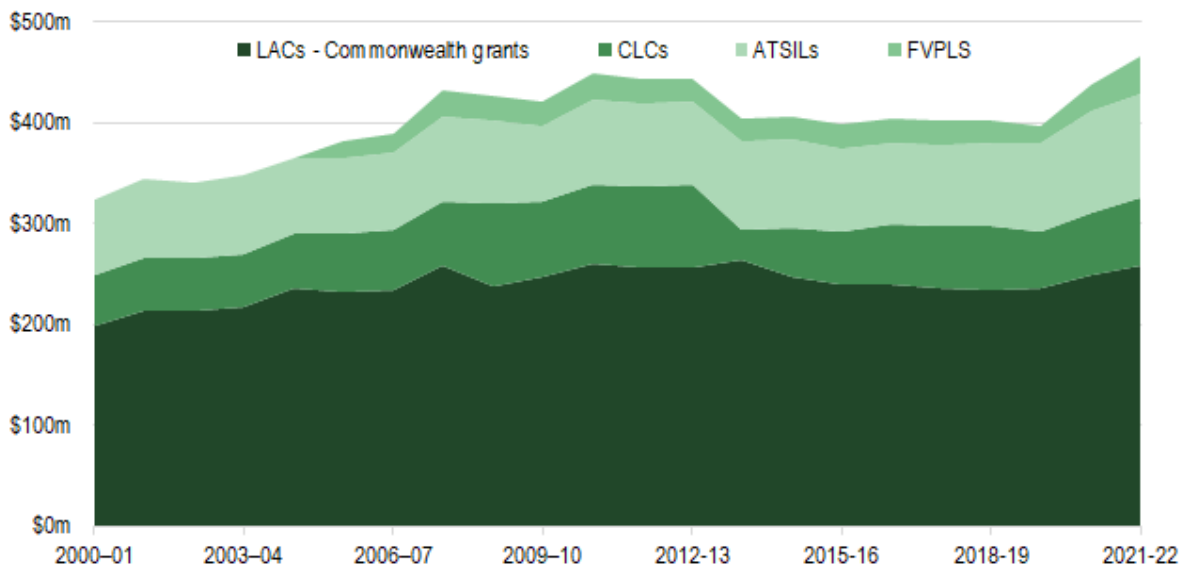
The growth in State and Territory funding has outpaced Commonwealth funding, as it grew from \$498m in 2012-13 to \$599m in 2021-22. However, the funding composition remained relatively constant over this period – funding for LACs fell from 92% to 89%, whereas funding for CLCs increased from 8% to 11%.

2.3.2 Commonwealth legal assistance funding of major providers — 2000-01 to 2021-22

Commonwealth legal assistance funding for major service providers steadily increased in the 2000s, from \$325m in 2000-01 to reach a peak of \$449m in 2010-11. This resulted from sector-wide increases in funding and the introduction of culturally safe legal assistance and support for victim-survivors of family violence.

However, Commonwealth funding gradually declined from 2010-11. By 2019-20, it fell to a 13-year low of \$397m. With the exception of ATSILs, there were broad-based decreases in sector funding. Following a decade of tight budgetary conditions, Commonwealth funding has increased considerably over the 2020-21 and 2021-22 period.

Figure 2.2 Commonwealth legal assistance funding — 2000-01 to 2021-22



Source: Data prior to 2013-14 is from the Productivity Commission's Access to Justice Inquiry report. Data from 2013-14 onwards is gathered from multiple sources, including the funding agreements (i.e., NPA, NLAP and ILAP), Commonwealth budgetary papers and various documents held by the Australian Attorney-General's Department.

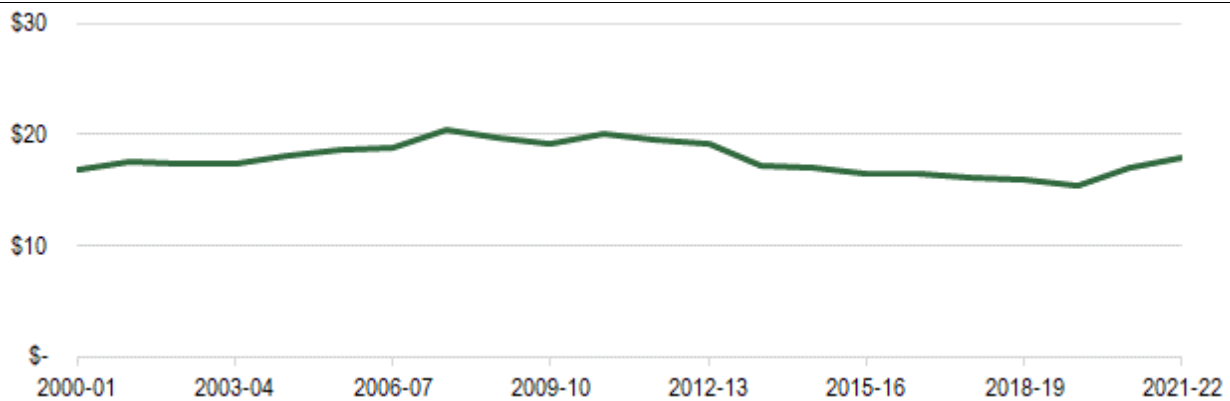
(Expressed in 2021-22 dollars – deflated using wage price index)

2.3.3 Real per capita Commonwealth funding

From 2000-01 to 2007-08, per capita Commonwealth funding steadily increased from \$16.8 per capita in 2000-01 to \$20.4 per capita in 2007-08. However, since its peak in 2007-08, per capita funding has continually declined.

There has been a resurgence in per capita funding over the 2020-21 and 2021-22 period to reach \$17.9 – its highest level since 2012-13. The Review notes it is likely the real costs of service provision have increased, and maintenance of real funding is likely to have had adverse impacts.

Figure 2.3 Real per capita Commonwealth funding



Source: Data prior to 2013-14 is from the Productivity Commission's Access to Justice Inquiry report. Data from 2013-14 onwards is gathered from funding agreements (i.e., NPA, NLAP and ILAP), Commonwealth budgetary papers and data privately held by the Australian Attorney-General's Department. (Expressed in 2021-22 dollars – deflated using wage price index)

2.4 Other sources of Commonwealth legal assistance funding

Most funding provided by the Australian Government to support the assistance services is provided through the NLAP. There are other sources of funding that support the delivery of legal assistance services. Examples of funding outside the NLAP include but are not limited to the:

- Expensive Commonwealth Criminal Cases Fund (ECCCF), which is administered by the Commonwealth Attorney-General's Department (AGD). LACs can apply for funding under the ECCCF when defending clients in high-cost Commonwealth criminal matters. ECCCF ensures that LACs have sufficient resources to represent people who cannot afford private legal representation and have been charged with serious Commonwealth criminal offences or are subject to an application for a post-sentence order (AGD, 2023). Funding is estimated at \$13.2 million in 2022–23.
- Family Violence and Cross-Examination of Parties Scheme, which provided \$7 million over 3 years (2018-2020) to provide legal representation to parties in matters subject to cross-examination bans under the Family Law Act 1975 (Cth) which was amended by the Family Law Amendment (Family Violence and Cross-examination of Parties) Act 2018. This funding is administered by LACs but is separate to a grant of aid.
- Community Legal Services Program, which is a nationally focused discretionary grants program that aims to support the delivery of legal assistance by funding national service delivery projects, peak bodies and program support activities that complement the delivery of services under the NLAP. Funding for 2021-22 was estimated at \$10 million and supported a range of activities, including the expansion of trauma-informed legal services for victims and survivors of child sexual abuse, online chat services that provide legal assistance to children, and mental health training for legal assistance providers.

Targeted funding is also provided to other organisations, like the Arts Law Centre and refugee and immigration legal services, to ensure the needs of specific communities are addressed.

In addition to the above long-term arrangements, the Australian Government funds additional short-term legal assistance related measures. Recent examples of these funding measures include but are not limited to:

- disaster related legal assistance measures, with \$5.4 million over 2 years from 2021–22 in funding for legal services in Queensland and New South Wales, and a further \$12 million over 4 years from 2022-23
- family law funding to meet the cost of legal representation, including the additional resources required to adapt to the Federal Circuit and Family Court of Australia reforms and provide independent children lawyers, providing an additional \$16.5 million over 2 years from 2021–22
- the Justice Sector Preparedness Package, with \$63.3 million for LACs, CLCs, ATSIILS and FVPLSs to help address the impact of COVID-19 via state and territory governments.

In recognition that Aboriginal and Torres Strait Islander peoples have specific legal assistance needs, the National Indigenous Australians Agency (NIAA) support legal assistance programs which work with First Nations families under the Indigenous Advancement Strategy. This includes, but is not limited to, the:

- Family Violence Prevention Legal Services
- Custody Notification Services
- Through Care programs – Adult Through Care and Youth Through Care
- Indigenous Women’s Program
- Supplementary Legal Assistance, which supplements core funding provided through the NLAP to legal assistance providers in the NT to meet additional demand for legal services.

There are also broader sources of funding provided by the Australian Government. Examples include NDIS legal assistance funding, and funding for Jervis Bay and Christmas and Cocos Island. There have been other funding sources that are no longer provided, such as the Immigration Advice and Application Assistance Scheme.

2.5 International comparison

There is a recognised need across the world for government-funded legal assistance to support individuals who would otherwise not be able to afford it (UNODC, 2016). While legal assistance is required by international law, schemes vary enormously in purpose and operation (Barlow, 2019). International comparisons are difficult due to differences in methodology. Individual studies are presented below, and no comparisons should be made across sources.

2.5.1 United Nations Global Study on Legal Aid (2016)

The United Nations Office on Drug and Crime (UNODC) published the Global Study on Legal Aid – Country Profiles in 2016 which presented a comparison of legal aid expenditure per capita (UNODC, 2016). Based on this study, Australia had the highest expenditure in legal aid per capita in 2013, but was comparable to similar countries with similar government and legal structures as presented below:

- Australia: \$23.78
- New Zealand: \$21.50
- Canada: \$21.65.

2.5.2 Comparative Study of the Government Spending on Nationwide Legal Aid System in Selected Countries

Research undertaken as part of a doctoral thesis in Japan compared government expenditure on legal assistance across Australia, England and Wales, Finland and Ireland (Aung, 2020). This analysis provided both the actual expenditure on legal assistance as well as expression of legal assistance expenditure as a proportion of GDP.

The report found that legal assistance funding has been falling in many international jurisdictions since the Global Financial Crisis in 2008. While legal assistance funding as a proportion of GDP has remained the same in Australia, the number of cases where legal assistance was granted has increased, where the number of granted cases for the other 3 comparator jurisdictions decreased between 2012 and 2016. This means that the amount of legal assistance funding per matter has decreased overall in Australia between 2012 and 2016.

Table 2.1 Comparison of Legal Assistance expenditure as a proportion of GDP

Country	GDP (2016)	Legal Assistance funding (2016)	Funding as proportion of GDP (2012)	Funding as proportion of GDP (2016)
Australia	\$1.2 trillion	≈ \$500 million	0.04%	0.04%
England and Wales	\$2.6 trillion	≈ \$3 billion	0.14%	0.10%
Finland	\$238 billion	≈ \$20 million	0.03%	0.01%
Ireland	\$304 billion	≈ \$40 million	0.02%	0.01%

Source: World Bank, International Legal Aid Group, Flores (2014), cited in Aung (2020)

Legal assistance for Aboriginal and Torres Strait Islander Australians

3

This section specifically examines the issues related to Aboriginal and Torres Strait Islander peoples, given the overrepresentation of Aboriginal and Torres Strait Islander peoples in all parts of the legal system and requiring legal assistance. sector-wide issues are examined in the next Chapter.

The Review is aware of the release by the Australian Government on 16 August 2023 of 2 actions plans to address pervasive rates of family, domestic and sexual violence experienced by Aboriginal and Torres Strait Islander women and children (Rishworth, Burney and Elliot, 2023). The Review has not had the opportunity at the time of release of this Issues Paper to consider the relevance of these plans to matters within its Terms of Reference but will do so and is keen to hear from stakeholders on these plans as they relate to the provision of legal assistance services.

3.1 Self-determination

First Nations communities and legal needs

Aboriginal and Torres Strait Islander peoples are significantly overrepresented in the criminal justice system and face disproportionate disadvantage across the justice system as a whole, including difficulties in accessing legal assistance. Much has been written regarding the importance of Aboriginal and Torres Strait Islander peoples having access to high quality community-controlled legal services, regardless of location, across criminal, civil, child protection, and family law.

Legal assistance providers deliver specialised, culturally tailored services for Aboriginal and Torres Strait Islander peoples. ATSILS deliver legal assistance across a range of practice areas with a focus on criminal, family, child protection and civil law needs. FVPLSs primarily specialise in helping victims of family violence. Many Aboriginal and Torres Strait Islander peoples also access legal assistance services through LACs and CLCs with the Australian Government providing funding for civil and family law needs. The Review understands that around 20% of the workload of LACs relates to Aboriginal and Torres Strait Islander clients but this is in excess of 50% in some jurisdictions. This is likely to be an underrepresentation, as not all data records whether individuals identify as Aboriginal and Torres Strait Islanders.

In addition to programs funded by the NIAA mentioned in section 2.4, the NIAA also funds a network of 14 Native Title Representative Bodies and Native Title Service Providers to assist native title claimants and holders. The NIAA also provides direct funding to Prescribed Body Corporates (PBCs), the corporations that hold and manage Native Title rights and interests, through the PBC Capacity Building Program. While the NLAP does not prevent ATSILSs from undertaking Native Title activities, the Review understands that other priorities and resource availability largely preclude them from providing assistance in these areas.

National Agreement on Closing the Gap

The National Agreement sets the overarching policy framework to enable Aboriginal and Torres Strait Islander peoples and government to work together to improve the lives of Aboriginal and Torres Strait Islander people, across 19 Socio-Economic Outcomes and 4 Priority Reforms. The Review's preliminary analysis suggests the key Socio-Economic Outcomes relevant to the NLAP include:

- **10:** Adults are not overrepresented in the criminal justice system

- **11:** Young people are not overrepresented in the criminal justice system
- **12:** Children are not overrepresented in the child protection system
- **13:** Families and households are safe.

The Priority Reforms are:

- **Priority Reform One** of the National Agreement is a commitment for governments to work in partnership with Aboriginal and Torres Strait Islander communities and organisations to share in decision-making on policies and programs that have a significant impact on them.
- **Priority Reform Two** prioritises a strong and sustainable Aboriginal and Torres Strait Islander community-controlled sector delivering high quality services to meet the needs of Aboriginal and Torres Strait Islander people across the country, acknowledging that Aboriginal and Torres Strait Islander community-controlled services are better for Aboriginal and Torres Strait Islander people, usually achieve better results, employ more Aboriginal and Torres Strait Islander people and are often preferred over mainstream services.
- **Priority Reform Three** focuses on transforming government organisations and institutions to be accountable for Closing the Gap, and to be culturally safe and responsive to the needs of Aboriginal and Torres Strait Islander people, including through the services they fund.
- **Priority Reform Four** of the National Agreement would facilitate sharing of access to data and information at a regional level, ensuring access of Aboriginal and Torres Strait Islander people to this data, and with the capability to use it, to monitor implementation and priorities, and drive development.

A draft report from the Productivity Commission's review of the National Agreement on Closing the Gap (2023) has found:

- The commitment to shared decision-making is rarely achieved in practice, and is primarily adopted in formal partnerships, but not in wider practice.
- Government policy includes few tangible steps to increase the proportion of services delivered by Aboriginal and Torres Strait Islander Community Controlled Organisations (ACCOs).
- There has been limited progress in transforming government organisations to ensure accountability for Closing the Gap, cultural safety and responsiveness.
- Changes to government data policy and access are limited, with ACCOs experiencing difficulty accessing government held data, and limitations within the data that is collected.
- Significant challenges to the design and implementation of performance reporting arrangements have impacted on the transparency and public accountability for progress against Socio-Economic Outcomes and Priority Reforms.

This draft report concluded that stronger mechanisms for government accountability are needed to drive change, including:

- positioning Aboriginal and Torres Strait Islander bodies to identify good and bad practices under the National Agreement, and advocate for improved policies, programs and services
- embedding responsibility for driving action within the public sector
- publishing meaningful implementation plans, reports and documents, with agreed upon actions that are substantive and critical to achieving the objectives of the National Agreement, improving transparency and accountability.

Justice Policy Partnership

The Justice Policy Partnership (the Partnership) brings together representatives from the Coalition of Peaks, Aboriginal and Torres Strait Islander experts, Australian, state and territory governments to collaborate on Aboriginal and Torres Strait Islander justice policy. The Partnership is implemented under Priority Reform One of the National Agreement, with the primary function of making recommendations to reduce over-incarceration.

National Strategic Framework for Legal Assistance

The National Strategic Framework for Legal Assistance outlines that the principles of the framework should be applied consistently with the National Agreement. This includes self-determination, referring to ACCOs as the preferred suppliers for

culturally appropriate legal assistance services, determining service priorities and locations based on community need, and being actively and meaningfully involved in the development and implementation of legal assistance policies and programs.

The Review is keen to examine how ACCOs can be further strengthened through sustained capacity building and investment, in line with Priority Reform 2, to deliver culturally appropriate legal assistance services. Elevating the capacity of these organisations is critical to achieving sustainable growth of the sector. The streams identified in the Sector Strengthening Plans in Priority Reform 2 (workforce, capital infrastructure, service provision and governance) are highly relevant in the legal assistance sector.

The Review is also keen to understand how to ensure that government funded non-Indigenous legal assistance services are accountable for Closing the Gap and are culturally safe and responsive to the needs of Aboriginal and Torres Strait Islander people, where required.

Key question

How can self-determination and cultural appropriateness be best supported through legal assistance arrangements?

Consider:

- the contribution of legal assistance programs to the Priority Reforms of the National Agreement on Closing the Gap, including prioritising, partnering and negotiating beneficial sector-strengthening strategies and activities
- the extent to which the NLAP has addressed the need for the community-controlled sector to be actively and meaningfully involved in the development and implementation of legal assistance policies and programs.

3.2 Arrangements over time

Indigenous Legal Assistance Program 2015-2020

Prior to 2020, there was a separate ILAP which provided direct grants from the Commonwealth to ATSILSs to deliver frontline legal assistance and related services to Aboriginal and Torres Strait Islander clients.

The ILAP funded legal advice, non-legal support, referrals, community legal education, duty lawyer assistance, casework and representation across all law types, as well as prevention and early intervention activities. The ILAP also provided funding for sector development, program support activities and support for collaborative service planning.

ILAP funding was \$369 million of the 5-year period 2015-2020. Funding support provided to ATSILSs was primarily used for criminal legal assistance services. The review of the ILAP found this focus to be broadly appropriate given the level of need but acknowledged service gaps for Aboriginal and Torres Strait Islander peoples in relation to civil, family and child protection needs.

Merging of ILAP and NPA

The NPA and ILAP merged to form the NLAP. It is not clear that this decision was consistent with the ILAP review, as the review of the ILAP found that Australian Government funding should continue to support a standalone, specific purpose program for Aboriginal and Torres Strait Islander legal assistance to enable a sustainable, community-controlled legal assistance sector.

ATSILS funding within the NLAP accounts for approximately 22% of the total NLAP funding, an amount of \$441 million over 2020-2025. This includes both baseline ATSILS funding and Social and Community Sector supplementation in some states. This funding is distributed across states and territories using a funding model developed by the AGD. More detail on this model is provided in section 4.4. A full technical paper will be published shortly after the release of this Issues Paper.

The baseline ATSILS funding is intended to support the delivery of culturally appropriate services, consistent with self-determination as defined under the NLAP and Closing the Gap Framework. The funding also includes a requirement that \$8.6 million of baseline funding be used towards legal assistance services related to family law and/or family violence related matters.

Family Violence Prevention Legal Services

FVPLS seek to respond to family violence in high need areas by providing access to culturally safe legal services for Aboriginal and Torres Strait Islander victims. These services support Aboriginal and Torres Strait Islander people who have recently experienced family violence or are likely to do so in the near future.

Funding for FVPLSs is currently administered by the NIAA. The Review understands that FVPLSs were advised in May 2021 that their funding arrangements would be transferred to NLAP from 30 June 2023. This decision was deferred after the 2023 Federal election, pending the completion of this Review.

The mechanism for funding FVPLSs needs to be considered in the broad context of future funding structures for Aboriginal and Torres Strait Islander services. The Review is keen to understand the costs, benefits and risks of changing the current administrative arrangements for FVPLSs.

Key question

How do legal assistance arrangements (that is funding provided to ATSILSs, FVPLS, LACs and CLCs and other organisations) support intersectional and holistic approaches to legal assistance for Aboriginal and Torres Strait Islander people?

Consider:

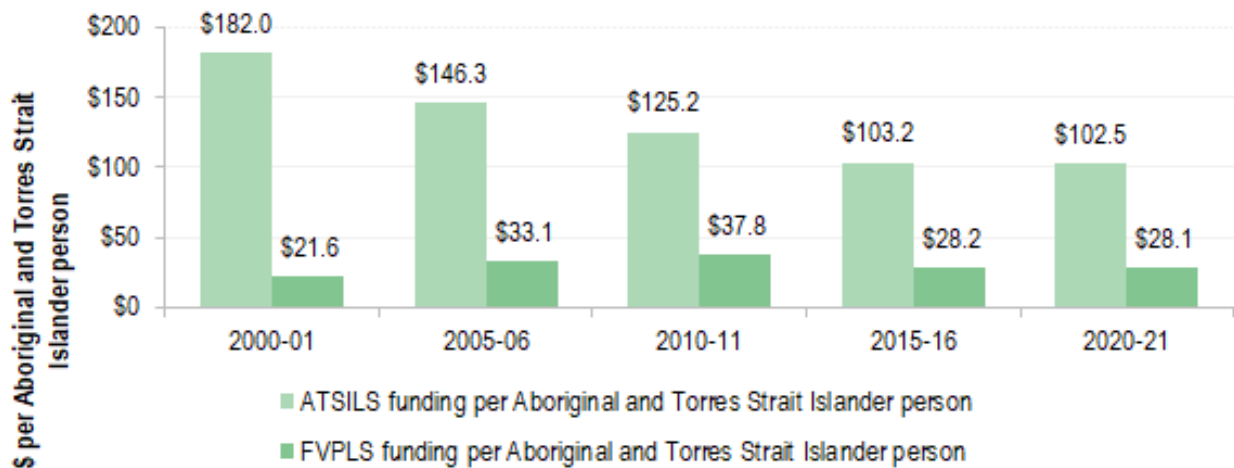
- the benefits or risks of achieving this through a single or separate agreement for Aboriginal and Torres Strait Islander legal assistance services (including both ATSILS and FVPLS)
- whether or not Aboriginal and Torres Strait Islander legal services should be funded directly by the Commonwealth.
- the role of the states and territories in the funding of services for Aboriginal and Torres Strait Islander people.

3.3 Funding levels

Over the decade to 2020-21, Commonwealth legal assistance funding directly to ATSILS increased in real terms, growing at a compound annual growth rate (CAGR) of 1.9%. Over this time, the Aboriginal and Torres Strait Islander population grew by a CAGR of 3.9%. This reflects a decrease in real funding per person for ATSILS by a CAGR of 2%.

Commonwealth legal assistance funding to FVPLSs marginally increased in real terms, at a compound annual growth rate of 0.9% between 2010-11 and 2020-21. This coupled, with the positive growth in the Aboriginal and Torres Strait Islander population. Led to real funding per person for FVPLS to fall by a CAGR of 2.9%. It should be noted that these data present a partial estimate of expenditure assisting Aboriginal and Torres Strait Islander Australians. The data does not include funding of the services they receive from LACs and CLCs or directly from state and territory governments – the Review will endeavour to include such data in the Review Report.

Figure 3.1 Real Commonwealth funding per Aboriginal and Torres Strait Islander person for ATSILS and FVPLS



Source: Data prior to 2013-14 is from the Productivity Commission's Access to Justice Inquiry report. Data from 2013-14 onwards is gathered from funding agreements (i.e., ILAP and NLAP), Commonwealth budgetary papers, and data privately held by the Attorney-General's Department.
(Expressed in 2021-22 dollars – deflated using wage price index)

The Productivity Commission (2014) noted that ATSILSs and FVPLSs faced a number of service delivery challenges including capacity in providing culturally appropriate services, remoteness and language barriers. The cost of delivering services was estimated to be higher, particularly in rural and remote locations, given the need to fund travel, interpreters and other supports in thin markets.

Key question

How should the funding models consider what funding is required to enable delivery of legal assistance through Aboriginal and Torres Strait Islander organisations?

Consider:

- the contribution of current funding arrangements to the achievement of socio-economic outcomes and targets
- access to interpreters in relation to both impact on outcomes and funding in delivery of services to ATSI people.
- how the legal assistance needs of Aboriginal and Torres Strait Islander people should be reflected in the funding of LACs and CLCs.

Issues to be explored

4

Overview of key issues

The following table is provided so that stakeholders can see the issues being examined at-a-glance. Each of the individual issues are expanded on in the subsequent pages. Please note that the questions below are relevant to both Aboriginal and Torres Strait Islander peoples and other Australians.

Issue	Question
1. Effectiveness	To what extent has the NLAP achieved the overall objectives and outcomes?
2. Legal needs	To what extent does current legal assistance meet the overall scale and breadth of the legal needs of disadvantaged Australians?
3. Roles and responsibilities	What roles should the Commonwealth and the jurisdictions play in determining or administering funding distribution between legal assistance service providers?
4. Disadvantaged groups	Are there other systemically disadvantaged groups, either existing or emerging, who are not supported adequately?
5. Regional, rural and remote	How should the challenges of service delivery in regional, rural and remote locations be addressed through future agreements?
6. Funding models	To what extent does the funding model support appropriate distribution and quantum of Commonwealth resources to meet current and future needs?
7. Demand over time	What timeframe is most appropriate for the next national legal assistance partnership agreement, and how can flexibility be embedded to accommodate changing needs?
8. Wrap around services	How can holistic service provision improve outcomes and reduce the demand for legal assistance services?
9. Early intervention	How should legal assistance funding support activities that at an early stage reduce or prevent legal need, including activities not purely of a legal character?
10. Advocacy	Should legal assistance funding be provided to legal assistance providers for advocacy and law reform activities?
11. Efficiency	To what extent are administrative processes of funders placing unnecessary regulatory burdens on legal assistance providers?
12. Commonwealth administrative review	How might Commonwealth administrative processes, including appeals, be reformed to reduce the demand for legal assistance services and improve outcomes for legal assistance service clients?
13. Labour market	How does workforce supply and remuneration impact on the provision of legal assistance services?
14. Data	To what extent are the current reporting processes sufficient to support monitoring, continuous improvement and achievement of objectives?
15. Opportunities	What other changes to the NLAP would further improve service delivery outcomes and maximise use of resources?

4.1 Effectiveness

Objectives

The objective of the NLAP is to contribute to integrated, efficient, effective and appropriate legal assistance services that are focused on improving outcomes and keeping the justice system within reach for vulnerable people facing disadvantage, within available resources. The NLAP aims to facilitate the achievement of the following outcomes:

- a) Legal assistance services are focused on, and accessible to, people facing disadvantage
- b) Legal assistance services are delivered in a client-centric manner in order to better consider people's legal needs and capabilities
- c) Legal assistance and other service providers and governments collaborate to provide integrated, client-centric services to address people's legal and other problems
- d) Legal assistance services are provided at an appropriate time, which best addresses an individual's legal needs, including preventative action when appropriate
- e) Legal assistance services empower people and communities to understand and assert their legal rights and responsibilities and to address, or prevent legal problems
- f) Legal assistance providers are supported to build the capacity of their organisations and staff to ensure they can effectively respond to evolving service demand.

The NLAP also supports the delivery of Aboriginal and Torres Strait Islander specific legal assistance services, consistent with self-determination as defined in the NLAP to:

- a) Enable and empower Aboriginal and Torres Strait Islander people in addressing their legal needs
- b) Improve access to justice outcomes for Aboriginal and Torres Strait Islander people.

Key question

To what extent has the NLAP achieved the overall objectives and intended outcomes?

Consider:

- the appropriateness of the NLAP in achieving its objective and outcomes and delivering outputs
- whether general, specialist and Aboriginal and Torres Strait Islander specific legal assistance services funded under the NLAP have been delivered in an effective, efficient and appropriate manner.

4.2 Legal need

Defining legal need

Legal need refers to a problem that an individual cannot resolve by their own means, and where a legal solution to that problem exists. NLAP currently does not provide a definition of legal need nor a framework for measuring it.

Unmet legal need is where the individual is either not aware of their legal rights or where they lack the appropriate access to legal services, whether for reasons of affordability or availability of the appropriate legal services. Again, NLAP does not provide any guidance as to what level of unmet legal need governments are seeking to address.

Measuring legal need

While met legal need is captured to some extent via data on the use of legal services, these data typically do not capture unmet need. Where it is captured, the data holdings tend to be opportunistic and inconsistent. Most typically these are measures of the number of people who have been turned away by service providers or present as unrepresented litigants.

Measures of unmet need may not distinguish legal problems where a legal solution may not be the most appropriate solution. Current measures of legal need and unmet legal need do not necessarily provide an accurate depiction of the overall legal need in Australia.

Previous reviews and inquiries have found that there is significant unmet demand for legal assistance services in Australia. It has been challenging to identify where there may be unmet legal need, the scale of that unmet need, and the drivers of this gap in the absence of longitudinal data that demonstrate how changes to legislation, employment arrangements, and social and economic conditions can affect legal need.

Comprehensive Australian data have not been collected in recent years, with the most contemporary being the Legal Australia-Wide Survey (LAW Survey) published in 2012. It examined the nature of legal problems, the pathways to their resolution and the demographic groups that struggle with the weight of their legal problems. Individual jurisdictions and bodies are currently exploring mechanisms to capture unmet legal need, but there is limited information available at present. The Productivity Commission (2014) recommended that the Australian Bureau of Statistics should undertake periodic legal needs surveys, including targeted data collection on priority groups – this has not occurred.

Having said this, there is quality evidence pointing to unmet legal need in certain areas of law and among different communities. The Review will seek to bring together these disparate qualitative and quantitative studies of legal need to provide the Attorneys-General with the best estimate of unmet legal need in Australia and advice on the extent to which unmet legal need is growing. The Reviewer has decided that once evidence is gathered, an expert technical group will be convened to advise on the best use of the evidence from a statistical perspective and this will then inform his conclusions and recommendations. This will be quite a substantial task which cannot wait until the closing date for submission to start. If you are aware of any evidence that you think would be helpful in this regard, could you provide it as soon as possible to submissions@nlapreview.com.au – if it is in the public domain, a citation or link will be enough.

Legal need and legal assistance

Not all legal needs require government-funded legal assistance. The determination of legal need to be met is currently viewed as a multivariate function of:

- disadvantage, measured by eligibility criteria, including financial disadvantage testing
- socio-demographic and economic drivers, incorporated within the Funding Allocation Models (FAM)
- priority clients, as determined by the NLAP
- areas of law, as determined by political, legislative and regulatory environments.

The Productivity Commission (2014) noted that not all service agreements between government and service providers were underpinned by a consistent view of priority clients or areas of law, nor was any eligibility criteria applied consistently across states and territories. The Productivity Commission noted that “only 8% of households would likely meet income and asset tests for legal aid, leaving the majority of low- and middle-income earners with limited capacity for managing large and unexpected legal costs”, indicating that the means tests were ‘too mean’ – at the time the Productivity Commission estimated 14% of Australians lived below the poverty line.

The Productivity Commission recommended that the eligibility for government-funded legal assistance should be consistent and linked to an agreed measure of disadvantage, appropriately updated over time, making any eligibility requirements transparent and equitable. This recommendation has not been acted upon.

Key question

To what extent does current legal assistance meet the overall scale and breadth of the legal needs of disadvantaged Australians?

Consider:

- the drivers of legal need, including where needs are and are not being met
- how unmet legal need should be accounted for in the design and funding of legal assistance services
- defining and measuring need and unmet need, including the benefits and design of a periodic national legal need survey.

The Review is also seeking your help in identifying credible data sources of unmet need that may exist.

4.3 Roles and responsibilities

Previous findings

The 2018 Review noted that the Australian Government had a narrowly defined role, identifying that there were opportunities for arrangements to better codify the individual and shared responsibilities, particularly in relation to national data leadership. The Final Report recommended:

“To ensure the responsibilities of governments under the NPA are well defined and complementary, the NPA should explicitly set out the roles of the Australian Government and state and territory governments for the key areas defined within recommendation 1. This would encompass areas of sole and joint responsibility.”

Roles and responsibilities under the NLAP

Under the 2020-2025 NLAP, the role of the Commonwealth is defined as being to:

- **Policy and strategic guidance:** facilitating information sharing at the national level with the States and the legal assistance sector; organising, facilitating and participating in forums at the national level with the States and the legal assistance sector.
- **Provision of funding:** providing a financial contribution to the States for the delivery of mainstream, specialist and Aboriginal and Torres Strait Islander specific legal assistance services in accordance with the NLAP; providing a financial contribution to support the States in administering the NLAP.
- **Sector planning and development:** leading, conducting and participating in national collaborative service planning; providing specific guidance and support to the States on the requirements and implementation of collaborative service planning; sharing resources at the national level which support the ongoing development and capacity of the legal assistance sector within available funding.
- **Performance monitoring:** monitoring and assessing performance under the NLAP to ensure that outputs are delivered and outcomes are achieved; and facilitating improvements to the collection of nationally consistent data and the National Legal Assistance Data Standards Manual.

The Commonwealth provides quarantined administration funding to the states and territories to carry out their roles under the NLAP. The role of the states and territories is to:

- **Policy and strategic guidance:** facilitating information sharing at the jurisdictional level with the Commonwealth and the legal assistance sector; organising, facilitating and participating in jurisdictional legal assistance forums with the Parties and the legal assistance sector; providing, on an annual basis, State funding information for legal assistance services to the Commonwealth, in a manner and format established by the Legal Assistance Services Inter Governmental Committee; facilitating the provision of Legal Assistance Service Data.
- **Allocation and administration of funding:** allocating or distributing, as applicable, and administering quarantined Commonwealth funding for the delivery of mainstream, specialist and Aboriginal and Torres Strait Islander specific legal assistance services, in accordance with the NLAP; allocating or distributing, as applicable, and administering quarantined SACS supplementation until 30 June 2021 to eligible service providers through a fair and transparent process.
- **Sector planning and development:** leading, conducting and participating in jurisdictional and local collaborative service planning; supporting the ongoing development and capacity of the legal assistance sector within available funding.
- **Performance monitoring:** reporting on the delivery of outcomes and outputs; monitoring and assessing the delivery of legal assistance services under the NLAP; ensuring that Community Legal Centres funded under the NLAP collect data; ensuring Legal Assistance Service Data is collected and reported consistent with the National Legal Assistance Data Standards Manual.

The Commonwealth and states and territories are jointly responsible for:

- participating in consultations with the legal assistance sector as appropriate regarding the implementation of the NLAP
- meeting biannually on a bilateral basis to discuss the operation of the NLAP
- ensuring the ongoing collection and transparent reporting of nationally consistent data
- working with the legal assistance sector to increase data availability
- developing an outcomes-based framework for legal assistance services
- supporting the independent review.

States delivered their respective Legal Assistance Strategy and Action Plan 2022-2025 for this agreement and the Review will undertake an assessment of these. These, in addition to bilateral agreements, outline reporting and measurement requirements, financial arrangements and other conditions that apply for the duration of the agreement.

Key question

What roles should the Commonwealth and the jurisdictions play in determining or administering funding distribution between legal assistance service providers?

Consider:

- the benefits and risks of more specific roles with performance indicators and outcomes
- the involvement of the Commonwealth in the distributional outcomes of CLC allocations of the states and territories
- whether agreements should specify annual funding commitments for all parties.

4.4 Disadvantaged groups

Previous review findings

The Productivity Commission (2014) reported that disadvantaged Australians are more susceptible to, and less equipped to deal with, legal disputes. Governments have a key role in supporting these individuals and cohorts to manage legal problems. Legal assistance services under the NLAP have a strong focus on supporting disadvantaged individuals and priority groups who are otherwise unlikely to secure legal advice or representation. The 2018 Review indicated that the existing objectives, including targeting disadvantaged Australians, remained appropriate.

Current priority cohorts

The NLAP specifies the following National Priority Client groups under Schedule A, clause A.3:

- Aboriginal and Torres Strait Islander peoples
- Children and young people (0-24)
- Older people (over 65, or over 50 for Aboriginal and Torres Strait Islander peoples)
- People experiencing, or at risk of, family violence
- People experiencing, or at risk of, homelessness
- People in custody and/or prisoners
- People residing in rural or remote areas
- People who are culturally or linguistically diverse
- People with a disability or mental illness
- People low education levels, and
- Single parents.

This list is intended to recognise that certain cohorts of people facing disadvantage are more likely to experience legal problems, less likely to seek assistance and less able to access services. These cohorts are also often impacted by intersectionality, discussed further in the section on wrap around services, which requires legal assistance providers to deliver a complex array of person-centred and culturally safe services, including interpreters.

States and territories may identify other priority client groups specific to their respective jurisdictions. These groups should be identified in the State's Legal Assistance Strategy.

The variety of disadvantaged cohorts will grow and evolve over time, with emerging groups such as:

- *LGBTIQ+*: A legal needs analysis report conducted by the Victoria Law Foundation (2020) highlighted the specific needs experienced by the Victorian LGBTIQ+ population to support policy makers better understand and meet these specific and varied needs.
- *Veterans*: The Productivity Commission inquiry report into a Better Way to Support Veterans (2019) identified veterans as a priority group, in particular for funding for the Administrative Appeals Tribunal processes.
- *Individuals and communities impacted by disasters, including climate change*: The Royal Commission into National Natural Disaster Arrangements, (2020) indicated that it is expected that more concurrent and consecutive hazard events occur. Such events increase pressure on communities, particularly those already vulnerable.

Key question

Are there other systemically disadvantaged groups, either existing or emerging, who are not supported adequately?

Consider:

- the approach to defining and measuring legal need (met and unmet) for priority cohorts
- the level and categories of current unmet legal need for priority cohorts
- how the needs of people experiencing multiple sources of disadvantage can best be addressed.

4.5 Regional, rural and remote contexts

Level of need

People residing in rural or remote areas are identified as priority cohorts under the NLAP, reflecting their high level of need. These individuals often experience high socio-economic disadvantage and compounded barriers to accessing justice such as distance, lack of public transport, and access to technology.

Workforce challenges

Staffing regional, rural and remote legal assistance can be challenging due to the limited availability of qualified workers, low retention and high attrition. Consultations to date have also identified that there are mental health and wellbeing concerns for the workforce as a result of isolation, vicarious trauma and a lack of local support.

Service delivery challenges

The delivery of legal assistance services in regional, rural and remote Australia is made difficult by higher operational costs and higher levels of disadvantage. Previous reviews have identified that the cost of legal assistance services negatively affected services' ability to meet demand, particularly when working with isolated or remote communities. The level of effort required to service isolated communities is reportedly not captured in current data and performance monitoring, including the cost of transport, time taken for travel and access to appropriate infrastructure.

The Review has heard through early consultations that legal assistance in regional, rural and remote locations can often encounter conflicts of interest due to the small size of communities, especially in relation to Aboriginal and Torres Strait Islander communities. This highlights the need for diversified and remote service provision that introduces alternative

sources for legal advice, thus reducing conflict of interest concerns whilst maintaining culturally appropriate service provision.

Key question

How should the challenges of service delivery in regional, rural and remote locations be addressed through future agreements?

Consider:

- the availability of appropriately trained legal assistance professionals
- the cost of delivering services in these locations
- other supports needed to overcome barriers, such as workforce incentives and access to housing.
- challenges associated with conflict-of-interest issues

4.6 Funding models

Previous review findings

Historic arrangements separated funding for ATSILSs from funding for LACs and CLCs, with ATSILS funding provided through the ILAP and LAC/CLC funding through the NPA. The Commonwealth has funded FVPLSs and some specialist CLCs outside these agreement frameworks. Previous reviews found that the NPA effectively integrated core Australian Government funding for LACs and CLCs into a single agreement, which supported devolved planning and decision-making around the distribution of funding to state and territory level.

Commonwealth money for Commonwealth matters

The Commonwealth baseline funding for LACs under the current NLAP is restricted to Commonwealth law matters such as family law proceedings, migration, employment, insurance, consumer law, NDIS appeals and crimes set out in Commonwealth laws. For some matters, the Commonwealth is a party but not in all instances. In addition, this funding can be used to provide assistance in relation to:

- State laws when matters relate to the safety or welfare of a child, connected to family law proceedings,
- State law when matters relate to a person's safety connected with family law proceedings, or
- In discrete assistance (such as information, referral, advice, legal tasks or non-legal support) or community legal education.

Baseline funding attributed to family law and/or family violence for CLCs is to be used for family law and/or family violence matters, irrespective of jurisdiction.

The requirement that Commonwealth funding be only used for Commonwealth law matters applies only to LACs. Similar restrictions are not present for CLCs or ATSILSs. The Review understands that the principle of "Commonwealth money for Commonwealth matters" was introduced in the 1990s to address a concern at the time that the states and territories may be cost shifting onto the Commonwealth. The Review is interested in views whether this approach remains necessary and/or legally required and what the impacts are on service providers and service provision of this requirement.

Current NLAP funding model

The 2018 Review noted that there was a demand for more transparency in how Funding Allocation Models (FAMs) were devised. The 2018 Review recommended that:

"To support the rigour and improve the transparency of the funding formula to determine allocations to jurisdictions, the current FAMs should be reviewed (and if appropriate, updated) by an independent body to inform negotiations around Australian Government funding to states and territories under the NPA."

The Review understands that FAMs may not have been shared with jurisdictions and service providers.

Currently, baseline Commonwealth legal assistance funding is allocated based on 3 separate models – one for each subsector (LACs, CLCs and ATSILSs). These models do not determine the level of Commonwealth funding for these subsectors, but rather they use the available funding as an input and distribute it across jurisdictions.

Each model is structured similarly and can be characterised by 4 components: a population component, a needs component, an operational component and a cost factor component. The population and needs components are intended to represent differences in the relative need for legal assistance between jurisdictions, while the operational and cost factor components consider the differences in the cost of delivering comparable services across jurisdictions. These components and their underlying drivers are represented schematically in Figure 4.1. ACIL Allen has undertaken a review of these models and a more detailed technical paper will be published shortly after the publication of this Issues Paper.

In allocating baseline funding under the NLAP, a ‘no state or territory loses’ principle was adopted for the first year, meaning each subsector across every jurisdiction received at a minimum, their baseline funding levels from the preceding year.

Figure 4.1 Schematic of the funding allocation model



Source: Australian Attorney-General’s Department

FVPLS funding

In 1998, the FVPLS Program was established by the Aboriginal and Torres Strait Islander Commission in the Law and Justice Program. Initial allocation totalled \$4.8 million to establish 13 units. In 1999, the Queensland Government released the Aboriginal and Torres Strait Islander Women’s Taskforce on Violence report which led to an increase in funding of services of \$1.2 million annually, to a total of \$6 million per annum.

In 2003, responsibility for FVPLSs moved from ATSIC to the Aboriginal and Torres Strait Islander Services (ATSIS) Division in the Attorney-General’s Department. In 2004-2005, the House of Representatives conducted an Inquiry into Indigenous Law and Justice, which resulted in additional funding. Funding was increased to \$22.7 million over 4 years to fund an expansion of the FVPLS program from 13 to 26 units. In 2006-2007, the FVPLS program was expanded to increase 26 services to 31, develop early intervention and prevention programs and a wider range of legal services. This resulted in additional investment of \$23.6 million over 4 years.

Responsibility for the FVPLS moved from ATSI to the Indigenous Affairs at the Department of the Prime Minister and Cabinet. In 2017- 2018, \$24.5 million was provided to the sector; and for 2018-2019 \$25.37 million was provided. Upon its creation on 29 May 2019 responsibility for FVPLSs was transferred to the National Indigenous Australians Agency (NIAA). FVPLSs today are funded under the Indigenous Advancement Strategy (IAS) Program 1.3 Safety and Wellbeing under the IAS Agency Collaborates Grant Opportunity Guidelines via simplified direct approach.

Grant funding is provided through direct Funding Agreements between the NIAA and each individual FVPLSs. In 2020-21 to 2022-23, \$92 million total investment was provided for the FVPLS program. This includes the \$17 million which was announced as part of the 2021-22 Women's Safety Budget Measure to expand the FVPLS program and bringing 2 new FVPLS providers online.

In December 2019, the Government announced they would equally distribute the \$244,000 allocation per annum for the National FVPLS Forum Secretariat across each of the existing FVPLSs for use towards FVPLS Forum Membership fees. In 2022-23, funding of \$3 million over 3 years from 2022–23 has been provided for the National FVPLS Forum to act as a peak body for FVPLS providers. In 2023-24 to 2024-25, \$68.6 million over 2 years will be provided for the FVPLS sector to support the work of the 16 FVPLSs to continue to provide culturally safe legal and critical non-legal wrap around services to women and children First Nations families (predominately women and children) subjected to experiencing family violence, domestic violence and/or sexual assault.

The Review is keen to get a better understand as to how funding determinations for FVPLSs reflect the operating costs of individual services, how these are affected by their particular locations and whether the criteria for the establishment of new FVPLSs properly meets the legal and other needs of Aboriginal and Torres Strait Islander women and children.

Additional and “top up” funding

NLAP funding has been supplemented by government over the life of the agreement to respond to changing circumstances and unanticipated community needs. For example, in the 2021-22 Budget, the Australian Government committed an additional \$355 million for the NLAP which covered a range of measures, including:

- increased legal assistance for vulnerable women
- maintaining and enhancing the Family Advocacy and Support Service
- supporting people with mental health conditions to access the justice system
- frontline support to address workplace sexual harassment
- preventing and responding to child sexual abuse prosecutions
- enhancing mental health supports through Domestic Violence Units and Health Justice Partnerships
- family law pilot program in South Australia.

The Review understands many of these programs, which involve significant funding, will end in 2024 or 2025 thereby constituting a “funding cliff”. The Review is keen to understand the consequences of the programs going over the cliff and if they were retained, how should they be funded. The Review is also interested in understanding the consequences of funding via short term programs as opposed to general increases in base funding.

Non-NLAP funding

While most funding provided by the Australian Government is provided through the NLAP, there are other sources of funding that support the delivery of legal aid and legal assistance services. Indicative amounts are provided in section 2.4.

Key funding pools include the ECCCCF, the CLS program, and the Cross-Examination Program. Targeted funding is also provided to other organisations, like the Arts Law Centre and refugee and immigration legal services, to ensure the needs of specific communities are addressed. The NIAA also supports legal assistance service activities which work with Aboriginal and Torres Strait Islanders, including the FVPLS program.

Alternative funding approaches

The current funding models do not determine what level of funding is required to address a specified level of legal need but rather, simply distributes a largely arbitrary level of baseline funding which is then supplemented in a non-systematic way on the basis of politically perceived need.

Data presented in Chapter 2 of this Issues Paper shows a long-term deterioration on real per capita legal assistance funding in the face of growing demand for, and complexity in, the provision of legal assistance funding. It would therefore not be surprising if the current funding approach would not address the legal needs of the most disadvantaged Australians.

In parallel to this Review, the AGD will identify options to update the models, and consider alternative approaches to funding distribution. An options paper will be provided to this Review and released for consultation. This process, being conducted separately by AGD, in no way constrains the ability of this Review to make recommendations regarding any aspect of its Terms of Reference.

The Review seeks feedback on alternate funding approaches that should be considered to meet legal needs of Australians.

Key question

To what extent does the funding model support appropriate distribution and quantum of Commonwealth resources to meet current and future needs?

Consider:

- the need to maintain the principle of ‘Commonwealth funding for Commonwealth matters’
- gaps in current funding and the quantum of any funding gaps
- how should the level of baseline funding for the next agreement be determined and distributed
- should terminating funding under NLAP be rolled into baseline funding and if so how
- whether Commonwealth funding should continue to be provided both within and outside NLAP and/or within the Attorney-General’s portfolio and if so how.

4.7 Managing demand over time

Duration of the agreement

National partnership agreements for legal assistance have generally spanned 5 years, with the current NLAP time limited from 2020-21 to 2024-25. Longer agreements that commit to longer term funding of assistance providers can enable them to undertake efficient investment and planning that is not possible in the environment of uncertainty and risk generated by short-term funding. This is particularly the case in the development of partnerships with non-legal service providers, legal and non-legal staff and systems for compliance, analysis and service delivery. The length of the agreement needs to find a balance between ensuring service providers have the certainty to invest over time but have the resources to meet changing legal need and cost conditions.

There can be significant change over the course of these agreements, with shifts in socio-demographic and economic factors, policy reforms, the introduction of new legislation and exogenous events such as COVID and natural disasters. These changes can drive increases in demand for legal assistance services – some of which may be short-term in nature, and others which contribute to longer-term increases in need. Similarly, assumptions about the relationship between the growth in costs of services to the general rate of inflation may be wrong or change over time and forecasts of the underlying rate of inflation may not eventuate in 3- or 4-years’ time.

Previous review findings

The 2018 Review identified that there was a perceived erosion of funding in real terms due to increasing service delivery costs and increasing demand. The Final Report recommended that:

“To ensure funding remains stable in real terms at a state and territory level, the FAMS should incorporate provision for the indexation of supply-side costs and demand drivers as forecast at a jurisdictional level and applied over the duration of the agreement. This would include, for example, the use of labour cost indexation formulae that are specific to each state and territory, and updates socio-demographic forecasts drawing on the most current data available.”

That review also found that there was increasing demand for legal assistance services and increasing costs of service delivery, placing significant pressure on services and compromising the objectives of the NPA. This would suggest that the indexation of funding should reflect both changes in demand and changes in the unit cost of services, although it is not clear whether these should be forecast costs over the agreement period or based on outcomes on an annual basis.

Initial consultations suggest that there have been occasions where the policy and law reform decisions of one government impacts on the demand for legal assistance services funded by another. Similarly, inflation assumptions made at the time of the making of NLAP are unlikely to reflect Australia’s current macroeconomic circumstances. The Review would like to explore what mechanisms might be put in place to ensure that where policy and law reform changes have an impact on the demand for legal assistance services, the jurisdiction making the policy or law change meets, or at least contributes, to the cost of meeting that increased legal assistance demand. Similarly, the Review is interested in views how changes in unit costs outside service providers controls can be better dealt with in any future funding arrangement.

Key question

What timeframe is most appropriate for the next national legal assistance partnership agreement, and how can flexibility be embedded to accommodate changing needs?

Consider:

- the most appropriate timeframe for the national legal assistance partnership agreement
- the most suitable way to index the funding over time to ensure funding adequacy
- how best to adjust funding in the event of unforeseen changes in demand or input prices.

4.8 Wrap around services

Intersectionality

People accessing legal assistance services often face multiple vulnerabilities which can lead to complex and multifaceted legal needs. Intersectionality refers to the ways in which aspects of a person’s identity can expose them to overlapping forms of discrimination and marginalisation, such as gender, sexual orientation, ethnicity, refugee background, disability, mental health, and socio-economic status. When these aspects combine, there is a greater risk of systemic barriers that prevent individuals from getting the help needed.

Meeting the legal needs of these people often requires not only legal assistance, but also other services provided inhouse or in partnership with other agencies. For example, a non-legal issue such as housing or accommodation may need to be addressed before (or in conjunction with) addressing a legal issue. This requires additional work from legal assistance providers to ensure clients are appropriately supported. These challenges particularly impact Aboriginal and Torres Strait Islander women and children, where access to legal assistance can occur through non-legal services and trusted connections.

Previous review findings

The 2018 Review found that the intent of collaborative service planning (CSP) was well supported by stakeholders. However, there was significant variability in implementation across jurisdictions, reflective of different developmental stages, stakeholder participation and approaches taken to CSP. This manifested with a variable focus, scope, and a lack of clarity of purpose.

It found there was considerable scope for improvement in implementation of CSP, with opportunities to overcome competitive tensions relating to the funding environment, power imbalances and conflicts of interest amongst stakeholders, and inconsistency in sector participation. The 2018 ILAP Review identified similar findings and recommended that the Australian Government should work with ATSILSs and the NATSIL to implement strategies to facilitate greater consistency of CSP at the national and state/ territory levels in the future.

Current agreement

The NLAP incorporates funding for specific wrap around service models, including Domestic Violence Units, Health Justice Partnerships and Family and Advocacy Support Services.

Baseline funding for each LAC, some CLCs (on an allocation approved by the relevant state or territory Attorney-General) and ATSILS is provided by the Commonwealth are often used by service providers to support wrap-around service delivery models. Funding for these activities is also provided by the States under their own grant agreements, administered separately through relevant departments and agencies.

FVPLSs deliver culturally safe legal and non-legal services to Aboriginal and Torres Strait Islander women and children. Their model of service delivery supports a holistic response to family violence by delivering services along the continuum of need, including prevention and early intervention services, case management support and service advocacy, and recovery and healing programs. This reflects wrap around support across the spectrum from prevention, early intervention and recovery.

Australian Government's Wellbeing Agenda

The Australian Government has recently released Measuring What Matters – Australia's first national wellbeing framework. The framework aims to support better alignment of economic and social goals in order to deliver on 5 wellbeing themes of Healthy, Secure, Sustainable, Cohesive and Prosperous. Access to justice informs in particular the Secure theme.

The Review is keen to hear views and evidence around the importance and impact of wrap around support services, not only for the benefit of client outcomes and wellbeing, but also whether these supports can reduce the level of demand for legal assistance services.

Key question

How should holistic service provision improve outcomes and reduce the demand for legal assistance services?

Consider:

- what approaches to wrap around services have worked well and what have not
- the impact of access to justice on wellbeing and other outcomes of individuals
- the contribution to broader wellbeing agendas
- barriers in the current arrangements to the provision of such support services.

4.9 Early intervention

Current agreement

The NLAP includes key outcomes that focus on prevention and early intervention. Clauses 14(d) and 14(e) of the NLAP stipulate outcomes that include ‘preventative action when appropriate’ as well as ‘empowering people and communities to assert their legal rights and responsibilities and to address, or prevent, legal problems’. This is slightly different to the 2015-2020 NPA, where the intended outcome was that ‘legal assistance services help people to identify their legal problems and facilitate the resolution of those problems in a timely manner before they escalate’.

Prevention and early intervention work that is undertaken with NLAP funding includes community legal education, stakeholder engagement, legal advice, referrals, legal tasks, dispute resolution, non-legal services and law and legal services reform. Prevention and early intervention can also take the form of integration with non-legal services, such as financial counselling or social workers, to allow for improved outcomes for clients and reduction of lawyer efforts on non-core legal work. As such, prevention and early intervention also intersects with wrap around services (Section 4.8) and advocacy and law reform (Section 4.10).

Previous review findings

The 2018 Review found that the NPA’s focus on prevention and early intervention was sound, and activities undertaken by service providers included a significant degree of early intervention work through the provision of legal advice, community education and other similar activities.

However, the review cited evidence provided in the Productivity Commission (2014) of the ‘missing middle’, those who ‘do not meet the financial disadvantage testing for legal assistance services and for whom private legal services are unaffordable’. Within the 2018 Review, stakeholders indicated that failure to provide legal services to this cohort can result in exacerbation of disadvantage to the extent that they eventually meet the financial disadvantage test. Providing services to this cohort would be consistent with the ethos of early intervention and deliver downstream benefits to both clients and the legal system in terms of avoided costs.

Prevention and early intervention are also evident under the NLAP through a focus on performance indicators that track the success of facilitated resolution processes. However, the 2018 Review included stakeholder feedback that the performance indicators in this area did not accurately reflect the level of effort needed or the outcomes achieved.

Technology and innovative approaches can support the delivery of early intervention legal assistance. The 2018 Review indicated that, while the agreement allowed for innovation particularly in the prevention and early intervention areas, it did not specifically drive innovation by providing specific funding for innovative programs or measures to reduce demand. It was also found to be a key mechanism by which the 2018 NPA achieved value for money.

The Review is keen to hear views and evidence around whether the current focus on prevention, early intervention and recovery is adequate or would benefit from strengthening, including addressing some issues faced by “the missing middle” that if not addressed would lead them to creating increased demand for legal assistance services.

Key question

How should legal assistance funding support activities that at an early stage reduce or prevent legal need, including activities not purely of a legal character?

Consider:

- the benefits and risks of funding preventative services, including legal education and information services
- the potential for cost shifting
- what indicators should be used to measure the success of such services.

4.10 Advocacy

Scope for advocacy

Under the NLAP, there is little guidance provided in relation to activities that may fall under advocacy and law reform. Specifically, clauses in Schedule A of the NLAP stipulate that:

- A18: The NLAP does not prohibit legal assistance providers from engaging in lobbying activities.
- A19: Legal assistance providers funded under the NLAP must prioritise the use of Commonwealth funding for the delivery of frontline legal assistance services and/or undertaking activities required under the NLAP.

Previous review findings

The Productivity Commission (2014) found 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” and recommended that:

“The 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.”

The 2018 Review found that CLCs and LACs undertake some level of policy and advocacy work, but it was not possible to determine the level of funding or effort that had specifically been allocated to such work. The 2018 Review noted that CLCs and FVPLSs perceived that the restrictions on the application of NPA funding under clause B7, which limited lobbying and public campaigns, constrained the advocacy and law reform work of the sector. As a result, the 2018 Review provided Recommendation 21:

“To address consistent perceptions in the CLC sector that the lobbying clause precludes or constrains law reform and advocacy work, the NPA should incorporate a clearer definition of lobbying and the specific activities towards which NPA funding cannot be applied.”

A similar perception that ATSILSs’ advocacy work was not supported by ILAP was found in the ILAP Review. The ILAP Review noted the value of the advocacy work undertaken by ATSILSs recommended funding for the ATSILSs and FVPLSs for strategic litigation and for clarity to be provided around law reform, advocacy work and research.

Recent developments

In November 2022, the Commonwealth Attorney-General noted that “legal assistance providers are superbly well placed to provide advice on law reform and legal assistance” and that he had “worked with the Attorneys-General of the State and Territories to remove clauses from the National Legal Assistance Partnership 2020-25 that restricted them from engaging in lobbying activities” (Dreyfus, 2022). Notwithstanding this, the current NLAP provides that Commonwealth funding should still prioritise the delivery of frontline services and other activities required under the NLAP.

In specific jurisdictions, state legislation may also specifically stipulate that legal aid organisations undertake policy and advocacy work. For example, the *Legal Aid Act (VIC) 1978* empowers Victoria Legal Aid to undertake strategic advocacy, both through submissions to inquiries and reviews, running test cases, and advocating directly to different areas of government and the courts.

In this regard, the Final Report of the Royal Commission into the Robodebt Scheme recommended:

“When it next conducts a review of the National Legal Assistance Partnership, the Commonwealth should have regard, in considering funding for legal aid commissions and community legal centres, to the importance of the public interest role played by those services as exemplified in their work during the Scheme.”

While this recommendation has not been formally referred to the Review, the Independent Reviewer is of the view that it is already within the scope of the Terms of Reference, and as such he will have regard to the recommendation of the Royal Commission and associated materials.

Key question

How should legal assistance funding be provided to legal assistance providers for advocacy and law reform activities?

Consider:

- the benefits and risks of the outcomes that can be achieved through funding advocacy activities
- how such activities should be funded and how might this funding vary across different types of legal assistance providers
- the flow-on effects of funding law reform activities.

4.11 Efficiency

Previous review findings

The Productivity Commission (2014) reported that the high number of service providers contributes to an enlarged administrative burden, where duplication in administration tasks across the sector absorbs more time and resources. It found that the share of expenditure on the provision of services varied considerably, with many organisations dedicating significant expenditure to administrative costs, thus detracting from frontline service delivery. This impacted disproportionately on smaller organisations, with the size and structure of service providers affecting the nature of administrative expenditure.

The 2018 Review identified that the overall reporting burden imposed by the then NPA was relatively low and appropriate for the level and nature of funding, but limited commentary was provided on administrative approaches.

Reporting and regulatory requirements of the NLAP

The development of the NLAP saw the introduction of new reporting requirements. Amendments included requirements for the collection of comparable data delivered by aligning sector reporting requirements and data obligations, including funding for the Australian Bureau of Statistics to undertake projects to improve data analysis.

The Review has heard that at the service level, operational and administrative efficiencies within services have been adversely impacted by the NLAP. Short term funding in some jurisdictions has diminished the appetite for longer term investment in infrastructure and systems upgrades that would enhance efficiency.

Other reporting requirements

Legal assistance providers generally face multiple and inconsistent reporting requirements as a result of the diversified streams of funding. This leads providers to gather different, but often overlapping, data sets, report in different formats and on different timelines.

Previous reviews and inquiries have identified that compliance with these increases the cost and overheads associated with the provision of legal assistance. These reviews have consistently highlighted the benefit of greater alignment of reporting requirements to reduce the administrative burden for providers. In preliminary consultations the Review one service provider has advised it needs to provide the same information twice to the Commonwealth – once to ABS and once to AGD, but in different formats and that reporting to AGD across a range of programs is not integrated. Clearly, it may be the case that more work is required to reduce the burdens.

The Review has also heard that the administration of grants of legal aid from LACs may place unnecessary regulatory burdens on private practitioners.

Technology has an important role to play in improving efficiencies of reporting. The Review is keen to receive practical suggestions as to how the compliance burden of service providers may be reduced and what other administrative reforms might improve the efficiency of the legal assistance services.

Key question

To what extent are administrative processes of funders placing unnecessary regulatory burdens on legal assistance providers?

Consider:

- the current costs of compliance and red tape that impact the delivery of legal assistance, and how these can be reduced or streamlined
- the effect of regulatory burdens on the cost of delivering legal assistance services and subsequent impact of reducing availability of private practitioners to undertake legal aid.

4.12 Commonwealth administrative review

The Australian Government has committed to a reform of the federal administrative review system largely administered by the Administrative Appeals Tribunal (AAT). There is recognition that the introduction of new programs, such as the NDIS, have contributed to increased demands for federal administrative reviews, along with legal assistance related to these matters.

There is a significant backlog within AAT, particularly related to NDIS appeals and migration matters. As of January 2022, approximately 4,500 matters related to NDIS appeals were waiting to be heard and an estimated 56,208 migration matters were waiting to be heard as at 30 June 2022. These matters tend to take a relatively extended period to resolve – as an example, NDIS matters took a median of 31 weeks to finalise while migration and refugee matters required a median of 133 weeks to finalise.

The Administrative Review Taskforce has highlighted that there is significant unmet legal need. In addition to addressing the backlog, there is an opportunity to transition to a model that could reduce the impost on legal assistance services by reforming legislation and increasing education to improve departmental decision-making.

The Administrative Review Taskforce has advised that their consultation indicated that Aboriginal and Torres Strait Islander peoples seem proportionally under-represented. The Review is interested in whether this group of Australians is indeed not accessing the AAT at levels that would be expected, why this might be and how the provision of legal assistance services might improve this situation.

Key question

How might Commonwealth administrative processes, including appeals, be reformed to reduce the demand for legal assistance services and improve outcomes for legal assistance service clients?

Consider:

- how should legal assistance be provided for Commonwealth Administrative law matters
- what should the criteria be for access to legal assistance for these matters
- how might tribunal process be modified to improve outcomes for people requiring legal assistance and/or reduce the demand for legal assistance services
- whether Aboriginal and Torres Strait Islander Australians being afforded appropriate access to justice in Commonwealth administrative proceedings and how might legal assistance services address this.

4.13 Labour market

Legal assistance workforce

The legal professions encompass a range of sectors. In 2022, over two-thirds of solicitors in Australia were working in private practice (67%), followed by the corporate legal sector (17%) and the government legal sector (13%). Only 3% of solicitors worked in the community legal sector (Urbis, 2022).

A suitably skilled, sized and located legal profession is a pre-requisite for effective access to justice. Attracting students to study law, and graduates into the breadth of sectors, requires competitive remuneration, conditions and pathways.

Remuneration of legal assistance workers

Remuneration differs greatly across sectors. While there may be some variation across jurisdictions, median income for CLC employees was \$65,000 to \$77,999 per annum (Victorian Law Foundation, 2022) and for LAC employees was \$90,000. Consultations to date indicate that the average income for solicitors within ATSILSs and FVPLSs is between \$58,000 and \$80,000. By contrast, private practice salaries generally start at \$100,000 for top tier firms (Beacon Legal, 2022).

Workplace conditions

Remuneration is not the only factor that determines labour market outcomes. The Review has already heard of the difficulties in attracting and retaining lawyers to the legal assistance sector, particularly in the light of their need to service debts from their tertiary education. These issues are exacerbated in regional, rural and remote areas by a range of factors including access to adequate housing and professional development.

Conditions also differ across sectors. The preponderance of short-term funding in the funding mix means that the community legal sector is often limited in its ability to offer permanent, full-time positions, and flat organisational structures provide few opportunities for progression and development. Many workers experience vicarious trauma as a result of the complex needs of the individuals they are supporting. Workloads are also reportedly high, with significant file loads and limited support which contributes to burnout. This impacts the retention of both legal and non-legal professionals, resulting in relatively high staff turnover.

Role of private practice

The private profession provides services to the community on a fee-for-service basis on behalf of LACs. Under a grant of aid, LACs pay for a private lawyer to have ongoing legal representation for a client's legal problem. These funds are released in stages to coincide with the amount of legal assistance delivered. Normally, the first stage of a grant of aid will pay for initial advice, investigation, and negotiation on a client's case. However, it can be extended to cover more work (for example, going to trial) if there is legal merit to take the case to the next stage.

In 2014 the Productivity Commission suggested that rates at the time were inadequate. The Review understands from initial consultations that these fees paid may not cover all hours of work required, are generally lower than market rates and in many instances have fallen in real terms. Further it has been suggested to us fees in legally assisted state matters are in some cases 30% higher than in relation to Commonwealth matters.

The Review is keen to consider how grants of legal aid might be more appropriately set and how this would reduce unmet legal need particularly in regional, rural and remote areas.

Private practitioners also provide pro bono services, though not all private practitioners do so. In 2022, the average annual number of pro bono hours per lawyer was 36.4, increasing from 35.5 hours in 2020 (Australian Pro Bono Centre, 2023). In a relatively small survey of firms with over 50 staff 80% reported having at least one dedicated pro bono manager, whose primary responsibility was to coordinate pro bono legal work. The Review understands that some governments, such as the Commonwealth and Victoria, have incorporated the provision of specified amounts of pro bono services as a requirement for firms to be part of their respective legal services panels.

The Review is keen to hear views and evidence regarding whether there is an adequate supply of lawyers to meet the current and forecast legal need, and whether any changes in employment arrangements, including but not limited to remuneration levels, would lead to an overall increase in supply that would be able to address unmet legal need as opposed to simply improving outcomes for the existing workforce.

Key question

How does workforce supply and remuneration impact on the provision of legal assistance services?

Consider:

- the current employment arrangements, including levels of remuneration, of lawyers and other staff, by level across legal assistance service providers
- how have these developed over time, how do these compare domestically and internationally
- barriers to the training or supply of adequate legal assistance workers, and how would addressing these increase the size of the legal assistance work force.
- the adequacy of grants of legal aid for Commonwealth assisted matters, how might this be address and how adequacy can be maintained through time
- the extent of pro-bono services provided by small and large firms to support the work of legal assistance providers.

4.14 Data collection

Performance monitoring

Quality data on legal assistance services supports an understanding of which clients are accessing legal assistance services, which service models are most effective, and how legal assistance funding is best targeted. There is a need for data to be consistent, accurate and linked in order to support performance management and improved service delivery.

Part 4 of the NLAP sets out national performance indicators, including:

- total number of clients receiving legal assistance services disaggregated by funding category and legal assistance provider and priority client group
- number of legal representation services and the percentage of those services in which the clients were financially disadvantaged
 - number and percentage of legal assistance services, separately identifying funding category, legal assistance provider type, service type and disaggregated by law type, problem type and priority client group
- total number of information and referral services by legal assistance providers, separately identifying service type and legal assistance provider type
- total number of legal assistance services (provided to the community), separately identifying legal assistance provider type, disaggregated by service type.

Data and reporting requirements

Schedule D of the NLAP requires that states and territories provide Legal Assistance Service data. It is supported by the National Legal Assistance Data Strategy, developed in accordance with the NLAP. The Strategy sets the policy framework for the collection, storage, reporting, transmission, and analysis of data that are collected and reported under the NLAP. The Strategy outlines 4 key outcomes:

- NLAP service data are consistent and accurate.
- The legal assistance sector is informed by data to deliver improved services for people experiencing disadvantage and for their communities.
- Commonwealth, state and territory governments have a better understanding of legal assistance services to inform legal assistance policies and programs.
- NLAP service data informs an outcomes-focused approach.

States and territories must provide Legal Assistance Service Data annually, covering unit-level client demographic information and service information. The data required is of 2 types: compliance data under JPR and SoSF clauses and unit level data to the ABS.

Legal assistance services that receive funding from other sources may be required to provide separate reporting. The National Legal Assistance Data Strategy recommends that this reporting aligns with the National Legal Assistance Data Standards Manual (DSM) to support consistency and comparability, but there is no requirement to do so.

While reporting must be provided electronically, consultations identified that legal assistance providers may still be using paper-based records or disconnected data systems. This can result in an administrative burden on resource-constrained organisations.

Linkage to Closing the Gap

Priority Reform 4 of the National Agreement aims to ensure that that “Aboriginal and Torres Strait Islander people have access to, and the capability to use, locally relevant data and information to set and monitor the implementation of efforts to close the gap, their priorities and drive their own development.” As noted in Chapter 3, the draft report from the Productivity Commission (2023) found that changes to government data policy and access are limited.

Key question

To what extent are the current reporting processes sufficient to support monitoring, continuous improvement and achievement of objectives?

Consider:

- the adequacy of current key performance indicators, data standards and collections,
- ability for data collection to reflect the complexity of service delivery, level of digital transformation required
- how legal assistance data could be integrated with existing and emerging data sources providers
- are the current arrangements supporting Priority Reform 4 of the National Agreement on Closing the Gap and how might they be improved

4.15 Opportunities

In addition to reviewing existing practice, the Review seeks to find ways to improve the NLAP by learning from best practice and innovation that may already be happening within individual service providers and peak bodies. The Review is particular interested in any view of the likely impact, and funding implications, of the future use of artificial intelligence and other technological developments. Submissions are welcome to explore general ideas and thoughts on how the NLAP might be improved.

Key question

What other changes to the NLAP would further improve service delivery outcomes and maximise use of resources?

Consider how the NLAP could be changed to better support innovation and improved best practice throughout the life of the agreement.

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Terms of reference

A

Background

Legal assistance plays a vital role in ensuring more equal access to the justice system which is fundamental to our democratic society and the rule of law. Not only does legal assistance facilitate improved outcomes for individuals, it also generates broader benefits to society. Conversely, insufficient legal assistance not only results in injustice and entrenches disadvantage, it can have other profound economic and social costs for individuals, their families and communities.

The Commonwealth and the States and Territories (the States) have a mutual interest and responsibility in the provision of legal assistance services, within available resources. The National Legal Assistance Partnership 2020-2025 (NLAP) is a key mechanism to assist vulnerable people facing disadvantage by keeping the justice system within their reach. Services are delivered through legal aid commissions, community legal centres and Aboriginal and Torres Strait Islander Legal Services, as well as other service models, such as Family Advocacy and Support Services (FASS), Domestic Violence Units (DVUs) and Health Justice Partnerships (HJPs).

The NLAP is subject to an independent review (clauses 81 and 82) which should, at a minimum, consider:

- a) progress towards achieving the overall objective and outcomes of the NLAP
- b) the appropriateness of the NLAP in achieving its objective and outcomes and delivering its outputs
- c) whether mainstream, specialist and Aboriginal and Torres Strait Islander specific legal assistance services funded under the NLAP have been delivered in an effective, efficient and appropriate manner.

It is imperative that the NLAP review informs an improved future legal assistance framework that supports efficient, sustainable, client-centric, evidence-driven service delivery, promoting best practice. This includes a cost-effective and appropriate Commonwealth funding mechanism that fosters a productive partnership between the Commonwealth, the States, and service providers, and advances the importance of legal assistance in improving legal, social and wellbeing outcomes for people in Australia.

Scope of the Review

In accordance with the Federation Funding Agreements Framework and consistent with the NLAP (clause 82), the review will evaluate the extent to which the objective, outcomes and outputs (clauses 13-20) of the NLAP have been achieved, and the NLAP is efficient, effective and appropriate in achieving its policy intent. It will have a particular focus on:

1. A holistic assessment of legal need and all Commonwealth legal assistance funding, including:
 - a) the quantum, prioritisation, allocation, distribution mechanism, and timing and length of existing Commonwealth funding, including funding provided under the NLAP and outside the NLAP
 - b) funding allocated across jurisdictions and within each jurisdiction.
 - c) comparative analysis of various funding administration mechanisms, such as direct and indirect distribution of Commonwealth funding under the NLAP, and other legal assistance programs for example Family Violence Prevention Legal Services (FVPLS), and the previous Indigenous Legal Assistance Program 2015-2020 (ILAP) to identify best practice for Commonwealth funding arrangements including principles of self-determination
 - d) the current evidence of unmet legal need and demand, particularly pertaining to the most disadvantaged communities and population groups, such as those in regional, rural and remote locations

- e) whether existing arrangements can appropriately respond to emergencies and new priorities (e.g., natural disasters, COVID-19 and legislative change).
2. An evaluation of the effectiveness and challenges of service delivery, including:
 - a) the effectiveness and challenges of delivering core legal assistance services of varying complexity and intensity, as well as wrap-around services such as counselling; and the broader role of providers in community education, advocacy and strategic litigation
 - b) integration, collaboration and innovation of service delivery, within the sector and with other areas of social service provision such as health, employment, disability and child protection services, and how the NLAP supports broader government priorities (such as, the National Plan to End Violence Against Women and Children, Australia's Disability Strategy, and the National Framework for Protecting Australia's Children)
 - c) the cultural appropriateness of legal assistance services for First Nations people, acknowledging the diversity of Aboriginal and Torres Strait Islander culture, and the alignment between legal assistance services and the Priority Reforms and Targets under Closing the Gap
 - d) cultural appropriateness of legal assistance services for all national priority client groups under the NLAP.
 3. An evaluation of data collection, performance monitoring and reporting, including:
 - a) the current reporting framework, including its purpose, utility, and data quality, with consideration of the data capability across and the administrative burden on the sector
 - b) exploring alternative frameworks and approaches to improve the data availability, reliability, quality, and better connection with the broad outcomes
 - c) opportunities and strategies to enhance data collection of legal assistance that improve service delivery, guide future outcomes-based frameworks, and align with Closing the Gap Priority Reforms 2 and 42.

Individual evaluations of specific services under the NLAP, such as FASS, DVUs and HJPs, will be outside the scope of the review. However, the impact of these service models will be considered as part of the review.

Process

The review will adopt a transparent and collaborative approach to consultation and will consult widely and extensively. At minimum it will enable inputs through submission and/or consultation from:

- Legal Assistance Inter-Governmental Committee (IGC) and its members
- National Legal Assistance Advisory Group and its members, and other advisory bodies as appropriate
- Peak bodies and providers of the legal assistance sector at all levels
- Sectors and service streams that interact with legal assistance, including government departments and institutions, and non-government bodies, such as research institutions, peaks and providers in relevant social and health sectors
- Clients (existing and potential) of legal assistance services

The reviewer should strive towards best practice in engaging, consulting and collaborating with First Nations legal service providers, peak bodies and communities in a genuine, comprehensive and culturally appropriate manner that values First Nations experience and expertise. The review methodology should align with the Closing the Gap Priority Reform Areas which highlight the importance of empowering and partnering with Aboriginal and Torres Strait Islander people. A draft review report and the final report will be provided to all Attorneys-General around December 2023 (clause 81). The final report will be publicly released by the Commonwealth within 3 months of completion of the review (clause 86).

Detail on the funding model

B

Information under compilation, to be provided in separate addendum.

